

A-2
7

(20)

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

—
ORIGINAL APPLICATION NO.1098 OF 1987.

Dated: The 21st September, 1995.

Hon'ble Mr. S. Das Gupta, Member(A)

Hon'ble Mr. T.L.Verma, Member(J)

Trilochan Singh, son of late Sri Bhagat Singh, Watchman, 510 Army Base Workshop Meerut Cantt.

. APPLICANT.

(By counsel Sri R.C.Singh).

Versus

1. Union of India, through Home Secretary, Home Ministry, New Delhi.

2. Samadestha(Commandant), 510 Army Base Workshop, Meerut Cantt.

3. Respondents RESPONDENTS.

(By Counsel Sri Prashant Mathur).

O R D E R.

By Hon'ble Mr. S.Das Gupta,, Member(A). (Oral).

The applicant has approached this Tribunal through this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking relief of a direction to the respondents to appoint the applicant on the post of Store-keeper in 510 Base Workshop Meerut Cantt. on the basis of his selection on 28.7.1993. It has also been prayed that the respondents be directed to make full payment to the applicant of the salary of the post of Store-keeper since 29.1.1993.

2. The admitted fact in this case is that the applicant along with other candidates appeared and cleared the selection test which was taken by the respondents for filling the post of Store-keeper. The applicant, who was a departmental candidate, however, was not given appointment as Storekeeper and a representation in this regard was of no avail.

54

A-2
2

(2)

- 2 -

3. The respondents have filed counter affidavit in which it has been averred that on the date the selection was finalised, the post in question had become time barred on expiry of six months from the date of its release, in accordance with the Government instructions in this regard. This was the reason why the applicant could not be appointed on the post. Subsequently, however, the post has already been filled by transfer of existing Storekeeper from another Unit.

4. We have heard learned counsel for both the parties.

5. There is nodoubt that the applicant did appear in the selection test conducted by the respondents and he was also selected for the post of Storekeeper. It is, however, now a settled law, which was enunciated ^{by the Apex} in Court of ~~Law~~ ^{dealt} by the ~~Supreme Court of India~~ in the case of ~~Sankar Das~~ ^{Sankar Das} Vs. Union of India that selection and empanelment does not confer ^{undefeasible} ~~inevitable~~ right on a candidate for appointment even if there are vacancies available for appointing candidates. It has only been stated in the case of ^{Sankar Das} ~~Mr. Das~~ that ^{if} nonfilling of a post by a selected candidate ~~was~~ ^{is} arbitrary and illegal ^{it can} ~~and was~~ challenged only on the ground that such action on the part of the respondents is arbitrary and illegal. Respondents ^{have} clearly averred that the reason why they did not fill up the post by the applicant was that the post had become time barred. The counsel for the respondents has shown us a copy of the Government Order dated 8.1.1981 issued by the M.E. Directorate of the Army Headquarters which indicates that vacancies ^{which} ~~caused~~ more than 6 months old shall not be filled unless filling of ^{such} ~~of~~ post is required ^{for} ~~after~~ meeting statutory requirement or for operational or technical reasons. Therefore, nonfilling of the post, in case six months have elapsed, cannot be considered as arbitrary on the part of the respondents.

56

A-2
3

(22)

- 3 -

Learned counsel for the applicant, states that even on the basis of averment in the counter affidavit it cannot be said that six months have passed from the date of release of the post till the date of selection. This is a question of fact and the question of fact is ~~not~~ in dispute. We do not consider ^{it necessary} to enter into this dispute. The facts remains that the post had since been filled by transfer of existing storekeeper from other Unit and this in our view cannot be taken as arbitrary action on the part of the respondents.

6. In view of the foregoing we are of the view that the applicant has no ^{indefeasible} ~~intensive~~ right to be appointed on the post of Storekeeper and non-filling of the post by the respondents, in the facts and circumstances of the case, cannot be considered arbitrary. Therefore, on the basis of ratio of ^{decision in Sankarson Das} ~~discussion~~ we

We find that the application has no merit and is dismissed accordingly.

J. Kumar
Member(J).

W. C.
Member(A)

sa.