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CENTRAL ADM INISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 551/1989.

DATE OF DECISION: 27-5-1991.

Dineshwar Parshad

....

APPLICANT.

V/s.

Department of Defence and
Others

....

RESPONDENTS.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Ms. Sarla Chandra, counsel for the applicant.
Shri P.P. Khurana, counsel for the respondents.

1. Whether Reports of local papers may be allowed to see the judgment? *Yes.*
2. To be referred to the Reporter or not? *Yes.*
3. Whether their Lordships wish to see the fair copy of the judgment? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

CJ
(P.C. JAIN)
MEMBER (A)

(RAM PAL SINGH)
VICE-CHAIRMAN (J)

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by his non-appointment to the post of Oil Engine Driver (OED) in the office of Garrison Engineer (G.E.) and has prayed that the respondents be directed to appoint him as OED with instant effect. As an interim relief, he prayed for a direction to the respondents to stop any further new appointment to the post of OED till the appointment of the applicant to the said post. The interim relief prayed for has not been granted. As the pleadings in this case are complete and we have heard the learned counsel for the parties on the merits of the case, we are of the view that the case can be finally disposed of at the admission stage itself and we proceed to do accordingly.

2. It is common ground between the parties that for some posts of OED under the office of G.E., Dehradun, names were called for from the Employment Exchange and interviews were held in 1982. The applicant's name was also sponsored by the Employment Exchange and he too was interviewed. An offer was also sent to him vide letter dated 13.4.1983 (Annexure 'F' to the O.A.). The subject-matter of this

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letter is shown as "RECRUITMENT/APPOINTMENT:OED ON CASUAL BASIS". The letter states that the applicant has been selected for appointment against the temporary vacancy of OED on casual basis. (emphasis supplied). He was to report to the office of G.E., Dehradun, in connection with verification of his antecedents, and it was also, inter-alia, stated that his appointment is purely on temporary basis and will be subject to: -

- (a) Fulfilling conditions laid down in Recruitment Rules.
- (b) Satisfactory verification of character/ antecedents from civil authorities.
- (c) Fitness medically.

He was asked to report by 23.4.1983. According to the applicant, he reported on 14.4.1983 with the documents as asked for in the aforesaid letter. It is here that the controversy between the parties starts.

3. According to the applicant, he was required to be issued an authorisation for getting himself medically examined, but such an authorisation was not issued to him in spite of verbal and written requests. It is his further case that even though his name was included in the panel of selected candidates, he was not appointed to the post, but seven others were appointed. Verification of character and antecedents through the District authorities had been completed in May, 1983. He has challenged the action of the respondents in appointing others and denying the appointment to him as arbitrary, discriminatory, and against the Government instructions on the subject. In his rejoinder, as also on the basis of two documents filed by him after the rejoinder had been filed, he has contended that a number of vacancies were available in 1987 and fresh recruitment had been made against those vacancies in 1987.

4. The case of the respondents, in brief, is that only seven vacancies had been released by the higher authorities in 1982 and the aforesaid selection was made

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in pursuance of those vacancies. It is also stated that the applicant's name was also included in the panel, but his number in the merit list was ~~xxxx~~ much below and, therefore, seven selected candidates who were higher than the applicant in the panel had been appointed against those seven posts. It is further stated that the panel was prepared of a larger number of candidates with a view to utilizing the same for short-term vacancies on casual basis and, accordingly, the applicant was also issued an offer for appointment on casual basis, but by the time his case could be processed, the need for casual engagement had ceased to exist pursuant to improvement in the supply of electricity and absence of the need for running generating sets, on short-term basis. It is also the case of the respondents that the instructions issued in the Ministry of Home Affairs O.M. dated 8.2.1982 (annexed to Annexure 'N') were received only in April, 1987, but the panel in which the name of the applicant had been included ceased to be effective after 31st December, 1983. No vacancies were released during the period 1983 to 1986 and by the time some more vacancies were received in 1987, the Recruitment Rules had been amended, as a result of which the technical qualification of certificate from NCVT/I.T. I. was prescribed as an essential qualification, which the applicant did not possess.

5. At the outset, it may be pointed out that the applicant claims to be a Scheduled Caste candidate (para 4(f) of the O.A.). However, the list of candidates sponsored by the Employment Exchange filed by the respondents (Annexure-II to the counter) in which the name of the applicant appeared at Sl. No.27, shows him to be a Schedule Tribe candidate. Further, in the Attestation Form filled in by the applicant for purposes of verification of character and antecedents (Annexure II-A to the counter reply), against col.9 thereof, he has stated that he is neither a member of Scheduled Caste nor of Scheduled Tribe. The applicant has stated that he had

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submitted S.C. candidate certificate at the time of interview. However, the respondents have denied this contention. The applicant has not placed anything on record to substantiate his claim that he is a Scheduled Caste candidate. On the other hand, he admits in his rejoinder that he was sponsored by the Employment Exchange as a S.T. candidate. No document has been placed on record before us in support of his contention of even being a S.T. candidate. In these circumstances, his case has to be considered only as if he was a General Category candidate.

