

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1221 of 1987
T.A. No.

199

DATE OF DECISION 31.1.92

Shri Iqbal Kumar Katarmal

Petitioner

Shri K.L. Bhatia

Advocate for the Petitioner(s)

Versus

Dy. Director General Coast Guard Hqrs. & Ors

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. D.K. Chakravorty, Member (A).

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgement of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this application, filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for the relief that he be declared as promoted to the post of Head Draughtsman. He has further prayed for a direction to the respondents not to hold examination.

2. The applicant was appointed as Draughtsman on ad hoc basis from 2.5.81 for a period of three months. The appointment was purely provisional. This appointment order was passed on 4.5.81 vide Annexure 'A'. On 20.7.81, the applicant was appointed as Draughtsman on temporary basis in the scale of Rs. 330-10-380-EB-12-500-EB-15-560 with effect from 16.7.81 vide Annex.

'B'. He was placed on probation for a period of two years with a

stipulation that the same may be extended at the discretion of the competent authority. Subsequently, a seniority list (Annex.'C') dated 7.2.86 was published in which the applicant was shown at the top and in columns (c) and (d), he was shown as quasi-permanent Draughtsman with effect from 16.7.84. The applicant has further contended in his O.A. that he was harassed and persecuted by Shri S.L. Bhutani, his immediate officer, due to which he suffered setback in his health. He has stated that the post of Head Draughtsman is next higher post to which he is entitled to be promoted on the basis of his seniority. He made a representation for his promotion but the same was rejected on the ground that the applicant could not be promoted without his being successful at the examination/test set for the purpose. According to the applicant, for filling up one post of Head Draughtsman, respondent Nos. 1 and 2 want to conduct an examination in order to favour respondent No.3 in contravention of the departmental rules (Annex. 'E') which are statutory rules.

The applicant claims to be the seniormost in the seniority list (Annex. 'F') and hence, according to him, he should be promoted to the post of Head Draughtsman without being compelled to appear in a test. The applicant filed a representation against the proposed examination to be held by the respondents for filling up the post, but the representation was rejected.

3. The respondents have appeared and opposed the prayer of the applicant and they contend that the relevant service rules do not prohibit holding of the departmental examination to ascertain the suitability of the candidates to be selected for filling up the posts of Head Draughtsmen. The respondents have denied the allegation of mala fide on the part of Shri Bhutani against the applicant.

4. After filing the O.A., the applicant prayed for ad interim relief ex-parte and a Bench of this Tribunal on 18.9.87 issued ex-parte interim order restraining the respondents from declaring the results of the examination in question. Thus, the conduction of

Continued

19

the examination itself by the respondents for the post of the Head Draughtsman was not stayed. Again the applicant prayed for an interim order praying for the stay of the holding of the examination by the respondents. The prayer was turned down on 14.12.88 by a Bench of this Tribunal which refused to stay the holding of the examination, but advised the applicant to appear in the test which was to be held by the respondents.

5. Shri K.L. Bhatia, learned counsel for the applicant, and Shri P.P. Khurana, learned counsel for the respondents, were heard extensively. The main contention of the applicant is that when the rules do not provide for holding of a suitability test/departmental examination, the respondents have no right to hold any examination for the purpose of filling up the post of Head Draughtsman. The applicant further contends that as according to Annex 'C', the seniority list, the applicant is the seniormost Draughtsman, the respondents should promote him to the post of the Head Draughtsman. Shri Bhatia has laid great stress upon the provisions of the departmental rules (Annex 'E'). These rules are called the Coast Guard Head Draughtsman and Draughtsman Recruitment Rules, 1981. For convenience, we reproduce Rule 3 which provides the method of recruitment, age limit and qualifications etc:

Rule 3: "The method of recruitment, age limit, qualifications and other matters relating to the said posts shall be as specified in columns (5) to (13) of the Schedule aforesaid."

This Rule 3 also includes column (5) to column (13) of the Schedule.

which are as under:

Column 5 - Whether Selection post or non-Selection post - N.A.

Column - 6 - Age limit for direct recruits - 30 years and below.

(Relaxable for Government servants upto 35 years in accordance with the instructions or orders issued by the Central Govt.)

NOTE: The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than those in the Andaman and Nicobar Islands and Lakshadweep).

Column 7 - Education^{al} and other qualifications required for direct recruits -

1. A degree in Engineering or its equivalent.

OR

20

Matriculation or equivalent.

2. Must have completed apprenticeship of at least 3 years in Naval/Marine/Electrical/Mechanical/Structural Workshop Engineering Drawing office with 5 years experience in Draughtsmanship.

OR

Diploma in Civil/Mechanical/Electrical/Naval Architecture and Ship Construction Engineering/Diploma/Certificate, in Commerical Art with 5 years experience in Draughtsmanship.

Column 8 - Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees. -

No.

Column 9 - Period of probation, if any.

Two years .

Column 10 - Method of recruitment whether by direct recruitment or by promotion or by deputation or transfer and percentage of the vacancies to be filled by various methods.

By promotion/transfer on deputation, failing which by direct recruitment.

Column 11 - In case of recruitment by promotion or deputation or transfer, grades from which promotion or deputation or transfer to be made:

Promotion/Transfer

Persons holding analogous posts under the Central Government and possessing the qualifications and apprenticeship/experience prescribed for direct recruits. The departmental Draughtsman with 6 years service in the grade will be considered and if he is selected for appointment to the post, it will be treated as having been filled by promotion.

