

24

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1918/2004

New Delhi this the 20th of January, 2006

Hon'ble Mrs. Meera Chhibber, Member (J)

Hon'ble Mr. N.D. Dayal, Member (A)

1. Chandrup Singh,
S/O Shri Jagram,
R/O Village Khadipur,
P.O. Basai, Distt. Gurgaon.
2. Daya Nand,
R/O Bhim Nagar, Gurgaon
3. Anil Kumar,
S/O Shri Banwari Lal,
R/O H.No. 238/30, G Block,
Rajinder Park, Gurgaon.
4. Subhash Chand,
Shri Daya Chand,
R/O H.No. 90, Char Marla,
Model Town, Gurgaon
5. Ram Chander,
S/O Bharat Singh,
R/O Babupur, P.O.Daultabad,
Gurgaon.
6. Surender Kumar,
S/O Bhagwan Das,
R/O 5/2/21, Gali No.8,
Madan Puri, Gurgaon.

(By Advocate Shri S.K.Bisaria)

..Applicants

2



VERSUS

1. Union of India,
through Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Chief of the Air Staff,
Vayu Bhawan, New Delhi.
3. Commanding Officer,
54, ASP, Gurgaon.
4. Lala Ram,
Leading Hand Fire,
C/O Fire Section 54, ASP,
Gurgaon.
5. Daya Chand,
Leading Hand Fire,
C/O Fire Section, 54, ASP,
Gurgaon.
6. Devender Kumar,
Leading Hand Fire,
C/O Fire Section, 54, ASP,
Gurgaon.
7. Ram Pal Meena,
Leading Hand Fire,
C/O Fire Section, 54, ASP,
Gurgaon.

..Respondents

(By Advocate Shri S.N.Sharma for official respondents)
(By Advocate Shri Yogesh Sharma for pvt. respondents)



ORDER

(Hon'ble Mrs. Meers Chhibber, Member (J))

By this OA, 6 applicants have challenged order dated 21.6.2004 whereby their representation was rejected. They have also sought quashing of promotion order dated 27.12.2003 of respondents No. 4 to 7 from the post of Fireman Grade 1 to Leading Hand Fire. They have further sought direction to the respondents to consider applicants for the said post with all consequential benefits.

2. It is submitted by applicants that as per Recruitment Rules (RRs) DPC was to consist of one outsider but page 40 shows, no outsider was involved and all the officers were from Airforce itself, therefore, since constitution of DPC itself was contrary to the RRs, any selection made by such DPC gets vitiated.

3. Applicants further submitted that as per RRs, the requirement was to hold trade test which was throughout held by way of viva voce but the respondents instead of holding viva voce test, held written test for the 1st time in 2003 arbitrary which is contrary to RRs, therefore, on this ground as well selections are liable to be quashed.

4. He also submitted that in Jan, 2003 there was only 1 post, therefore, only 5 persons could have come within zone of consideration, whereas

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respondents have gone beyond zone of consideration permissible and promoted as many as 4 persons who are beyond Sl.No.5 in the seniority list and here also 2 SC, 1 Gen. 1 ST candidate have been promoted which is again wrong because total strength of cadre being 10, respondents could not have promoted 2 SC candidates in any case. He has relied on Establishment and Administration page 836 to show zone of consideration could be 5 only.

5. OA is opposed by official as well as private respondents. Official respondents have explained that Shi Lala Ram, senior most Fireman Grade 1 was though SC but he was considered against unreserved vacancy which arose due to retirement of Shri Dharam Singh on 31.12.2002. Shri Daya Chand was considered against SC vacancy which became available due to retirement of Shri Giani Ram (SC candidate) on 31.3.2003. Shri Devender Kumar, senior most general candidate against the vacancy of Shri Piyarson Chand who retired on 31.5.2003. They have also explained that as per model roster for promotion for the cadre strength upto 13, the 10th candidate should belong to ST. Accordingly Ram Pal Meena who was senior most ST candidate and had cleared the trade test was cleared for promotion.

