

(14)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

OA NO. 1181/2005

Allahabad, this the 16th day of September, 2008

**HON'BLE SHRI JUSTICE M. VENKATESWARA REDDY, MEMBER (J)
HON'BLE SHRI SHAILENDRA PANDEY, MEMBER (A)**

Kailash Chandra,
Aged about 33 years
Son of Shri Sovaran Singh
r/o Mohalla Ladia Post Office
Jayganj
Aligarh. ... Applicant

(By Advocate: Shri V.Budhwar)

Versus

1. Union of India, through Secretary
Ministry of Defence
New Delhi.
2. Aerial Delivery Research & Development Establishment
Government of India, Ministry of Defence,
Defence Research & Development Organization,
Post Box No.51
Agra Cantt. Agra, through its
Director. ... Respondents

(By Advocate: Shri R.C.Shukla for Sh. S.C.Mishra)

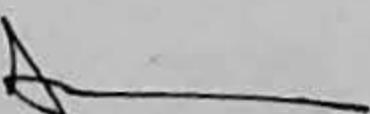
ORDER (Oral)

BY JUSTICE M. VENKATESWARA REDDY, MEMBER (J):

Aggrieved by his non-selection to the post of Senior Technical Assistant 'A' in the office of Respondent No.2, the applicant has filed this OA.

2. The necessary facts that led to the filing of the OA can be stated as under:

3. In pursuance of a newspaper advertisement calling for applications for the above said post, the applicant herein had applied in the Scheduled Caste (SC) quota wherein one post was available. He was successful in the written examination but by mistake, he was



selected against the Scheduled Tribe (ST) quota on the basis of the marks secured by him.

4. Before issuing the appointment letter, it came to light that the applicant was actually in the Scheduled Caste category and not the Scheduled Tribe category. Therefore, the correction process was set in and the applicant was intimated accordingly.

5. It appears that some representation/legal notice sent made by the applicant as no appointment order was issued to him. Thereafter, on the basis of his representation/legal notice dated 1.8.2005, the impugned order dated 24.08.2005 came to be passed. The impugned order discloses that the applicant was shown in ST category by the scrutiny board due to oversight and accordingly he was called for interview and was selected against the ST category. Thereafter, when the medical check up and police verification papers were received and forwarded to the Civil authority for verification alongwith caste certificate, the establishment came to know that he was actually in SC category and not ST category.

6. As the impugned order took play as stated above due to the non-issuance of the appointment order no injustice has been caused to the applicant, as the marks obtained by him are lesser than the selected candidates in General as well as SC category.

7. In the counter reply filed by the respondents, while stating the above facts and how the mistake has crept in, they have stated that special protection given in Article 16(4) of the constitution of India does not provide for appointment of an SC who lacks in merit overlooking the claim of other meritorious candidate in SC/ General category.

8. During the course of the arguments, the learned counsel for

the applicant has brought to our notice in connection with this case that consequent to the applicant taking up the matter with the SC/ST Commission, some observations have been made by the Commission vide their document dated 7.8.2007 (Appendix 'G' attached to the Supplementary Affidavit, filed by the applicant on 29.10.2007). The relevant operative portion of the same reads as follows:

"The reservation roster is not made on regional basis at that time and advertisement the post. The roster maintained on regional basis SC post could have been more and petitioner would have been selected against SC points as he was at No.3 in the merit in the SC candidates. The roster register was not properly maintained as per DOP&T instructions of dated 02.02.1997. The roster needs to recheck and recast. Had the roster maintained on Regional basis and S.C. Candidate could have been more and petitioner would have selected against S.C. post as he was at No.3 in the merit.

Therefore the mistake made by the department may be corrected in a justified manner by Apply the regional basis roster."

9. The learned counsel for the applicant contends that had the roster been maintained properly on reasonable basis, the number of SC candidates would have been more and the applicant would have been selected against the SC post as has been observed by the SC/ST Commission and, thus, when he had a fair chance of being selected, he was deprived of the same on account of lapses committed by the respondents in preparing the appropriate roster. The learned counsel for the respondents contends that the roster has been maintained properly but that in any case this is not an issue to be gone into in the present context and more particularly in the teeth of the reliefs claimed in this application. If so advised, the applicant can take necessary steps as to the non-maintainance of the roster correctly, as are open to him under law.

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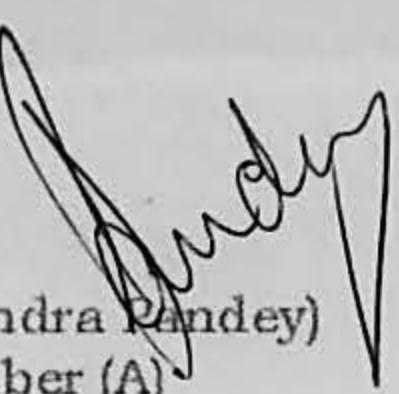
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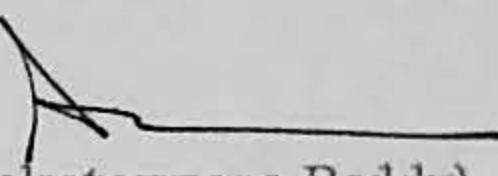
10. So far as his grievance that he was not issued the selection letter is concerned, it is clear that the post advertised, against the SC category, is only one and it is not denied that the applicant did not gain the 1st position in the SC category, as such he cannot complain that he was not given an appointment.

11. ~~In the result, therefore,~~ ^{Accordingly} this OA is liable to be dismissed.

~~2nd April~~
^{Accordingly}, the OA is dismissed. No costs.

12. It is open to the applicant to take necessary steps as are open to him for redressal of his grievance, if any, in accordance with law on the basis of the observations made by the SC/ST Commission.


(Shailendra Pandey)
Member (A)


(Justice M. Venkateswara Reddy)
Member (J)

/nsnrsp/