

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application no. 78 of 1990
Transfer Application no. _____

Date of Decision 21/11/96

Suresh Singh and Others.

Petitioner

Sri K.S. Kushwaha

Advocate for the
Petitioner

VERSUS

HOL & Ors.

Respondents.

Km. Sadhna Srivastava.

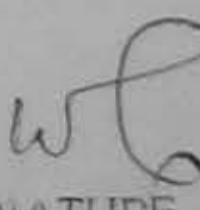
Advocate for the
Respondents.

CORAM

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

Hon'ble Mr. T.L. Verma, J.M.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Bench ?


SIGNATURE

PIYUSH/

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 27 day of November 1996

Original Application No. 78 of 1996

District Ghazipur

COURT:-

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

Hon'ble Mr. T.L. Verma, J.M.

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X 6 pages

1. Suresh Singh Son of Sri Vishwanath Singh
2. Ramakant Son of Taptelu.
3. Gopal Ram Son of Baldeo.
4. Uma Shankar, Son of Jugul Kishore.
5. Om Narain Shukla, Son of Badri Nath Shukla.
6. Ram Chandra Sharma, son of Sukalu.
7. Bal Kishun, Son of Mukh Ram.
8. Basant Prasad Son of Baij Nath.
9. Ram Adhar Son of Sundar.
10. Harhangi Singh Yadav Son of Khuddi.
11. Surendra Ram, Son of Ramdeo.
12. Shiromani Son of Sahdeo.
13. Marjad Son of Sahdeo.
14. Parmeshwar Son of Devi Charan.
15. Jokhan Son of Sheo Badan.
16. Ram Janam Son of Durga.
17. SK Mukherjee Son of SN Mukherjee
18. Dina Nath Son of Sita Ram.
19. Raja Ram Son of Ram Chandra.
20. Gajendra Son of Jaddu.
21. Abdul Salim Ansari Son of Sarfuddin Ansari.
22. Radhey Shyam Son of Dhorha.
23. Laxman Son of Chiraunji.
24. Pati Ram Son of Mitthoo.

All Residents of Opium Factory,
Ghazipur.

(By Sri K.S. Kushwaha, Advocate)

..... Petitioners

Versus

1. Union of India through Secretary
Ministry of Finance, New Delhi.
2. The Government Opium and Alkaloid
Factory, Ghazipur, through its
General Manager.

(Km. Sadhna Srivastava, Advocate)

..... Respondents

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O R D E R

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

The applicants in this OA are aggrieved by an order dated 11-10-89 in which the decision has been conveyed that a fresh recruitment be made from the departmental candidates as well as from the candidates sponsored from the Employment Exchange for filling certain technical post on which the applicants amongst others were earlier promoted on ad hoc basis. They have sought quashing of the aforesaid order dated 11-10-1989. They have also sought quashing of notification dated 6-1-1990 by which the persons eligible for the aforesaid posts were to appear for a trade test. The admitted facts of this case are that the applicants who were appointed long back and working as skilled/unskilled workmen in the factory applied for ad hoc appointment certain technical posts in response to an advertisement issued by respondent no.2 on 30-4-1985. They were directed to appear before a selection committee for interview and thereafter the applicants were appointed ~~from~~ various technical posts by orders dated 28-11-1985 and 26-12-1985. All these appointments were on ad hoc basis. The applicants continued to work on these posts since their appointment until the issuance of the impugned order dated 11-10-189 by which the respondent no.2 directed that ~~answert~~ examination would be held for selection on the post which were being held by the applicants. It was stated in that order that appointments

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made in the year 1985 were on purely ad hoc basis and there were certain irregularities in such appointments and hence ~~such~~ ^{first} selections were required to be made.

Subsequently, the Administrator of the Factory issued a notification dated 21-11-1989 inviting application for the post, which the applicants were holding whereby the applicants were also asked to appear in the selection. Thereafter the impugned notice dated 6-1-1990 was issued by respondent no.2 whereby the applicants were directed to submit their application for selection and to appear for a test.

2. The applicants have challenged the notification on the ground that they were appointed in the year 1985 after following the proper procedure and that they have been continuously working on such posts for more than five years and, therefore, they would have not been reverted without giving any opportunity or right of hearing.

3. The respondents have contested the case by filing a counter affidavit. It has been submitted therein that some technical posts in Group 'C' and 'D' were to be filled by direct recruitment following the proper procedure as per the Draft Recruitment Rules, 1985. However, the then General Manager of the Factory instead of asking the Employment Exchange to sponsor the names of eligible candidates, invited applications only from departmental candidates on the basis of experience etc. and these posts were filled up by

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departmental candidates only. However, they were appointed ~~only~~ on purely ad hoc basis ~~in~~ direct recruitment quota on the basis of the recommendations of the selection committee. However, subsequently, it was detected that such appointments had been made irregularly by the previous General Manager and, therefore, it was necessary to fill these posts on a regular basis after following the regular procedure. However, as the matter was pending before the Assistant Labour Commissioner before whom Lucknow, the dispute was raised by the workmen, the reversion of the workmen was stayed by the respondents and they were asked to appear for a selection alongwith the candidates to be sponsored by the Employment Exchange.

4. The applicants have filed a rejoinder affidavit reiterating their contentions in the OA and denying the contrary contentions in the counter affidavit.

5. We have heard learned counsel for both the parties and perused the record carefully.

6. The applicants were admittedly appointed on the technical posts in 1985 and they had continued on those posts though on ad hoc basis for several years. The case of the respondents is that such appointment were against direct recruitment quota in which open market candidates sponsored by Employment Exchange should have been given opportunity alongwith departmental candidates for selection. It is stated that this was in accordance with the provisions of the Draft Recruitment Rules. The respondents have not filed a copy of the aforesaid

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recruitment rules to support their contention that the posts were required to be filled up by direct recruitment and, therefore, the Employment Exchange should have been asked to sponsor candidates. In the absence of a copy of the recruitment rules, we are unable to come to a conclusion that the initial appointments of the applicants was irregular. The respondents, however, have not stated that the applicants and similar other departmental candidates could have been considered for this post. All that they have stated is that they could have been considered alongwith outsiders sponsored by the Employment exchange.

7. Even if we assume in the absence of a copy of the recruitment rules that the posts on which the applicants were appointed were directly recruitment posts, the admitted facts are that the applicants were so appointed after being screened by the selection committee and not by way of promotion on the basis of the recommendations of a departmental promotion committee. Thus, for all practical purposes their appointments have been by way of direct recruitment and not by way of promotion.

The omission has been only to the extent that the Employment Exchange was not notified to sponsor outside candidates. This may or may not have been a violation of the Compulsory Notification of Vacancies Act but but cannot be considered as a violation of the recruitment rules, if any. In view of the ^{fact} matter, the appointments of the applicants on technical posts cannot be construed as irregular.

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8. In view of the foregoing, we hold that the applicants were regularly appointed on the technical posts. The impugned order dated 11-10-1989 and the notification dated 6-1-1990 are quashed. Let the applicants be considered for regular appointments on the post which they are holding and let them be regularised on these posts on fulfilling other conditions, if any.

9. The application is disposed of accordingly. The parties shall, however, bear their own costs.

J. K. Sharma
Member (J)

W. P. S.
Member (A)

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