

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1705/87 1987
TAX NO.

DATE OF DECISION 15.7.88

Smt. Usha Jain

Petitioner

Shri O.P. Gupta

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mrs. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER


(P.K. KARTHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 1705/87

Date of decision 15.7.88

Smt. Usha Jain Petitioner

Vs.

Union of India & Others Respondent(s)

Shri O.P. Gupta Advocate for the
Petitioner

Mrs. Raj Kumari Chopra Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered
by Hon'ble Shri S.P. Mukerji, Administrative
Member)

The applicant, who was admittedly selected by the Headquarters of Technical Group EME of the Army Headquarters through the Employment Exchange in December, 1984, but has not been given any appointment so far for the post of Lower Division Clerk (in lieu of Combatant) has moved this application under Section 19 of the Administrative Tribunals' Act dated 24th November, 1987, praying that the respondents be directed to give her appointment to the post of LDC (in lieu of Combatant)

from the date of the occurrence of vacancy with arrears of salary and other consequential benefits.

2. The admitted facts of the case are as follows.

Two posts of Lower Division Clerk (in lieu of Combatant) for a limited period were sanctioned in May, 1984. The sanction was to expire, if they were not filled up, within six months from the date of issue of the sanction letter. After further approval of the AG's Branch for the release of these two vacancies for direct recruitment through Employment Exchange, the Employment Exchange, New Delhi, was approached for sponsoring suitable candidates. The applicant's name was received from the Employment Exchange along with ~~those~~ ^{all} other candidates. After interview and test in October, 1984, a Select List of 5 candidates was prepared in which the name of the applicant was at S.No.2. The approval of the Appointing Authority was obtained on the select panel and on 11th December, 1984, letters were sent to the applicant as also to the other two candidates within the first three positions in the Select List, intimating her that her name was being considered for appointment as LDC and she was asked to get herself medically examined and character and antecedents verified. She was also asked to report to the Headquarters for further instructions. She reported accordingly, but she was not given any ^{on} appointment. She and her father went/representing

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without any effect. On 16th June, 1986, her father was informed (Annexure-E) that even though the applicant had qualified for appointment as LDC, / due to ban on filling up of vacancies, she could not be employed and as soon as the ban was lifted, she would be considered for the job. In March, 1987, the petitioner received a letter from respondents dated 9th March, 1987 (Annexure-A) to the following effect:-

" Employment: LDCs (IN LIEU OF COMBATANT)

1. Refer to your interview/test held on 18th October, 1984 for the post of LDC (In lieu of Combatant).
2. Please confirm whether you are still interested in your employment as an LDC (In lieu of Combatant) in this HQ. If so, please report in persons within 3 days of the receipt of this letter for further directions.
3. In case no reply is received within 7 days of the issue of this letter it will be assumed that you are no more interested in the above employment and your name will be deleted from the select list".

The applicant immediately conveyed her willingness and reported to the Headquarters, but was not taken on and duty. She represented on 25.3.87 15.7.87 claiming the appointment, without effect. The respondents sent a letter on July, 27, 1987 (Annexure-B) in which the respondents indicated that her case had been referred to the higher authorities for clarification and that she would be informed as and when the same is received.

3. The respondents have admitted the aforesaid facts, but have explained that when the sanction of

of the vacancies expired in November, 1984, they obtained fresh sanction for 4 vacancies which were further released by the AG's Branch in January, 1985.

In the meantime, it was doubted whether the vacancies there was a could be filled up as L ban imposed by the Government,

and whether the applicant who had crossed the age-limit could be offered an appointment at that time. The

matter was referred to the higher authorities in

March, 1987 and in the meantime the petitioner was

asked in March, 1987 whether ~~she~~^{was} still willing to join as LOC. The Army Headquarters in April, 1987,

clarified that the ban was not applicable and that

the age-limit did not apply in case where the individual was within the age-limit at the time of selection.

regarding During this period of correspondence, L doubts and

clarifications, the sanction accorded for the vacancies expired and further sanction was refused by the EME's

office. Accordingly, the applicant could not be

appointed. The respondents further clarified that the

vacancies were "in lieu of Combatant" and even if the

applicant had been appointed, her service could be

terminated on the joining of a Combatant (Military personnel)

Accordingly, the applicant cannot claim permanent

appointment. They have further stated that the vacancy was purely of casual nature which could be terminated at any

time on availability of a Military personnel.

