

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1094 of 1988

This, the 6th day of October, 1994

Mohd. Himayat Ullah Khan, s/o Shri Hidayat Ullah Khan
R/o 132/354, Babu Ka Purwa, Kanpur.

..... Applicant

By Advocate Shri B.P. Srivastava
Shri R.K. Pandey

Versus

Union of India & Ors.

By Advocate Shri Ashok Kumar Shukla

..... Respondents

CORAM:

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. J.S. Dhaliwal, J.M.

JUDGEMENT

By Hon'ble Mr. S. Das Gupta, A.M.

This original application has been filed under section-19 of the Administrative Tribunal Act, 1985 with the prayer that the impugned order dt. 27.11.1987 (Annexure-A IV), by which applicants representation for being reappointed as Storekeeper in the Loco Canteen was turned down, be set aside and applicant be declared to be entitled to be appointed to the said post. It has also been prayed that alternatively, the respondents be directed not to interpret the order the impugned order dt. 27.11.1987 as an order denying the petitioner the appointment on the post of wash-boy.

2. The applicant came to know that a post of Storekeeper was

vacant in the staff canteen of the Loco shed, Kanpur and he

applied for the same. In the application he had mentioned that

he had passed the 8th class and was able to handle the work of

the post of Storekeeper. The Canteen Committee considered his

application and by the order dt. 22.12.1980 (Annexure-A II) he was

appointed to the said post of Storekeeper on trial basis for six

months. The petitioner claims that he was discharging his duties

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as a Storekeeper of the canteen to the ~~entire~~ satisfaction of the superiors. He has further stated that the canteen was closed down u.e.f. 19.06.1981 when the petitioner alongwith the other staff members working in the canteen was discharged. According to the petitioner, the canteen reopened in ~~the~~ April 1983 and while all other staff members were re-engaged, the petitioner was not. He is stated to have submitted an application on 14.04.1983 for his reappointment; this was followed by reminder dt.06.05.1983. Thereafter protracted correspondence ensued between the canteen authorities and finally the impugned order dt.27.11.1987 was issued informing the petitioner that as he was not matriculate, he could not be appointed on the post of Storekeeper.

3. The petitioner however contends that even before the issue of the impugned order dt.27.11.1987, he had come to know that the post of Wash boy in the Loco Canteen ~~had~~ fallen vacant and he submitted an application on 03.11.1987 for his appointment against the aforesaid vacant post of wash boy. ~~xxxxxxxxxxxxxxxxxx~~
~~xxxxxxxxxxxxxxxxxx~~ After some internal correspondence, the petitioner was directed by the Secretary of the canteen committee to get himself Medically examined after depositing the required amount therefor. The petitioner accordingly deposited required amount, got himself medically examined on 07.03.1988 and obtained the fitness certificate dt.11.03.1988. Thereafter the petitioner is stated to have been directed by the Secretary of the canteen committee to give affidavit regarding his date of birth which was ~~applied~~ ^{completed} with the petitioner on 12.03.1988. The petitioner claims that after all the formalities were completed, when he went to obtained his appointment letter, the loco foreman refused to give the appointment letter showing the impugned letter dt.27.11.1987 by which it was decided not to appoint the petitioner for the post of storekeeper.

4. The petitioner's case is that he could not have been denied reappointment to the post of Storekeeper. 3

on the ground that he was not a matriculate since at the time he was first appointed, the authorities concerned were aware that he had passed only 8th class and yet he was appointed to the post. He claims that by appointing, ~~him~~ ^{as} the storekeeper despite his educational qualification, it should be deemed that the prescribed qualification ~~of~~ matriculation had been waived in his case and as such he could not have been denied subsequent appointment on the ground that he was not matriculate. The other point he has made is that in any view of the matter, he could not have been denied the appointment on the post of wash boy on the basis of the order dt. 27.11.1987 as the said order related to the appointment on the post of Storekeeper and not to the appointment on the post of wash boy.

5. In their written statement the respondents have averred that the applicant's appointment as Storekeeper was on trial basis for a period of six months only and that even appointment was irregular since applicant was not a matriculate. They have also stated that the Loco Canteen Committee was dissolved and all the canteen employees were discharged. Later, most of the regular employees were re-engaged but the petitioner was not re-engaged since he did not possess requisite qualification for the post of storekeeper. It is also beaverred that since the earlier managing committee of the canteen irregularly appointed the applicant as Storekeeper, it cannot be deemed that the qualification requirement for the post ~~as~~ was waived. As regards appointment as wash boy, it has been stated by respondents that the petitioner could not be appointed in the absence of ~~the~~ ^{an} vacancy and that in fact there is ~~case~~ ^{excess} staff in the canteen in view of the reduction of Loco employees. It has been further stated that as the regular Loco Foreman was sick, a Loco inspector was temporarily looking after the work and he got the applicant medically examined under the impression that the Loco foreman had already processed the case.

6. We have heard the counsel of both the parties and

perused records.

7. Admittedly the initial appointment of the applicant was on a trial basis for six months. This appointment obviously did not confer any right on the applicant to be regularly absorbed in the post. It is not in dispute that the requisite qualification for the post is matriculation. Merely because the applicant was appointed by the canteen committee having the knowledge that the applicant was not a matriculate cannot be deemed to have the effect of waiving the requirement of minimum educational qualification. The applicant cannot have a claim that since he was appointed as storekeeper in spite of his being a non matriculate gives him right to be appointed again despite the fact that the requisite qualification for the post was matriculation.

8. So far as the appointment to the wash boy is concerned the applicant cannot claim the appointment as a matter of right. It was for the respondents to consider his case sympathetically in view of the fact that he was an ex-employee of the canteen, even though his appointment was irregular. However, in the face of specific averment on the part of the respondents that there is no vacancy of this post in the canteen, the applicant cannot claim that he must be taken as a wash boy even if no such vacancy exists. The applicant has asuring in his rejoinder affidavit that vacancies for the post of wash boy do exist. We cannot however go by his assertion. We have no reason to disbelieve the contention of the respondents that the canteen does not have the vacancy of the wash boy. We cannot therefore direct them to appoint the applicant as wash boy even if they have made the applicant undergo medical tests and obtained from him an affidavit regarding his date of birth.

9. Before parting with this case we would like to observe that since the applicant has been an ex-employee of the canteen, it would be just and fair on the part of the canteen committee

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to consider engaging the applicant on any vacant posts in the canteen for which the applicant is considered suitable. However, we refrain from giving any direction in this regard but leave it to the respondents to consider the matter.

10. The application has otherwise no merit and the same is dismissed, leaving the parties to bear their own costs.

J. M.
J. M.

A. M.
A. M.

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