

(7)

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.214/2004

Friday, this the 15th day of October, 2004

Hon'ble Shri S. K. Naik, Member (A)

Ashok Kapper
R/o 21, Chidya Colony
IARI, Pusa Road
New Delhi-12

..Applicant

(By Advocate: Shri Rajinder Nischal)

Versus

1. Union of India through Secretary
M/o Industries, Govt. of India
Udyog Bhawan, New Delhi

2. Joint Controller of Patents & Designs
Patent Office Branch, MM Building
Karol Bagh, New Delhi-5

3. Shri Ajay Kumar, Peon
s/o Shri Mahavir
Joint Controller of Patents & Designs
Patent Office Branch, MM Building
Karol Bagh, New Delhi-5

4. Shri Ghanshyam, Peon
O/o Joint Controller of Patents
& Designs, Patent Office Branch
M.M. Building, Karol Bagh,
New Delhi -5.

..Respondents

(By Advocate: Shri K.R. Sachdeva)

ORDER (ORAL)

This OA has a chequered background. The applicant – Shri Ashok Kapper – was initially appointed as a Waterman on daily wage basis for about 120 days from June 1997 until December 1997 and thereafter appointed as a Peon on ad hoc basis from 21.9.1998 until 15.9.1999, as admitted by the respondents themselves in their reply. The applicant, however, claims that he worked for 180 days during 1997-98 as a Waterman and subsequently as a Peon from 20.10.1998. He claims that he had completed more than 206 days of service. During the year 1999, the applicant along with one Raj Kumar had filed OA-2089/99 before this Tribunal for grant of temporary status, which, however, was not allowed by the Tribunal but in its order dated 17.2.2000, the Tribunal observed as under:-

Final

⑧ Name of R-4 inserted as per
o/dt. 20¹²/₂₄ in RA 222/04. *Handwritten signature*
13/01/2005

"5. As the applicants have been in service from 1998 for a period of two years continuously and that had completed more than 206 days, they are, however, entitled to be considered in preference to the other freshers or juniors in the future appointments of casual labourer in the respondents department."

2. It appears that during May 2000, the respondents appointed five group 'D' Peons against the vacancies. While Raj Kumar, who was the co-applicant in OA-2089/99, was one of those five appointees, the applicant was left out, even though he was senior to Raj Kumar in terms of their engagement/ad hoc appointment. The applicant thereafter filed a Review Application along with MA, in which it appears that he had challenged the appointment of his co-applicant, which, however, was dismissed by the Tribunal on the ground of limitation vide its order dated 9.8.2000. Subsequently, the applicant filed a Contempt Petition No.430/2000 before the Tribunal alleging that he was not given any preference, as directed by the Tribunal vide its order dated 17.2.2000. The said CP was decided by the Tribunal on 14.5.2001 holding that since the Tribunal had ordered preference only against appointments of casual labourers, no contempt was made out. In the concluding paragraph, the Tribunal held as under:-

"6. Under the circumstances the C.P. is dropped and notices are discharged after noting the submissions made by respondents' counsel upon instructions from the departmental representative who was present in Court, that applicant Ashok Kapper's claim for reengagement would be considered when future recruitments are made in Group 'D' category."
(emphasis supplied)

3. As alleged by the applicant that even though an undertaking was given before the Tribunal that his claim for reengagement would be considered when future recruitments are made to Group 'D' category, they have continuously ignored him for the grant of consideration what to speak of preference, as directed by the Tribunal. On 2.8.2002, the respondents called the applicant for interview for the post of Safaiwala-cum-Farash but did not appoint him despite the undertaking of giving him preference. Subsequently, on 6.5.2003, when two posts of Group 'D' fell vacant, the respondents again invited candidates from the Employment Exchange as also from the open market but did not appoint him.

