

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 240 of 2004

Allahabad, this the 30 day of November, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Aley Yasin S/o Late Mohd. Haroon Resident of Village and P.O.
Dandupur, District Allahabad.

Applicant

By Advocate: Mr. Swayambar Lal

Vs.

1. Union of India through Defence Secretary, Ministry of Defence, New Delhi -110011.
2. Director General of Ordnance Services, Army Headquarters, D.H.Q. P.O., New Delhi -110011.
3. Officer Incharge, A.O.C. Records, Secunderabad.
4. Commandant, C.O.D. Chheoki, Allahabad.
5. Commandant, Ordnance Depot, Fort, Allahabad.

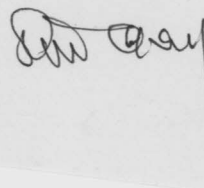
Respondents

By Advocate: Mr. Anil Dwivedi

ORDER

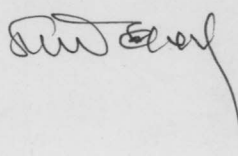
By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for giving direction to the respondents to appoint the applicant as Store Keeper w.e.f. 10.09.1993 with the respondents, and grant all consequential benefits including seniority from 10.09.1993 at par with the other three candidates empanelled with him and appointed as Store Keeper with the respondents.



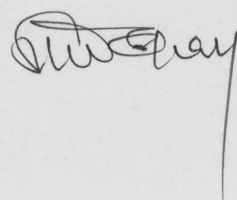
2. The pleadings of the parties may be summarized as follows: -

That the applicant was initially appointed as Mazdoor in C.O.D. Chheoki, Allahabad on 06.11.1981. Applicant's date of birth is 01.01.1957. It is stated that the applicant appeared in recruitment test as a departmental candidate along with the candidates sponsored from the Employment Exchange for the direct recruitment quota for the post of Store Keeper in C.O.D., Chheoki, Allahabad in 1984. The applicant qualified in the Test, and he was empanelled at serial No. 1 along with two other candidates, who were the departmental candidates and four other candidates who were sponsored by the Employment Exchange. But, a ban was imposed by the Government of India against filling up any vacancy in the year 1984 onwards till 1988. The ban from the recruitment was lifted in the year 1988. On lifting the ban, respondent No. 4 sent the proposal to respondent No. 3 for giving appointment to the applicant as Store Keeper. But, the proposal was rejected vide letter dated 13.07.1991 however, other candidates namely Raj Narain, Gulab Chand and Deota Din-sponsored from the Employment Exchange and empanelled with the applicant in the panel drawn on 29.09.1984, were appointed as Store Keeper on 10.09.1993, and the appointment was denied to the applicant. Thereafter, O.A. No. 1334 of 1993 was instituted by the applicant seeking direction from the Tribunal to the respondents to provide appointment to the applicant for the post of Store Keeper. The O.A. was allowed, and the direction was given to the respondents to appoint the applicant as Store Keeper from the date when Raj Narain, Gulab Chand and Deota Din were appointed as Store Keeper w.e.f. 10.09.1993. It is stated that the applicant was appointed vide order dated 19.03.2002 as Store Keeper in the Ordnance Depot, Allahabad but the seniority



was not given to him w.e.f. 10.09.1993, and after being relieved, the applicant joined the service as Store Keeper on 01.04.2002. It is stated that the applicant was brought in central roster of A.O.C. w.e.f. 02.04.2002 instead of 10.09.1993. A representation was moved by the applicant to that effect but the representation was rejected hence the present O.A.

3. The respondents contested the O.A. and filed the Counter Affidavit. It has been admitted that the applicant was initially appointed as Mazdoor in C.O.D., Chheoki, Allahabad on 06.11.1981, and his date of birth is 01.01.1957. It is also an admitted fact that the applicant appeared in the recruitment test as a departmental candidate along with other candidates sponsored by the Employment Exchange for the post of Store Keeper in C.O.D., Chheoki, Allahabad. It is stated that name of the applicant finds place at serial No. 1 in the list of selected candidates. It has also been admitted that due to ban imposed in 1984, the applicants and others were not appointed, and after lifting of the ban in the year 1988, the candidates whose names were sponsored by the Employment Exchange, were selected and appointed as Store Keeper on 10.09.1993. The Rules of the respondents do not permit anti dated seniority to the applicant. It is stated that the applicant is not entitled to the seniority from 10.09.1993 and the seniority has been granted to the applicant from the date of his joining. It has also been alleged that the applicant has claimed seniority w.e.f. 10.09.1993, the date from which some other persons joined the post and it is not permissible in Rules. The date of assumption of the charge is the date of seniority of the applicant. It is further stated



that earlier order of the Tribunal had already been complied with in full and hence O.A. is liable to be dismissed.

