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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1668 of 1987.

Moti Lal Yadav

....

Applicant.

Versus

Union of India & others

....

Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This writ petition has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioner's case is that after having retired from the Air Force as Photo Mechanic on 30.4.1978 he applied for the post of Photo Mechanic with the respondents. He was declared successful in the interview and trade test which were held in February and March, 1982. His name was at the top of the successful candidates. He was directed for medical examination and he was declared successful. So everything became final for his appointment but he did not receive any appointment letter and when he represented he was advised that due to reduction in the establishment his case could not be considered and it shall be considered when a vacancy arises. The petitioner again represented in 1984 requesting for his appointment but he was informed that the main hurdle in his appointment was a letter issued by the Air Headquarters on 20.2.1984 placing a ban on the filling up of vacancies. According to the petitioner there has been no reduction in the establishment and a number of persons had since retired but still he has not been offered any appointment. He has, therefore, come up with a prayer that the records of the respondents may be called and after scrutinising the same the impugned order dated 26.4.1985, holding the appointments of respondents 4 and 5 be quashed and the petitioner may be appointed to the post

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of Photo Mechanic.

3. In their reply the respondents have said that the petitioner was trade tested in February, 1982 and though he passed in the test he could not be declared as qualified since he did not possess the requisite educational qualifications. His case for relaxing the educational qualifications was referred to the Headquarters in March, 1982 but no relaxation was permitted. On his further representation instructions were issued by the Air Headquarters to review ~~their~~ his case. It was also confirmed to the HQ Maintenance Command that the petitioner was capable and a deserving candidate and he can be appointed provided the orders for reduction in the establishment are withdrawn, but in the meantime a fresh ban of recruitment was imposed by the Government in September, 1984 and this was extended for indefinite period. According to the respondents the vacancy of Photo Mechanic occurred on 24.4.1984 when one of the serving employee was promoted. Another vacancy fell vacant in March 1985 but the petitioner could not be appointed on account of the ban. In regard to respondents 4 and 5 the answering respondents have said that ~~the~~ <sup>3</sup> ~~to~~ private respondent was appointed as A/C Mechanic but not as Photo Mechanic.

4. We have heard the learned counsel for the parties. The contentions made on behalf of the petitioner were that when he had been finally selected the ban orders had not been received ~~therefore~~ <sup>3</sup> ~~so~~ he should have been given the appointment. While the learned counsel for the respondents submitted that though he has been selected because of the ban he could not be taken into service and the ban is still continuing.

5. The learned counsel for the applicant had referred to the letter from the Joint Secretary to the Government of India, Ministry of Finance in regard to economy in non-plan expenditure dated 3.1.1984 wherein it is mentioned that all existing vacancies, i.e. non-operational posts, where recruitment action has not ~~been~~ <sup>3</sup> taken place, should not be filled. The contention of the learned

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counsel was that as far as the applicant is concerned the recruitment process had already started and, therefore, the applicant could not be covered by the ban imposed by the Finance Ministry.

6. It is not under dispute that the petitioner was selected but there was some dispute about his educational qualifications which in the initial stages were not accepted by the Air HQ., but which on subsequent representation by the applicant were relaxed and thus the petitioner got empanelled amongst the selected candidates. The respondents had also considered the case of the applicant for an alternative post but he could not qualify in the same, <sup>3/</sup> ~~and since the~~ <sup>3/</sup> ~~vacancy~~ <sup>3/</sup> ~~arose~~ only in April, 1984 when a promotion was made <sup>3/</sup> ~~in~~ of respondent no.5, A. Ahmad, who was already in the employ of the respondents. In the list of candidates, who were interviewed in February, 1982, the petitioner appears at Sl.No.7, while the name of A.Ahmad, who was permitted to fill up the vacancy, which occurred in April, 1984, does not appear in the list. It is, <sup>however,</sup> ~~also~~ not clear whether the post of Photo Mechanic was to be filled by promotion or by <sup>2/</sup> ~~direct~~ recruit. The petitioner's claim is that since recruitment action has already been initiated in his case the plea taken by the respondents that there is a ban on filling of post should not stand in his way. The submissions made on behalf of the respondents are that though he is on the select<sup>3e</sup> list appointment cannot be made because there is a ban. They have further said that a vacancy exists at the moment. From the papers, in regard to the interviews held in February 1982, and from the averments made by the respondents that they had to make a reference to the Air HQ. in regard to his qualifications, it would appear that the major part of the recruitment action had already been completed by November, 1982 when the Air HQ advised the respondents that the qualification/experience was only of recommendatory nature and the individuals, who did not fulfil these recommendations, cannot be rejected on grounds of lack of qualification. It was also confirmed by the Air HQ. that the petitioner

3/ It is also clear that a vacancy

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was very capable and a deserving candidate.

7. The Ministry of Finance's letter in regard to the ban does not need any special interpretation. The orders were clear that where the recruitment action has been initiated such posts are not covered by the ban. In view of this and in view of the fact that a vacancy exists at present and the recruitment action had been completed as far back <sup>31</sup> by respondent no.2, we direct that the petitioner's case should be considered <sup>31</sup> immediately for appointment against the existing vacancy <sup>31</sup> on the basis of his selection and ignoring the ban orders which are not applicable to him. <sup>31</sup>

8. The application (Writ Petition No. 12105 of 1985 stand disposed of in the above terms, but under the circumstances of the case we make no order as to costs.

*[Handwritten Signature]*  
MEMBER (J).

*[Handwritten Signature]*  
MEMBER (A).

Dated: July 26, 1988.

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