6. They have also explained that all the applicants were intimated about the Trade Test Examination by their C.F.M. Shri Raghubir Singh vide notice dated 28.1. 2003. It is further wrong as the promotion in question is a non



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✓ selection post and for non selection post, all eligible candidates are entitled to appear in the Trade Test Examination. Five Senior Candidates for one post can be called only in selection post and not in a non selection post whereas the posts in question are non selection posts, therefore, their contention is wrong. They have relied on OM dated 11.7.2002 (R-1), Model Roster (R-2) and procedure to be observed (Annexure R-3), Question paper annexed (R-4). Counsel for the respondents also invited our attention to the impugned order to show that applicant had not passed the trade test (page 15). They have thus submitted that applicants have no right to claim the relief as prayed for.

✓ 7. Counsel for the private respondents has taken preliminary objection to the maintainability of OA itself, on the ground, that all the applicants as well as respondents are working in Gurgaon, the impugned order was passed at Gurgaon and no cause of action has arisen at New Delhi, therefore, Principal Bench at New Delhi has no territorial jurisdiction to entertain this case, therefore, OA may be dismissed on this ground alone.

8. On merits counsel for the private respondents submitted that one vacancy became available due to retirement of Shri Dharam Singh on 31.12.2002, second post became vacant on 31.3.2003 due to retirement of Shri Giani Ram, third post became vacant on 31.5.2003 due to retirement of

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29

Shri Piyarson Chand and fourth post was also vacant meant for ST as per the Model Roster. It is submitted that as per the promotion rules/instructions, Year wise panel should be prepared by determining the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately and therefore, department correctly promoted the answering respondents from the date of creation of the vacancies. He further submitted that since the post in question is a non selection post, the same can be filled up by way of seniority, subject to passing of the trade test and DPC is conducted to see whether any charge sheet, punishment etc. is pending against the candidate or not. In present case, the applicants had not passed the trade test, therefore, they could not be promoted whereas applicants have passed their trade test, therefore, they have rightly been promoted. It is well settled principle of law once a person appears in the test, than having been declared failed he cannot challenge the same on the ground that the test is not in accordance with rules. They have thus prayed that OA may be dismissed.

9. We have heard all the parties and perused the pleadings. Admittedly applicants are aggrieved by the orders dated 21.6.2004 and 27.12.2003 but both these orders have been passed by Group Captain Commanding Officer

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54 ASP, AF, Gurgaon (page 13) and Group Captain Commanding Officer 54, ASW, AFS (page 31). Memo. of parties shows all the applicants as well as private respondents are also residents of Gurgaon, therefore, we would agree with the counsel for private respondents that in normal course this OA would be barred by territorial jurisdiction.

10. The only way how this OA could have been entertained at Delhi was to seek permission from Hon'ble Chairman by moving an application under Section 25 of Administrative Tribunals Act, 1985 read with Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987. No such permission has been taken by the applicant, therefore, this OA could have been dismissed on this ground itself.

11. Counsel for the applicant submitted, that their earlier OA was entertained by this very bench, therefore, this objection cannot be raised at this stage. Perusal of order dated 13.2.2004 in OA 388/2004 (page 60) shows the said OA was disposed of at the admission stage itself, exparte, without even issuing any notice to the respondents, therefore, there was no occasion for the respondents to raise this objections, therefore, this reasoning cannot be a valid ground to entertain this petition at New Delhi. We have, however, noticed that the earlier order was passed by none else then the Hon'ble Chairman himself, thus by implication, it can be presumed that



permission was granted by Hon'ble Chairman to file the case at Delhi.

Moreover, it is seen, this OA was filed in July, 2004. Pleadings in the case are complete. All the parties must have paid fee to their respective counsel.

If at this stage, this OA is dismissed on the ground of jurisdiction, the only

sufferers would be litigants because they would have to go and engage fresh counsel at Chandigarh thus they would be saddled with avoidable expense.

Therefore, keeping all these facts in mind, we are proceeding to decide this case on merits.

12. RRs for the post of Leading Hand Fire are at Page 32. It shows the post is non selection in column 5, column 11 and 12 show it was to be filled by way of promotion from amongst Fireman Grade 1 with three years continuous service in the grade failing which six years continued services in the grade of Fireman Grade 1 and Grade II rendered after appointment thereto, on a regular basis and subject to passing a departmental trade test.