4. We have heard Mr. Swayambar Lal, Advocate for the applicant and Mr. Anil Dwivedi, Advocate for the respondents and perused the entire facts and materials available on record.

5. As we have stated above, that it is an admitted fact of the parties that in the year 1984, a test was conducted for recruitment as Store Keeper. The applicant appeared in the test as a departmental candidate along with other candidates sponsored by the Employment Exchange for direct recruitment quota. It is also an admitted fact that in the year 1984 on 29.09.1984, a recruitment panel was prepared after conducting the test and in that panel, name of the applicant was at serial No. 1 and name of other departmental candidates as well as four other candidates sponsored by the Employment Exchange, were placed after him in the panel. It is also an admitted fact that in the year 1984, Government of India imposed a ban on filling up the vacancy and it continued up to 1988, and after lifting the ban, other candidates who were sponsored by the Employment Exchange were appointed w.e.f. 10.09.1993 as Store Keeper. But applicant was not appointed on the pretext that the departmental candidate is to be treated empanelled only for the year in which the panel was prepared. Although this analogy of the respondents was incorrect and wrong. When a ban was imposed in filling up the vacancy in the year 1984 then after lifting of the ban, the applicant along with other persons whose names were sponsored by the Employment Exchange were entitled to be appointed. When the respondents had given to other

persons whose names were sponsored by the Employment Exchange, then it is not understandable that as to why and how the name of the applicant was omitted and that it was alleged that as the panel was prepared in the year 1984, and it could not be utilized during that year, hence he cannot be appointed.

6. Ultimately, applicant had to file O.A. No. 1334 of 1993 for obtaining directions against the respondents for giving him appointment against that panel prepared in the year 1984, and to give him seniority from the date when other persons of his panel had joined i.e. 10.09.1993 with all consequential benefits. Annexure A-2 is the copy of the Judgment passed in O.A. No. 1334 of 1993, and the O.A. was disposed of. It will be material to reproduce the operative portion of the Judgment: -

"7. We, therefore, direct the Respondents to consider the case of the applicant, who had qualified in the selection and empanelled for the post of Store-keeper and give appointment to the post of Store-keeper with effect from the date 3 candidates sponsored by the Employment Exchange were appointed to the post of Store-keeper. The respondents shall carry out the directions within a period of two months from the date of communication a copy of this order is filed before them. No order as to costs."

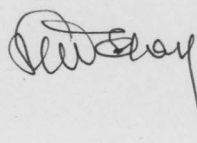
A specific direction was given to the respondents in that O.A. in order to give appointment to the applicant on the post of Store Keeper w.e.f. the date three candidates sponsored from the Employment Exchange, were appointed, because it was considered by the Tribunal that the act of the respondents of not giving the appointment to the applicant is discriminatory. When appointment had already been given to other persons of that panel, then the applicant is also entitled to the same treatment. A direction was also given that appointment to the post of Store Keeper shall be w.e.f. the date three candidates sponsored from the Employment Exchange were appointed. It means that appointment was to be

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given to the applicant from the same date when the appointment was given to three other persons. There was no question of any doubt in these directions that the appointment is to be given w.e.f. the subsequent date but it must be effective from the date when the appointment was given to other three persons. An ordinary man is expected to follow the intentions behind this Order. There was no question of any ambiguity in that Order. But the respondents partly complied with the Order but the direction was not complied with by the respondents for giving him the seniority w.e.f. 10.09.1993. It has been argued by the respondents' counsel that it is against the Rules of the respondents but we disagree with the arguments of respondents' counsel. What was the idea and analogy of the respondents for not giving appointment to the applicant with effect from the date when the appointment was given to three other persons of the same panel? If the approach of the respondents might have been impartial and unbiased, then the appointment ought to have been given from the date when the appointment was given other three persons whose names were in the panel. He was not given appointment on the pretext that the panel was only for a specific period and after that period, the panel is no more in existence. Annexure A-1/2 is the order passed by the respondents on 21st February, 2003. Para-C will be relevant in this connection, which is reproduced as below: -

