

OPEN COURT

**Central Administrative Tribunal Allahabad Bench
Allahabad.**

Allahabad This The 28th Day Of August 2008.

ORIGINAL APPLICATION NO. 662 OF 2004.

Present:

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

Thakur Das (S.C.) aged about 40 years, son of Shri Nattho Lal, Resident of village Kalsatuyiya, Post Office Nawabganj, District Bareilly.Applicant
By Advocates: S/Shri K.K. Srivastava/K.P. Tiwari/K.P. Singh

Versus.

1. The Union of India through the Defence Secretary, Ministry of Defence Govt. of India South Block, New Delhi.
2. The Chief Engineer, Bareilly Zone, Sarvatra Bhawan, Station Road, Bareilly Cantt. Bareilly.
3. The Commander Works Engineer, Station Road, Bareilly Cantt.
4. The Garrison Engineer NO.1, Military Engineering Service, Bareilly Cantt. Bareilly.
5. Shri Bhagwat Thakur (O.B.C.) Grass Mandi Colony, Nakatia, Bareilly.Respondents

By Advocate: Shri Saumitra Singh.

O R D E R

Delivered by: Justice A.K. Yog, Member (J)

Heard Shri K.P. Singh, Advocate assisted by Shri K.P. Tiwari, Advocate counsel for the applicant. Shri Anil Kumar Dwivedi, Advocate appearing on behalf of respondents NO.1, 2, 3 and 4 and none for the respondent NO. 5.

2. Record shows that the applicant did not supply requisite copy of the O.A. to enable the registry to serve notice upon respondent no.5. We are, however,



proceeded to decide this case finally protecting right of the respondent NO.5.

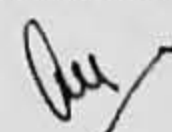
3. We have perused the pleadings in the O.A. and counter affidavit/rejoinder on record. Without adverting to the contentions made on behalf of respective parties with respect to seniority/roster/availability of reserved vacancies for Scheduled Caste etc, we find that this case can be decided on a short point as discussed hereinafter.

4. For convenience, we reproduce para 12, 13 and 14 of the OA:

- "12. That all of sudden to the utter surprise of the applicant, the respondent nO. 3 has issued a letter NO. 1485-1-1281-Elo (2) dated 17.9.1997 whereby he cancelled the letter dated 12.4.1997, issued by the respondent no. 3. The effect of the letter dated 17.9.1997 is that the appointment of the applicant has been cancelled illegally, arbitrarily and without giving any opportunity of hearing to the applicant or showing any cause by the respondent NO.3.
- 13. That the aforesaid action of the respondent NO. 3 is illegal, arbitrary and bad in law. The candidates junior to him have been serving after being appointed.
- 14. That the applicant has reliably learnt that the respondent NO. 3 in order to accommodate one Bhagat Thakur, respondent no. 5 on extraneous considerations has cancelled the appointment letter in respect of the applicant and has issued an appointment letter to respondent nO. 5 as scheduled caste candidate. It is specifically made it clear that the respondent NO. 5 belongs to other than backward community and his name even does not find place in the select list issued by the respondent No. 3 (Annexure 6)".

The aforesaid paragraphs have been replied by the respondents vide paras 10 and 11 of the counter affidavit and, for ready reference, quoted below:

- "10. That the contents of para 4.12 of the Original Application are not admitted as stated, hence denied. The applicant did not resume his duties as alleged. The issue of letter dated 17.09.1997 cancelling the letter dated 12.04.1997 is a matter of record and is admitted. The action has been taken in accordance with instructions and there is no illegality, or arbitrariness in it as alleged by the applicant in the paragraph under reply.
- 11. That the contents of paragraphs Nos. 4.13 and 4.14 of the Original Application are emphatically denied. The action taken is in accordance with instructions. The averments that the respondents No. 3 will accommodate his own man are totally false and denied".



We may also refer to paras (a), (d) (e), (f), (g) and (h):

- "(a) That in the year 1997 13 vacancies of Chowkidar G.I./CVB were released for direct recruitment by Chief Engineer Central, Command, Lucknow letter dated 02.01.1997 and Chief Engineer Bareilly Zone's letter dated 21.01.1997. The said vacancies were distributed in the following manner as per old 100 point Roster:-

| | | |
|------|---------------|---------|
| (i) | Chowkidar G.I | 12 Nos. |
| | SC | 2 |
| | ST | NIL |
| | OBC | 3 |
| | Gen. | 5 |
| | Ex. S/Men | 2 |
| (ii) | Chowkidar CVB | 1 |