7

4. Learned counsel appearing on behalf of the applicant has vehemently argued that in the peculiar background of the case under which the applicant had rendered more than 206 days of satisfactory service and as per 1988 scheme of the respondents, was entitled to regularization, his right is being denied just because he had approached the Tribunal. Despite the undertaking given by the respondents themselves that his case will be considered as and when recruitments to Group 'D' posts are held, their conduct in fact goes to show that no such consideration was ever given. In their reply, the respondents have stated that the applicant was given preference in the matter of calling him for interview although he was age barred. Stating that relaxation of age to the extent of service rendered by any casual/ad hoc employee is, by now, a settled law, the respondents could not take this as an excuse behind not rendering substantive preference in the background of his past service. The counsel has further alleged that the whole selection to the two posts of Peon interviewed on 3.11.2003 was conducted in a perfunctory manner and Ajay Kumar and Ghanshayam were appointed to the post of Peon on ad hoc basis without giving any preferential right to the applicant over these two fresh appointees. He has further stated that nepotism is writ large on this selection as Ajay Kumar is a son of UDC Shri Mahavir, who is working under the Under Secretary in respondent No.1's organization. The counsel further argues that this has not been rebutted or denied by the respondents in their reply. The counsel, therefore, contends that the entire selection made by the respondents should be quashed and the applicant provided substantial justice in the form of a direction to the respondents to appoint him against a group 'D' post. The applicant, being a poor person, is being repeatedly harassed by the respondents, he claims.

5. The respondents have contested the application. Learned counsel for respondents has, at the initial stage, attempted to raise the point of *res judicata* contending that the applicant had already agitated the matter repeatedly before the Tribunal and had filed revision application as also the contempt petition, which have all been dismissed. However, after a perusal of the orders *ad seriatim*, when it was pointed out to him that the respondents themselves had given an undertaking on 14.5.2001 at the time of disposal of CP-430/2000 that applicant's claim for reengagement would be considered when recruitments are made in Group 'D' category and that the applicant has

not been reengaged as yet, the learned counsel has not pressed the plea of *res judicata* and *limitation*.

6. On the merits of the case, however, he has submitted that the applicant has not exhausted the departmental remedy inasmuch as he also presumes that his representation will be rejected. Contending further, he has argued that the case of the applicant has no legal foundation since the earlier order was only for preference for engagement as casual labourer.

7. He has further contended that when vacancies of group 'D' posts were available, candidates were called for from the Employment Exchange as also through an open advertisement in the notice board and a duly constituted selection committee after interviewing the candidates gave their recommendations, in which unfortunately, the applicant could not make the grade for being appointed. Thus, the learned counsel contends that it cannot be said that his case was not considered.

8. I have carefully heard the learned counsel for the parties and also have gone through the records of the case. Since the learned counsel for applicant had alleged malafide in the entire process of the selection, I had called for the original records pertaining to the selection from the respondents-department.

9. From the series and sequence of litigations, which are in the background of this case, I find that the respondents have not denied the engagement of the applicant initially on daily wages as a Waterman and subsequently as a Peon on ad hoc basis. While his case for grant of temporary status had been rejected since he was not on the roll of the respondents on the crucial date, the Tribunal had clearly observed that he was to be given preference over other freshers or in future appointments of casual labourers. It is not denied that subsequently, there has been a selection of group 'D', i.e., Safaiwala-cum-Farash on 2.8.2002 when his junior was selected. That selection had been challenged by the applicant, which failed on account of limitation. However, when CP-430/2000 was disposed of by the Tribunal, it was the respondents who had given an undertaking that applicant's claim for reengagement would be considered when future recruitments are made in Group 'D' category. In view of this undertaking, the argument advanced by the learned counsel for respondents

Per curiam

11

5

that reference was to be given only for engagement as casual labour, I am afraid, is fallacious and not sustainable. In this background, I have scrutinized the departmental records and to my surprise, I find that there is no mention with regard to the observations of the Tribunal or the undertaking given by the respondents themselves in any of their noting. On the contrary, when two vacancies for the post of Peon arose, they approached the Employment Exchange, Kibri Place, New Delhi to sponsor the candidates. While simultaneously, they also invited applications through open advertisement in their notice board. In response thereto, they further constituted a selection committee, who held the interview on 3.11.2003. I find from the minutes of the selection committee, which has been wrongly described as minutes of the meeting of the DPC that while 18 candidates, who had applied in response to the open advertisement appeared before the selection committee, 17 candidates out of 41 sponsored by the Employment Exchange appeared before them. The selection committee has made out two separate selection lists, one for the candidates, who had been sponsored by the Employment Exchange and another one for the candidates, who applied in response to the open advertisement. While Ajay Kumar, who is alleged to be the son of UDC working under the Under Secretary of respondent No.1's organization has been placed at Sl.No.1 on the selection list prepared for open advertisement candidates, private respondent No.4 Shri Ghanshyam, has been placed at Sl.No. 1 from out of the candidates recommended by the Employment Exchange. The selection committee at no stage was informed by the respondents that the applicant in the present case was to be given preference in keeping with the undertaking given before the Tribunal, as he had earlier worked with the respondents and that his working had been found to be satisfactory.

