

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

O.A. No. 139/92

Allahabad this the th 12 day of Nov., 97. (1)

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S.DAS GUPTA, MEMBER(A)

Ashok Kumar Sharma, son of Shri Ram Raj Sharma,
Resident of 59-A/7, Vijay Nagar, Kanpur.

Applicant.

By Advocate Shri Idris Ahmad.

versus

1. The Union of India through the Secretary, Ministry of Defence, Central Secretariat, Govt. of India, New Delhi.
2. The Chief of the Air Staff, Air Head Quarters, Vayu Bhawan, New Delhi.
3. The Air Officer Commanding-in-Chief Maintenance Command, Air Force, Nagpur.
3. The Commanding Officer, 29 E.D. Air Force, Air Force Station, Chakeri, Kanpur.

Respondents.

By Advocate Shri N.B. Singh;.

O R D E R

BY HON. MR. JUSTICE B.C. SAKSENA, V.C.

The applicant, through this O.A. alleges that he was selected as a Civilian ^{Draftsman} ~~Draftsman~~ for appointment at 29 ED Air Force, Air Force Station, Chakeri, Kanpur vide letter dated 11.6.87. However, his grievance is that he was not given appointment to the said post illegally and arbitrarily inspite of persistent visit and numerous representations to the authorities concerned. The applicant states that finally, by letter dated 19.6.91 he has been informed that there is still ban on recruitment in Air force, and as such his case cannot be considered until lifting up of the ban. On the basis of these facts, the applicant has prayed for a direction to be issued to the respondent No. 4 to issue appointment letter to the applicant from ^a ~~the~~ date ~~which is~~ subsequent to the date of selection i.e. 11.6.87.

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2. The respondents, in their counter affidavit have not disputed that the applicant was interviewed for the post of ^{ugh} Draftsman and his character and antecedents were verified by the Civil police authorities. Their case is that the appointment letter could not be issued as a ban on fresh recruitment was imposed by the Government of India as per instructions of the Air H.Q./H.Q. Maintenance Command Indian Air Force. They have also indicated that the vacancy has been filled in by posting a senior ^{ugh} Draftsman and the vacancy released for local recruitment through Employment Exchange had been cancelled by Air/Headquarters.

3. The learned counsel for the applicant urged that once the applicant was selected for appointment to the post & after having gone ^{through the} ~~the~~ process of appointment, the applicant acquired vested right to ^{be} ~~the~~ appointed. Non appointment of the applicant, who was a selected candidate, is stated to be bad. Certain decisions have been relied upon by the applicant.

4. The question which arises for our determination in these circumstances is what is the legal right which the applicant can claim on the basis of his having been selected to the post of ^{ugh} Draftsman. The learned counsel for the applicant cited the following two decisions:

- i) Ujjal Kr. Chattopadhyay vs. Union of India and otehrs reported in (1990) 14, A.T.C. 631,
- ii) N.T. Devin Katti and others vs. Karnataka Public Service Commission and others reported in (1990), 14, A.T.C.688.

The first decision is by the Calcutta Bench of the C.A.T. In the said case the only question considered was whether cancellation of a panel without assigning any reason was valid. The cancellation had been ordered on a note by the Chief Personnel Officer that normally for

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I.T.I. appointments, matriculation qualification were required and in view of the fact that the cases of some experienced candidates could not be considered as they did not have 10+2 qualifications, the recruitment should be cancelled without assigning any reason. The validity of the note made by the C.P.O. was examined and it was found to be untenable. This decision therefore proceeded on its own facts and is not applicable to the present case before us.

5. The other ~~relevant~~ decision relied upon by the learned counsel for the applicant is the Supreme court decision where the question considered was the effect of a subsequent amendment to the statutory rule or order where selection process had been initiated by issuing advertisements. It was held that when advertisement expressly states that appointment shall be made in accordance with existing rule or order, the subsequent amendment in the existing rule or order will not affect the pending selection process unless contrary intention is expressly or impliedly indicated. Such a situation does not arise in the present case and therefore, the ~~present case~~ ^{said decision} is also wholly inapplicable to the case of the applicant.

6. The learned counsel for the respondents cited the following decisions :

- i) Shankarasan Dash vs. Union of India reported in J.T. 1991(2) S.C. 380.
- ii) U.P. Bhoomi Sudhar Nigam Ltd. vs. Shiv Narain Gupta reported in 1994 S.C.C(L&S), 1146.
- iii) Gujarat State Dy. Executive Engineers' Association vs. State of Gujarat and others reported in (1994) 28, A.T.C. page 78.

All the above are the decisions of Hon. Supreme Court.

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7. In the first case of Shankarsan Dash(supra) the Hon'ble Supreme Court laid down that "it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies."

The respondents, in their counter affidavit have indicated good and cogent reason why the appointment letter could not issued to the applicant. We are not satisfied that reason set out in the Counter Affidavit is in any manner indicative of arbitrariness. The applicant by his selection clearly did not acquire an indefeasible right to be appointed.

8. In the second decision which is also of the Hon'ble Supreme Court, the question considered was legality of denial of appointment to the selected candidates on account of abolition of the post. It was held that denial did not lack bonafide and was not arbitrary. The earlier decision in Shankarsan Dash was relied upon.


9. In the third decision cited by the learned counsel for the applicant the question considered in the said case do not have a direct bearing on the issues involved in the present case.

9. In view of the discussions hereinabove, we hold that the applicant did not acquire any indefeasible right to be appointed to the post of Civilian ^{ugh}Draftsman. The reason for his non appointment does not ^{lack}~~flow from~~ bonafides and is in ^{bel}no manner arbitrary. The O.A. therefore, merits dismissal

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and is accordingly dismissed. Parties to bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Allahabad Dated: 12.11.97.

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