13. From the above it is clear that promotion can be given subject to passing the departmental trade test only. It was thus a condition. The method of holding trade test is not mentioned in the RRs, therefore, the method how to hold the trade test is, for the department to decide. Applicants cannot insist, that it should be oral and not written. Even if earlier oral trade test was being conducted, as alleged by applicants, department can always take

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a conscious decision to hold written test. So long, the questions in the test relate to the trade, no objections can be raised as to why written test is being resorted to. After all written test has been held for all, in a uniform method. If applicant No. 1 decided to walk out from the examination as alleged by him, he did so of his own volition knowing the consequences. It is settled by now, that having failed in the trade test, they cannot be allowed to challenge the procedure adopted now nor would have any to claim promotion.

14. Counsel for the applicants submitted that some of the applicants had protested against the written examination but neither he has shown us any letter of protest nor the protest can be said to be for any valid justification. Even in the speaking order dated 21.6.2004 it was categorically stated by the respondents, that applicants have not passed the trade test. In these circumstances when applicants had failed in the trade test itself, which was mandatory and pre-condition for promotion, no direction can be given to the respondents to reconsider them for promotion.

15. Counsel for the applicants strenuously argued that since there was only 1 post as on Jan, 2003 therefore, 4 persons could not have been promoted however respondents have explained one vacancy became available on 31.12.12002 on retirement of Shri Dharam Singh, 2nd became



available on 31.3.2003 on retirement of Shri Gaini Ram (SC), 3rd became available on 31.5.2003 on retirement of Shri Piyarson Chand and 4th vacancy was required to be filled from ST as per the roster therefore, Shri Ram Pal Meena has been promoted against ST post. Perusal of order dated 27.12.2003 shows all the private respondents have been promoted from different dates. There are already instructions that DPC should be convened in advance for the anticipated vacancies as well. The only thing is, separate panel is to be prepared year wise, therefore, it is thus wrong on the part of applicants to allege there was only 1 pos. In view of above explanation, the contention that 4 persons could not have been promoted is rejected.

16. Respondents have also explained that though Sh.Lala Ram was SC employee but since he was senior most, he has been considered against unreserved vacancy on his merit and not as a reserved candidate. As such only Daya Chand has been promoted against SC vacancy. Shri Devender Kumar is senior most general candidate who has been promoted against the general vacancy. This clearly shows that 2 vacancies have not been filled from SC but one has been filled as in normal course. It is, therefore, wrong to allege that two posts have been filled as reserved candidates in true sense. Moreover, the procedure followed by respondents is in consonance with OM

8

dated 11.7.2002 issued by the Department of Personnel and Training wherein it was clarified as follows:

- “(i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected he will be appointed to the post and will be adjusted against the unreserved period.
- (iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/future promotion, if any”.

Therefore, the contention of applicants is rejected.


17. Counsel for the applicants next relied on Para 6.1.1 of part IV “Procedure to be observed” from Swamy’s Seniority and Promotion (page 71 of OA) to state that only 5 persons could have been considered as against 1 vacancy. This argument has to be rejected on 2 grounds firstly because respondents have explained that there was not one vacancy but more than 1. Secondly because para 6.1.1 deals with selection method whereas the post in

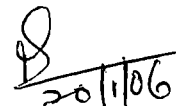


question was non selection as per the RRs. For non selection posts, method is given in para 7 (page 77) but this is to be read with RRs. Since in the RRs passing of trade test is prerequisite, naturally only such of the candidates would have been considered by the DPC who had passed the trade test, therefore, even this argument is rejected.

18. Counsel for the applicants next argued that DPC was not constituted in accordance with RRs as all the officers were from Air Force, whereas one member ought to have been outsider as per the RRs. Though this argument is not replied properly by the official respondents but since applicants did not even pass the trade test, they cannot be heard of complaining about the constitution of DPC. The role of DPC is only to assess the suitability of candidates, after they pass the trade test, therefore, no prejudice can be said to have been caused to the applicants.

19. In view of the above discussion, OA is found to be devoid of any merits. The same is accordingly dismissed. No order as to costs.


(N.D. Dayal)
Member (A)


20/1/06.
(Mrs. Meera Chhibber)
Member (J)

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