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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 5<sup>th</sup> day of April. 2005.

QUORUM : HON. MR. V.K. MAJOTRA, V.C.  
HON. MR. A.K. BHATNAGAR, J.M.

**O.A. No.323 of 2005**

Anil Kumar Tripathi, son of Shri Ram Prakash Tripathi,  
R/O E.T. 7 Middle Road, Armapur Estate, Kanpur.

.....Applicant.

Counsel for Applicant : Shri H.P. Pandey.

Versus

1. Union of India through Director General Ordnance Factory, Ministry of Defence, Government of India, 10-A, Shaheed Khudi Ram Bose, 10 Auckland Road, Kolkata.
2. General Manager, Field Gun Factory, Kanpur.
3. General Manager Small Arms Factory, Kalpi Road, Kanpur.
4. Pawan Kumar S/O Sri Sachidanand Prasad, R/O 738/7, Dabauli, Ratan Lal Nagar, Kanpur.

.....Respondents.

Counsel for Respondents : Sri S. Singh.

**O R D E R**

BY HON. MR. V.K. MAJOTRA, V.C.

Learned counsel of the parties heard.

2. Learned counsel of the applicant pointed out that applicant had appeared in the selections for the post of Charge man, Grade-II conducted in pursuance of notification published in Employment News dated 27.11-3.12.2004 (Annexure A-2). He stated that in terms of the notification, applications were to be addressed to Senior General Manager/General manager of the Factory concerned where the candidate sought appointment. A candidate could apply for only one post in one of the Factories only. The written examination was scheduled for 6.2.2005 at different places and selection was to be made on the basis of written test and medical

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examination. Applicant fulfilled the requisite qualifications for the post of Charge man, Grade-II (Mechanical). He appeared for such post for Field Gun Factory (FGK), Kanpur. Learned counsel stated that 14 posts were notified (7 general, 3 SC, 2 OBC etc.). Applicant appeared as a general candidate.

3. Referring to the impugned Factory-wise merit list (Annexure A-1), learned counsel pointed out that applicant has been discriminated against in as much as while the applicant was at Sl.No.20 of the merit list for FGK securing 92.25 marks, and had not been selected, Respondent No.5 Shri Pawan Kumar, who secured 84.75 marks, was selected for the post for Small Arms Factory (SAF), Kanpur. Thus, learned counsel contended that the selection is not based on merit and a person lower in order of merit of one Factory gets appointment while a person having higher merit applying for another Factory is deprived of appointment because the examination rules restrict candidates for contesting for more than one Factory on the one hand though a combined examination is held for all Factories. On the basis of these averments, learned counsel sought quashment of Annexure A-1 i.e. the impugned Factory-wise select list. He further sought a direction to the Respondents to prepare a combined merit list for all the factories instead of factory-wise merit list on the basis of All India merit in examination held on 6.2.2005. Learned counsel relied on the following :-

- a) 1997 SCC (L&S) 136 Radhey Shyam Singh & others Vs. Union of India & others.
- b) Judgment dated 1.3.2005 in Writ Petition No.12070/2005, Desh Deepak Dubey and others Vs. State of U.P. and others arising out of O.A. No.323/2005 passed by the Hon'ble High Court, Allahabad.

4. Although no notice has yet been issued in this O.A., Shri Saurabh Srivastava, holding brief for Shri S. Singh, learned counsel for the respondents made preliminary submissions. He stated that applicant had applied for the post of Charge Man Grade-II (Mechanical) against the vacancies notified

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for Field Gun Factory, Kanpur. He further stated that as per merit list of the candidates, who applied for posts in Field Gun Factory, Kanpur, the applicant found place much below the declared number of vacancies for general candidates. As such, the applicant was not offered appointment. He relied on the following :-

- a) AIR 1986 SC 1043, Om Prakash Shukla Vs. Akhilesh Kumar Shukla and others.
- b) 2002 SCC (L&S) 830, Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others.
- c) 2002(2) SCC 712, G.N. Naik Vs. Goa University and others.
- d) 2003(4) SLR 452 Vijai Sial and others Vs. State of Punjab and others.

5. We have considered the contentions raised before us from both sides.

6. To a specific query, learned counsel for the applicant stated that 56 vacancies had been advertised for the post of Charge man, Grade-II <sup>(Mech.)</sup> for 28 Ordnance and Ordnance Equipment Factories at various places in India. Selection was made for 14 vacancies at FGK. Of these, 7 were ear-marked for general category.