6. In the Notification of vacancies sent to the Employment Exchange vide letter dated 17th September, 1982 (Annexure-I to the counter reply), the number of vacancies in the post of OED is shown to be five. However, as per para 4(q) of the counter-reply, seven posts of OED are stated to have been released for being filled up and these were filled up in April, 1983. The applicant has filed at Annexure 'X' to the O.A. a list of candidates as per list prepared on 5.11.1982. As per this document, the number of vacancies is shown to be seven, of which two are shown to have been reserved for S.C. and one for S.T. candidates. Further, according to this document, the applicant's name appeared at Sl. No.2 in the list of 15 candidates under the list of General Category candidates. Six names appeared under the category of S.C. candidates and two names under the category of S.T. candidates. Respondents have not filed any merit list prepared after the interviews. In the reply, they have, however, stated that the name of the applicant appeared much below the seven candidates who were appointed against the seven available posts. It is also borne out by the material on record before us that some of the General Category candidates, whose names appeared, as per the document at Annexure 'X' ibid, lower in the list were appointed in 1983. The averment about Annexure 'X' is contained in para 5(ii) of the O.A. In their reply to this para, the respondents have stated that the contention of the applicant is incorrect and that he was too junior in the panel drawn in 1982 and the validity of the panel had

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already expired. The reply of the respondents does not categorically challenge the genuineness of the document at Annexure 'X'. Further, the respondents have also not filed, as already stated, any list of selected candidates to substantiate their contention that the name of the applicant in the select list was at a much lower position, as they claimed to be. It is in this background that the grounds of arbitrariness and discrimination alleged by the applicant against the respondents have to be viewed. On the basis of the material before us, as discussed above, it cannot be held by us that the position of the applicant in the merit list was such as to disentitle him to claim for appointment against the sanctioned posts then available.

7. The applicant has also relied on the instructions issued by the Ministry of Home Affairs in their O.M. dated 8.2.1982. It is stated in these instructions that normally recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. It is further stated that, however, when there is a likelihood of vacancies arising in future, in case names of selected candidates are already available, there should either be further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates awaiting appointment. The contention of the applicant, therefore, is that as the recruitment was made subsequently in 1987, his name being in the panel, he should have been appointed first before making fresh recruitment. The respondents' contention is that the aforesaid instructions of 1982 were circulated by the Headquarters only in 1987. This fact is borne out by the document filed by the applicant as Annexure 'N', which shows that the covering letter by which the instructions of 8th February, 1982 were circulated, was issued on 13th March, 1987.

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The respondents thus contend that these instructions could not have been implemented before they were received. This may be a good defence for respondent No.2 i.e., Garrison Engineer, Dehradun Cantt., but it cannot be held so in respect of respondent No.1 (Department of Defence) and the Union of India through the Secretary, Ministry of Defence. However, even then the applicant cannot get any relief on the basis of these instructions because these are applicable only to lists of selected candidates which include names only equal to the number of vacancies available. This is not the case with respect to the alleged select list. Respondents have pleaded that more names were included in the list with a view to filling up short-term vacancies of duration not exceeding 89 days on casual basis.

8. It is not in dispute that the applicant was not issued the authorisation for getting himself medically examined by the prescribed / competent Medical Attendant. Respondents' case is that this was not done as the need for even casual employment for period not exceeding 89 days ceased to exist because of the improvement in the electricity supply situation and, as such, the applicant was not authorised to get himself medically examined. This contention would have some weight only if it is established that the applicant was eligible, as per his position in the select list, ^{only} for the occasional casual employment. This does not appear to be so in view of our discussion in the earlier para of this judgment.

9. It is also not in dispute that certain appointments to the post of OED were made in 1987 (Annexure 'A-II to the Additional Affidavit filed by the applicant on 2.4.1991. According to the respondents, the applicant was not even considered eligible for consideration against appointments made in 1987 as by that time, the Recruitment Rules had been amended and he did not possess the technical qualification prescribed in the amended rules. The applicant cannot, therefore, claim any right to be considered for appointment against the 1987 posts if he was not eligible for such a post at that time.

10. In the light of the foregoing discussion, we hold that in the absence of any select list which should have been filed by the respondents in support of their case, the list of selected candidates filed by the applicant cannot be ignored. As in this list, the name of the applicant appears at Sl. No.2, he should have been issued the authorisation for getting himself medically examined and if he was found medically fit, he should have been appointed to one of the seven vacancies, for which the select list had been prepared. We, therefore, allow the O.A. in terms of the directions that the applicant shall be appointed to one of the regular posts of OED after his medical examination, and after completing other formalities prescribed in the rules, within a period of three months from the date of receipt of this order. He shall also be granted necessary relaxation, in the facts and circumstances of the case, in the matter of age. Whether the applicant is appointed against a reserved post or against a non-reserved post, will depend on the applicant's satisfying the competent authority about his eligibility in this regard. Prima-facie, the list of selected candidates shows his name in the list of non-reserved category. He has neither prayed for any back benefits, nor can he be allowed the same in the facts and circumstances of the case. The relief sought for by him in the O.A. is for his appointment as OED "with instant effect". The applicant approached the Tribunal only on 30.1.1989. Repeated representations said to have been made by him or by other persons / organisations on his behalf, would neither have the effect of extending the limitation, nor entitle him in equity to any past benefits. If there is no vacancy, the applicant shall be adjusted either against a regular vacancy if any falls vacant within the aforesaid period of three months, or a supernumerary post shall be created for the applicant to be adjusted against the regular vacancy as and when it arises in due course. We leave the parties to bear their own costs.

(P.C. JAIN) 27/5/1991
MEMBER(A)

(RAM PAL SINGH)
VICE-CHIRMAN (J)