(Period of deputation shall ordinarily not exceed three years)

Column 12 - If a Departmental Promotion Committee exists what is its composition -

Group 'C' Departmental Promotion Committee (and for considering confirmation of the direct recruits) consisting of:-

1. Director (Personnel), Coast Guard Hqrs. - Chairman.
2. Asstt. Director (Admn), Coast Guard Hqrs - Member.
3. Asstt. Director(Mat), Coast Guard Hqrs - Member.
4. Asstt. Director (Ops.) Coast Guard Hqrs - Member.

Column 13 - Circumstances in which Union Public Service Commission is to be consulted in making recruitment -

Not applicable.

2. 11. 14

5. Annexure 'G' is the objection raised by the applicant against the selection of Head Draughtsman by recruitment to the post of Head Draughtsman by means of examination. On 19th August, 1990 the Commander issued directions to the applicant as well as to the respondent No.3, the two departmental candidates who were found eligible for consideration for the post of Head Draughtsman, for appearing at the written/oral examination in the subjects of Engineering Drawings, Maths and Applied Mechanics, Marine Engineering and General Science. The applicant and respondent No. 3 both were directed by the Department to forward their willingness for their participation in the written/ oral examination. According to the O.A., the applicant sent his willingness for appearance in the examination, but has contended that he was pressurised to give his consent for appearance in the examination.

6. According to the applicant, he exercised the option for appearing in the examination, the failure of which would amount to forfeiture of his right of consideration for promotion. He exercised this option under pressure and duress. Therefore, he is not bound by the option he made. Before filing this O.A., the applicant does not appear to have repudiated his option and his willingness for appearance in the examination to be conducted by the respondents. He kept silent after giving his option and appears to have raised this plea in the O.A. as an afterthought. We are, therefore, not inclined to accept the contention of the applicant that he filed his option for appearance in the examination under any pressure. The rule, referred to above, lays down that for the promotion of the departmental Draughtsman to the post of Head Draughtsman, a candidate should possess ^{prescribed} qualifications and must have experience of a Draughtsman for 6 years. If he fulfills these conditions, he would be considered for selection. It is, therefore, clear that it is a selection post. The respondents are entitled to determine the suitability for the promotion by process of selection. "Selection" means assessment of comparative merit of two or

2-11-11

more persons. The applicant and respondent No. 3 were eligible for selection to the post of Head Draughtsman and the Department decided to hold examination for judging the comparative merit of the two candidates which was not against the provisions of the Rules. ^{specific} These rules do not prescribe any/method for assessing the suitability of eligible candidates nor the Rules provide for automatic promotion on the basis of seniority alone. In the circumstances, it was open to the competent authority to supplement the Rules by executive instructions prescribing test for assessing the suitability of competing candidates for promotion to the post of Head Draughtsman which is a selection post. The respondents were justified in directing the applicant to appear at the test and the applicant has no right to be promoted in the post of Head Draughtsman merely on the basis of his seniority.

7. Enclosure 3 of the Respondents' ^{counter} is an O.M. No. 14017/24/76-Estt. RR dated 22nd May, 1979 which specifies clearly that when promotion to a post is proposed to be made on the basis of merit, the word 'Selection' may be used in Col.5 of the Recruitment Rules (Annex. E of O.A.) Schedule, and when promotion is to be made on the basis of seniority, subject to the rejection of unfit, the word 'Non-selection' may be used in Col. No. 5. In the Rules for the post of Head Draughtsman, the entry in Col. 5 reads as 'non-applicable'. The implication is clear that the post of Head Draughtsman is a selection post in the normal sense of the term. It is, therefore, clearly established that the post of Head Draughtsman is a selection post.

8. A perusal of the Coast Guard Head Draughtsman and Draughtsman Recruitment Rules, 1981 shows that there is only one post of Head Draughtsman to be filled up "by promotion/transfer on deputation, failing which by direct recruitment". The respondents had proceeded to fill up the post by the first composite method of selection, namely by promotion/transfer on deputation. Besides the two eligible internal candidates, 5 applications were received for deputation out of which only person was found eligible.

Accordingly, there were three candidates for the examination for selection for the post of Head Draughtsman. The applicant has stated that in the test held in September, 1987 only one candidate namely respondent No. 3 appeared. He has contended that the method of examination is adopted only if there are a large number of candidates to be considered and if it is not possible to assess their inter se merit by the DPC. Further, in cases of recruitment of candidates for isolated posts by direct recruitment, the Union Public Service Commission do not hold any examination. We see merit in this contention of the applicant. The respondents have issued notice in February, 1991 for holding another examination for filling up of the post of Head Draughtsman but no date for the same has yet been fixed. While we uphold the right of the respondents to prescribe examination or any other procedure considered appropriate as a method of selection, we direct them to consider whether the selection should be made by the normal DPC procedure or through a duly constituted Board by scrutiny of confidential report dossiers/personal interview etc. if the number of candidates available is small.

9. The O.A. is disposed of on the above lines. However, in the circumstances, there will be no order as to costs.

D.K. Chakravorty 31/1/92
(D.K. CHAKRAVORTY)
MEMBER (A)

Ram Pal Singh 31.1.92
(RAM PAL SINGH)
VICE-CHAIRMAN (J)