- No. SC 1
- (d) The interview was held on 08.03.1997 and the applicant was selected for appointed as Chowkidar GI according to the Board proceedings received vide Chief Engineer Bareilly Zone Bareilly letter dated 07.04.1997. Thereafter the Garrison Engineer NO.1 was directed vide this office letter dated 12.04.1997 to issue offer of appointment to the applicant informing him to report to Garrison Engineer NO.1 Bareilly on 15.04.1997 alongwith his original certificates and character certificates etc.
- (e) By the time offer of appointment was issued and candidate could join their duties, a direction was received from the Chief Engineer C.C. Lucknow vide signal dated 25.04.1997 to withhold the finalization of Board proceedings. The main issue for withholding of the Board proceedings was to ensure that the revised 100 points Roster came into effect from 08.09.1993.
- (f) Accordingly the Chief Engineer Bareilly Zone informed the office on telephone on 25.04.1997 that no offer of appointments are to be issued to MT Drivers and Chowkidar GI till further orders. Simultaneously G.Es were directed vide C.M.E. letter dated 26.04.1997 that no offer of appointment are to be issued to MT Drivers and Chowkidar (GI) till further orders.
- (g) That according to the revised 100 points Roster, only 2 vacancies came for SC candidates. The applicant has secured 3rd position in the merit list. Earlier, one SC candidate namely Sri Munni Lal son of Shri Balaram had secured highest marks amongst SC candidates and he was also on the 5th position in the merit list of General candidates hence he was shifted in accordance with para 9 (b) of Chief Engineer Central Command Lucknow letter dated 30.12.1996 and the applicant got selected against the 2nd vacancy of SC candidates according to his third position in the select list of S.C. candidates.
- (h) Subsequently on the revision, the vacancy of General candidates reduced to 4 instead of 5 and therefore, the first 2 SC. Candidates in the merit list have been selected against two vacancies of S.C. quota. Therefore, the name of the applicant has been deleted from the select list since Shri Munni Lal who was a S.C. but was selected against the General quota earlier came to his original position in

Am

the S.C. candidates due to the reduction of one vacancy in the General candidates quota".

5. In the context of preliminary submission of the respondents NO. 1 to 4 (represented by Shri Anil Kumar Dwivedi, Advocate), Shri K.P. Singh, Advocate referred to Annexure 6 to the O.A. to show that amongst eligible scheduled caste candidate' applicant should have been just below 'Sarvesh Kumar' as per seniority and even if these were two vacancies-after Sarvesh Kumar, Applicant was entitled to be selected and appointed.

6. Learned counsel for the applicant further submits that even on reorientation/recalculation of vacancies, (as alleged by the contesting respondents), two vacancies were available and thus applicant being at No. 2- was to be appointed. Learned counsel for the applicant submits that placement of applicant (as selected candidates) at Sl. No.3 is arbitrary, illegal and whimsical. We find that the contention of the applicant as per record before us is correct. We would have adjudicated these issues but for the reason that the pleadings lack requisite information.

7. On the other hand, we find categorical and specific averment on behalf of the applicant that the impugned order has issued in violation of principle of natural justice. The aforesaid pleadings, with regard to denial of opportunity of hearing, has not been denied.

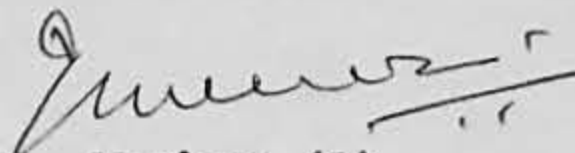
8. In view of the above, the impugned order dated 13.9.03 (Annexure 1 to the O.A.) and consequential letter dated 17.9.97 (Annexure 2 to the O.A.) are hereby set aside with a direction to the respondent No.2 to consider the grievance of the applicant afresh after affording opportunity of hearing to the applicant including respondent No. 5/ Bhagwat Thakur in accordance with law.

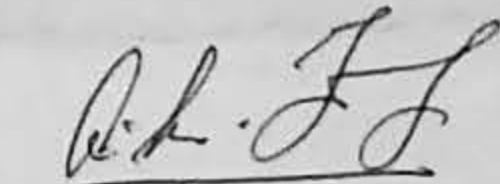
Am.

9. In the result, we direct the applicant to file certified copy of the order before respondent no.2/Chief Engineer, Bareilly Zone, Sarvatra Bhawan, Station Road, Bareilly Cantt. Bareilly alongwith copy of the O.A. with all Annexures as well as comprehensive written representation (if so advised) raising his grievance within 4 weeks and said Authority, provided it is filed within the stipulated time, shall consider the matter afresh on the basis of relevant record, Act, Rules, office order, Circulars and Guidelines etc, by passing a reasoned and speaking order, exercising unfettered discretion, 2 months of receipt of certified copy of this order as stipulated above and decision taken shall be communicated to the Applicant forthwith.

10. The O.A. stand allowed by moulding the relief claimed to the extent indicated above.

11. No order as to costs.


Member (A)


Member (J)

Manish/-