4. We have heard the learned counsel for both the parties and gone through the documents carefully. The main thrust in the applicant's case is that the applicant has developed a right to her appointment on the basis of her being included in the select panel. We are not impressed by this argument. It is upto the respondents to fill up the vacancy or not, depending upon the exigencies of service, availability of vacancies, public interest and many other factors. The mere fact that a selection process was held and some persons were selected does not mean that the respondents committed to appoint the person selected. In the instant case, the vacancies were of a temporary nature and appointments, if any, were subject to availability of Combatants who had the pre-emptive right to fill up the vacancies. Even otherwise, since no offer was made by the respondents to the applicant, even the intention to have a contract of appointment is not desirable. It is true that on 9th March, 1987, as quoted above, the respondents asked the applicant to confirm whether she was interested in her employment as an LDC. This was merely in the manner of an enquiry and cannot be held to be an offer of appointment.

5. The learned counsel for the applicant quoted the ruling of Punjab and Haryana High Court in Subash C

Chander Marwaha Vs. State of Haryana and Others, 1973(1)

SLR 823. In that case the Court observed as follows:-

" Advertisement is an invitation at large to the public to offer their services, but once the said order is made and the candidates appear in the competitive examination, their selection to the Service is governed by the statutory rules and if the said rules confer a right to the class of qualified persons to be appointed against the posts and if the Government decides to fill in the said posts, a plea cannot be taken that the Government will refuse to pass an order of appointment thereby refusing to bring into being the contract of service". (emphasis added)

In the instant case there is no statutory rules to govern the selection of the applicant, nor was there any decision to fill in the post. On the other hand because of the expiry of the sanction, it was decided not to fill up the post. Accordingly, the above ruling does not apply. In the same case the High Court observed that the rule of promissory estoppel regarding filling up of the post is not absolute. The State Government can refuse to act upon such a representation keeping in view the higher public interest. The ruling cited by the learned counsel for the applicant in another case of Onkar Singh Vs. Union of India, 1979(2) SLR 219 is of no avail because that pertains to selection under statutory rules where the vacancies continued to exist. These circumstances as indicated above do not obtain in the instant case before us. Another ruling cited by the learned counsel for the applicant in Prem Prakash and Another Vs. Union of India & Others, AIR 1984 SC 1031,

will not be quite relevant to the instant case before us. In that case the vacancies existed and there was a contest between one group of selected candidates and earlier group of selected candidates. It was held that if selected candidates are available from the previous list, the Appointing Authority has the responsibility to appoint such selected candidates, even if the number of vacancies undergoes a change and that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. In the instant case before us there was no contest between the two groups of selected candidates and the applicant could not be given appointment for the mere fact that there was no vacancy available.

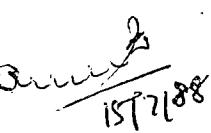
On the allegation made by the applicant that subsequent to 9th March, 1987, some vacancies of LDCs have been filled up by the respondents, The respondents have filed an affidavit dated 5th July, 1988, that no appointment of LDCs (in lieu of Combatant) out of the 5 candidates selected for the said post has been made since 19th November, 1984, in Headquarters Technical Group EME, Delhi Cantt. and that six vacancies of LDCs were filled up between 14.1.1985 and 1.2.1983 on compassionate grounds.

6. In the facts and circumstances, we see no merit in the application and dismiss the same with the direction to the respondents that if any vacancy of LDC is to be

filled up through the Employment Exchange in the course of current financial year ending 31st March, 1989, the applicant should be given preference on the basis of her inclusion in the select panel, without any further test or selection, but subject to her medical fitness and suitability in other respects. There will be no order as to costs.


15.7.88

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER


15.7.88

(P.K. KARTHA)
VICE CHAIRMAN