7. In Radhey Shyam Singh (Supra) it was held that preparation of Zone-wise separate merit list by the sub-ordinate services Commission for purposes of recruitment to Grade-II of Delhi Administration Sub-ordinate Services etc. on the basis of same examination though conducted in various Zones was held to be violative of Articles 14 and 16 of the Constitution. It was made clear that this judgment will have prospective application and selection and appointments already made in accordance with the impugned process of selection shall not be disturbed. But in future if the Govt. is keen to make Zone-wise selection after allocating some posts for each Zone, it may make such scheme or rules or adopt such process or selection which may not clash with the provisions of the Constitution of India and having regard to the guide-lines laid down by the Supreme Court from time to time in various pronouncements.

8. In Desh Deepak Dubey (Supra), liberty was given to petitioners to make fresh representation to the Respondents, who was required to take appropriate decision by means of a reasoned and speaking order within a definite period.

9. In Om Prakash Shukla (Supra), petitioner had challenged validity of competitive examination as not held as per law. He had appeared in the examination without protest on realization that he would not succeed in the examination. Relief was not granted to him.

10. In matters of Chandra Prakash Tiwari, G.N. Naik and Vijai Sial (Supra), it was held that challenging the process of selection after participation in it without protest in full knowledge of the recruitment criteria/subsequent change in the essential qualifications prescribed for the posts etc. stands barred. Participants cannot be allowed to turn back and challenge the selection in such situations.

11. In the present case, applicant had appeared in the examination held in pursuance of advertisement dated 27.11-3.12.2004. In terms of the advertisement, he had applied to the General Manager of FGK for the post of Charge man, Grade-II (Mechanical). Though the examination was to be held for posts in all the factories at various places, applicant had applied for posts vacant in FGK only. He had not made any protest while applying for posts of FGK only. In Annexure A-1, he was shown at Sl.No.20<sup>th</sup> in merit for posts of Charge man Grade-II at FGK. In terms of the advertisement, he could have been selected for the post at FGK as a general category candidate only if he was among the first seven candidates in the merit list. His grievance is that some candidates including Respondent No.5, who had secured fewer marks than he, were selected for post, in other factories as they had applied for posts in those factories. According to him, if a combined merit list had been prepared on All India basis, he would have found place among the

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successful candidates for a post in some other factory.

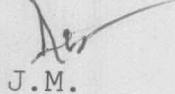
12. True that in the given circumstances in case of Radhey Shyam Singh (Supra), preparation of Zone-wise separate merit lists as in the present case was declared against Articles 14 and 16. However, the facts of that case are distinguishable. In that case, there were 15 zones and the candidates were eligible to appear at any zone out of those 15 zones. In case, no vacancy was available in a particular zone then the zone was to be clubbed with one of the contiguous zones at the discretion of the commission and a common list in order of merit was to be prepared. Petitioners had made representations to the Secretary of the Commission objecting to the process of zone-wise selection on the basis of separate merit list for each zone and requested to make an All India merit list in place of zone-wise merit list. Representations were not decided and therefore, the petitioners had appeared in written test under protest. In the instant case, no such representation was made by the applicant and he had appeared in the selection without any protest and request for change in the criteria for selection. In the case of Radhey Shyam Singh, too, despite protest and request for change in the criteria for selection, the selection was not set aside and directions were made for changing the criteria prospectively. Applicant would not be able to derive any benefit from this case as the facts of the two cases are distinguishable.

13. In the case of Desh Deepak Dubey (Supra), various judgments of the Hon'ble Supreme Court, cited here, have not been taken into consideration and as such, in the teeth of the law declared by the Hon'ble Supreme Court, similar directions as made in the case of Desh Deepak Dubey cannot be made available to the applicant herein.

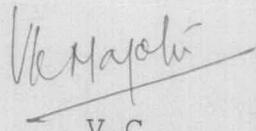
14. The ratio of the cases of Om Prakash Shukla, G.N. Naik and Chandra Prakash Tiwari and Vijai Sial

(Supra) are squarely applicable to the facts and circumstances of the present case. Applicant was fully aware of the criteria of selection for the post of Charge man, Grade-II. He had applied for consideration for the post of Charge man, Grade-II for FGK without any protest. His candidature could not have been considered for a post for any other factory as per the recruitment advertisement (Annexure-2) and his own application. Another candidate, who had applied for a post in another factory, could be selected on comparative merit with candidates, who applied for that post even though he had secured fewer marks than the applicant as the applicant had nothing to do with selection for posts in another factory.

15. Having regard to facts and circumstances of the case, discussion made and reason stated above, we do not find any merit in the O.A. As such, the same is dismissed in limine.



J.M.

Asthana/  
V.C.

5.4.05