

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2028 of 1993

This 3rd day of March, 1994

(6)

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Ms. Sumitra Patel,
W/o Shri A.K. Patel,
MCK 331, Street No.4,
Mahipalpur Extn.
New Delhi - 37

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Applicant

By Advocate: Shri K.B.S. Rajan

Versus

1. The Union of India, through
The Air Officer Administration (AOA)
Air Headquarters,
Rafi Marg,
New Delhi.
2. The Officer Commanding,
Headquarters Western Air Command (Unit)
Air Force, Subrato Park,
New Delhi.
3. The Officer in Charge,
Western Air Command (U) Canteens,
Subrato Park,
New Delhi.
4. Shri Vivek Sehgal,
L-9, Civil Zone,
Subrato Park,
New Delhi.

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Respondents

By Advocate: None.

Departmental Representative,
Wg. Comr. K.A. Vij, Canteen Manager.

ORDER (Oral)

(By Hon'ble Mr. J.P. Sharma, M(J)

The applicant was appointed on daily wages basis without giving her any appointment letter. She was appointed as General Assistant and she joined her duties w.e.f. 1.5.92. It appears that subsequently the respondent No.3 conducted a selection for filling up a vacancy of General Assistant. The applicant along with other candidates took that examination and she was also interviewed along with others, though the interview had taken place prior

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to her appointment. On the basis of the said selection the respondents issued the impugned order No. Air HQ/20726/152/Org dated 19th May 1993. Aggrieved by this the applicant filed a representation saying that she has not been given further appointment and that the respondent No.4 Vivek Sehgal has been wrongly appointed to the post and that the said appointment order is arbitrary and illegal.

2. The applicant filed this application in Sept. 1993 and prayed for the grant of relief that the order dated 19.5.93 be quashed and that the respondent No.3, Officer In Charge, Western Air Command (U) Canteens, be directed to confirm the applicant in the post of General Assistant w.e.f. 1.11.92 i.e. after expiry of six months from the date of her appointment, i.e. 1.5.92. She has also prayed that she may be deemed in continuous regular service in the respondents' organisation and that she may be allowed wages from the date she was ceased from the employment, i.e. w.e.f. 1.4.93, till the date of her reinstatement.

3. A notice was issued to the respondents who contested this application and opposed the grant of reliefs. It is stated that the appointment of the applicant was purely on daily wages and need basis which does not confer any right upon her for regular appointment. The organisation is totally for the welfare of the defence personnel and the workers of the Unit are not government employees. The employment is totally on private basis. The employees get their pay from the profit out of the sale of the items and no gratuity or pension or any other facilities are to be provided to the employees of the Canteen. It does not fall under the administrative control of the Central Government.

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Thus it is said that the applicant who could not secure higher position in the selection cannot be preferred to Vivek Sehgal, respondent No.4 who got 41 marks out of 50 while the applicant got only 32 out of 50.

4. We have heard the learned counsel for the applicant and also the departmental representative, Wg. Comr. K.A. Vig. In fact the question of jurisdiction of the Tribunal also arises in such a case where the applicant is not holder of a civil post under Union of India. However, in view of the decision of Supreme Court in Civil Appeal No.4817/92, All India Defence Civilian Canteen Employees Union Vs. Union of India, we are not considering the point of jurisdiction as the same has not been raised before us by either of the parties. The matter of the Canteen employees Union in this case was remitted to the Tribunal for disposal on merits. A copy of the said judgment is also annexed as Annexure 'B' to the O.A..

5. The next question arises whether the applicant has any claim for continuance in the post of General Assistant and in this regard the contention of the learned counsel for the applicant is that she has shown better performance in the selection and because of this she was issued appointment letter in compliance of which she joined w.e.f. 1.5.92. The contention of the learned counsel that had she not been foremost in the panel prepared by the respondents, she would not have been asked to join first as the letter of appointment to Vivek Sehgal, respondent No.4 was issued subsequently. This matter needs due consideration. The case of the respondents is that since the applicant was already working, in order to give her helping hand till a regular appointee joined, she was asked to continue only on sympathetic and magnanimous consideration.

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The applicant wants to take benefit of that magnanimity by ousting the respondent No.4 and alleging that she stood foremost in the said selection. We have summoned records of the respondents in regard to the said selection/examination which goes to show that 18 applicants appeared and they all were tested in written examination and interviewed. Besides there were certain marks allotted to education qualification, experience, typing knowledge and thereafter the allotment of marks was made out of 50. The applicant got 32 marks as against respondent No.4 who secured 41 marks. We have also seen the marks obtained by the applicant in various categories i.e. education qualification where she got 5/10 as against Vivek Sehgal (0/10). It is not disputed that the respondent No.4, Vivek Sehgal is more highly qualified than the applicant. In experience column she got 5 while Vivek Sehgal got 2/5. In English both the applicant and the respondent No.4 got equal marks i.e. 4 out of 5 each. In typing experience the applicant could not get any marks while Vivek Sehgal got 5 out of 5 marks. Under the column 'marks for ex-Service Man' the applicant got 5 marks while the respondent No.4 got only 3. In written examination the applicant got 13 out of 20 marks while Vivek Sehgal secured 17 out of 20 marks. Therefore the pattern of marking does not go to show that there has been any prejudicial attitude in favouring any candidate or there was bias against the applicant.

6. Further the learned counsel for the applicant pointed out that in the tabulation of marks form there are 18 candidates and the position shown in the last column is only 8 upto 12 and rank 10 and 13 are missing. However,

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we find that this does not give any thought to the marks given to the applicant as arbitrary or that it is unfair in any manner. The other contention of the learned counsel is that the panel was signed on 15.5.92 while the selection stood completed on 14.5.92. It is a fact. However, it does not show that the whole selection has been manipulated. The panel of course is prepared subsequent to the selection and it is not necessary that it should have the same date as that of finalising of the selection. In fact at the bottom of the same paper where the selection process is said to have been completed, there is an endorsement that the first candidate be called to join duty and that is dated as 14.5.92. In any case the Tribunal cannot sit as an appellate authority over any selection until and unless some bias, malafide or unfairness is alleged and that should have come before the selection process starts. Any person who feels aggrieved by the selection process may manufacture certain contentions to undo the selection itself by making allegations and on imaginary and unfounded grounds.

7. The contention of the learned counsel for the applicant is also that when she joined as General Assistant with the Respondent No.3, a deduction was also made from her salary towards contribution to the GPF. By this the inference was drawn that for all purposes the applicant qualifies for regular appointment to the post. We are not convinced with this contention at all.

8. As we have said earlier, in the selection process a person who has achieved highest marks has to be placed at No.1 and if he has qualified for the post, has to be appointed. It shall be unfair and unjust to the respondent No.4

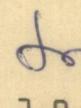
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if the applicant is preferred to him. We therefore hold that the selection was fair and just and hence does not call for interference. The learned counsel for the applicant also submits an argument that if the applicant was not given regular appointment, why was she allowed to continue beyond the period where there was only one vacancy to be filled up by the respondent No.4. As mentioned in earlier, the applicant has been given a helping hand only on sympathetic consideration but when there was no vacancy available she cannot be continued in service.

In view of the above facts and circumstances the application has no merit and accordingly it is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)