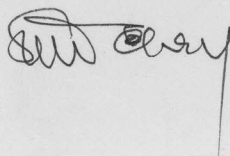
"(c) The three other indls who were given appointment during 1993 on the verdict of Hon'ble CAT order and due to occurrence of 3 vacancies due to death/superannuation. Moreover, those indls were sponsored through the Employment Exchange and were without employment prior to the present employment. Whereas, in his case, he was selected out of 10% quota of Gp. 'D' employees, which is valid for that particular year only. The matter was intimated earlier vide this Office letter No. 28976/CHD/CW/CA-6/A3 dt. 13/19 Jul 1991."

The reason given by the respondents for not granting the applicant seniority anti dated is not justified. Immediately



thereafter in the year 1993 when the appointment was not given to the applicant he approached this Tribunal by filing O.A. No. 1334 of 1993 but the O.A. was contested on behalf of the respondents. Ultimately, O.A. was decided on 15.12.2002 and thereafter also there had been delay in implementing the Order of the Tribunal, and applicant had to join on the post of Store Keeper on 01.04.2002. The delay, if any, was due to the conduct and treatment of the respondents. Otherwise, if the respondents might have been fair and impartial, then the appointment ought to have been given to the applicant from the date when appointment was given to three other persons whose names were sponsored by the Employment Exchange.

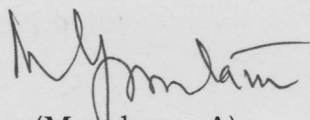
7. Moreover by the Tribunal also a specific direction was given to the respondents to give appointment to the applicant on the post of Store Keeper w.e.f. the date when three candidates sponsored by the Employment Exchange were appointed. The direction of the Tribunal was unequivocal and hence the appointment ought to have been given to the applicant from the same date from which appointment was given to three other persons. It was intentionally directed for giving appointment to the applicant from the date when three other persons were appointed so that he will be entitled for all consequential benefits and seniority shall also be given w.e.f. 10.09.993. In the circumstances of the case, there appears no bar in not giving the seniority anti dated. No such Rule has been cited by the respondents' Advocate, which prevents the respondents from giving seniority from the back date. When the respondents themselves were responsible and their conduct was discriminatory, then there was no option for the applicant to approach this Tribunal



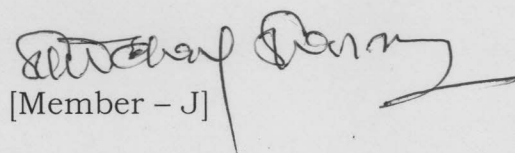
again and again. The applicant could have moved Petition for Contempt for getting the relief claimed in this O.A. but instead of moving Petition for Contempt of Court, the applicant considered it just and proper to file separate O.A. for granting him seniority w.e.f. 10.09.1993. When three other persons of panel were appointed on 10.09.1993 and subsequently by the Order of the Tribunal, appointment was given to the applicant also from the same date, then the respondents are not entitled to set up a lame excuse for not giving the seniority to the applicant as it is not permissible under the Rules. Nothing has been alleged by the respondents that as to why the seniority anti dated cannot be granted to the applicant.

8. For the reasons mentioned above, we are of the opinion that applicant is entitled for seniority anti dated w.e.f. 10.09.1993 from the date on which three other persons of the panel prepared in the year 1984 whose names were sponsored by the Employment Exchange, were appointed. The applicant is also entitled for all consequential benefits w.e.f. 10.09.1993 hence O.A. deserves to be allowed with cost of ₹ 5000/- because it is the respondents who are responsible to compel the applicant to approach the Tribunal again and again. The respondents themselves compelled the applicant to be dragged into the litigations.

9. O.A. is allowed with cost of ₹ 5000/-. The respondents are directed to give seniority to the applicant w.e.f. 10.09.1993, the date from which the applicant was directed to be appointed, with all consequential benefits. The Order shall be complied with within a period of three months from the date of receipt of a copy of this Order.


(Member - A)

/M.M/


[Member - J]