10. I further notice that the respondents during the entire process of recruitment had completely forgotten that there was an undertaking given by them with regard to the applicant and had completed the full formality of recruiting people from other sources. It appears that they only realized when the applicant made a representation when he came to know that fresh appointments are being made. In the letter dated 3.11.2003 issued by the Assistant Controller of Patents & Designs addressed to the Controller General of Patents & Designs and Trade Marks, Mumbai, it has been stated that the contempt notice has been discharged after noting the submission that applicant's claim for reengagement would be considered when future

Train

recruitments are made in Group 'D' category. Therefore, a request was made to the Controller General to relax the age in case of applicant, who had been found to be over aged on the date of the interview. The letter from the Delhi office was faxed on the very date of the interview to Mumbai and the relaxation was obtained by fax on the same date and the applicant was permitted to appear before the selection committee. According to respondents' learned counsel this was the full compliance of the undertaking given before the Tribunal. This argument, on the face of it, exposes the respondents inasmuch as the question of being over aged had not been raised when his junior had been appointed in the selection held on 2.8.2002. Since an undertaking had been given before the Tribunal for consideration, it appears to be a cover up action to grant age relaxation at the last moment so as to complete the formality, though empty in its content.

11. The learned counsel has also stated that when the selection committee had, after due consideration, placed him at Sl.No.5 of the merit list from amongst the candidates, who had applied in response to the open advertisement, it could not be stated that he was not given due consideration or preference. I am afraid, this contention of the learned counsel cannot be accepted. Firstly, I find that the entire process of selection is fraught with serious irregularities and illegalities. I notice that the selection committee has prepared two panels; one for candidates sponsored by the Employment Exchange and the other from out of the candidates who had applied in response to the open advertisement. This is not permissible since the role of the selection committee is to prepare only one panel after interviewing all the candidates irrespective of whether they had been sponsored by the Employment Exchange or applied in response to the open advertisement. The recruitment rule does not say that one candidate each had to be selected from the two sources from which the applications were received. Secondly, I find that despite an undertaking being given before the Tribunal neither their records anywhere indicate that his experience should be taken into account for giving him preference, nor has the selection committee been informed about the observations of the Tribunal or undertaking of the Department that the case of the applicant has to be considered on a better footing than those of the others. I also find from the records that the Administrative Officer of the Department has given a certificate dated 6.1.1999 in which he has categorically stated that the conduct and character of the applicant had been satisfactory during the period he worked with the

True

Department. Further, I also find that Ajay Kumar has been placed at Sl.No.1 in the list of the panel from out of the open market, who is alleged to be the son of the UDC and an element of favouritism has been alleged by the learned counsel for applicant. The relationship has not been denied by the respondents. This also casts a serious reflection on the selection process and conduct of the case. Further I find that the committee has not commented upon whether or not despite the satisfactory work, performance of the applicant when he was engaged in the past, he could not be ranked higher than the candidates who applied in response to the open advertisement, which makes it clear that no preference or special consideration was accorded to the applicant.

12. Under the circumstances, I hold that the entire selection made by the respondents is irregular and, therefore, has to be quashed. The respondents, therefore, have to prepare only one panel/merit list, if necessary, after holding a fresh interview, in which applicant's name must be placed before the selection committee with special reference to the experience that he has gained and that an undertaking had been given before the Tribunal that his reengagement would be considered when future recruitments are made in Group 'D' category.

13. OA thus succeeds and is disposed of in the aforestated terms.

S. K. Naik
(S. K. Naik)
Member (A)

/sunil/