

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

O.A.No./T.A.No. 346 of 1992

Date of decision 21-5-99

Chanora Bhushan Pandey Applicant(s)

C/A Sri K. Sinha, COUNSEL for the  
Applicant(s)

Versus

UOI & Ors. Respondent(s)

Sri NB Singh, Counsel for the  
Respondent(s)

C O R A M

Hon'ble Mr. S.L. Jain, J.M. V.C./Member( )  
Hon'ble Mr. G Ramakrishnan, A.M. Member ( )

1. Whether Reporters of local papers may be allowed to see the judgment? Ne
2. To be referred to the Reporters or not ? YES
3. Whether their Lordship wish to see the fair copy of the judgment ? YES
4. Whether to be circulated to all Benches ? No.

  
( SIGNATURE )

MANISH/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21<sup>st</sup> day of May, 1999

Original Application No.346 of 1992

CORAM:-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

Chandra Bhushan Pandey

S/o Late Shri Shiv Murti Pandey,

R/o 35, Tula Ram Bagh, Allahabad.

(Sri K.C. Sinha, Advocate)

. . . . . Applicant

Versus

1. Union of India  
Through the Secretary of Govt of India,  
Ministry of Defence, New Delhi.

2. Director General E.M.E.  
Army Headquarters,  
New Delhi.

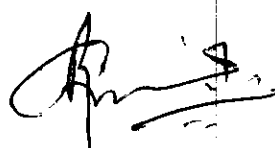
3. Commander,  
Headquarters Technical Group E.M.E.  
Delhi Cantonment.

4. Officer Incharge,  
E.M.E Records,  
Secunderabad.

5. Commandant  
506 Army Base Wksp,  
Fort Allahabad.

(Sri NB Singh, Advocate)

. . . . . Respondents



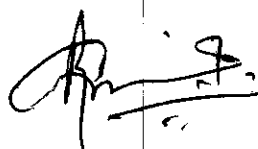
O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 wherein the applicant has challenged the order dated 9-12-1991 of respondent no.2 rejecting the claim of the applicant for being appointed as Foreman in 508 Army Base Workshop, Allahabad.

2. The facts of the case are that the applicant had approached this Tribunal through OA No.520 of 1987 for the relief of being appointed as Foreman in 508 Army Base Workshop, Allahabad and this Tribunal by its order dated 17-5-1991 had directed the respondents to consider the case of the applicant and pass a speaking order, in the light of the Ministry of Home, Department of Personnel and Administrative Reforms, New Delhi OM No. 22011/2/79-Estt(O) dated 8-12-1982. Accordingly, respondent no.2 had passed the impugned order on 9-12-1991. (Annexure-A-XIIA of OA). The applicant has sought the following reliefs through this OA:-

- (A) An order or direction of a suitable nature to quash the order dated 9-12-1991 of respondent no.2.
- (B) An order or direction of a suitable nature commanding the opposite parties to appoint the petitioner as Foreman with effect from 27-12-1983 or 20-6-1984 with full back wages and consequential benefits.
- (C) A mandamus be issued to the respondents to treat the applicant as Foreman with effect from 27-12-1983.
- (D) Any other relief to which the applicant is found ~~suitable~~ entitled under the circumstances.



3. The applicant sought for the reliefs mainly on the following grounds:-

- (i) Because, the order dated 8-2-1982 has been wrongly interpreted and as the same was clarificatory in nature and, therefore, there was no question of its applicability prospectively or retrospectively.
- (ii) Earlier panel of Foreman was not exhausted when the subsequent vacancies arose and also on 8-2-1982.
- (iii) After approval was given by EME Record to appoint the applicant as Foreman by letter dated 4-5-1984, it was mandatory for the authorities to appoint the applicant as Foreman.
- (iv) On the date when the post of Senior Chargeman & Foreman was advertised, the applicant was below 35 years of age and he was selected without claiming any age relaxation and question of age of relaxation will arise only when a candidate has to reappear in the examination and not when he claims the post on the basis of prior selection.

4. Respondents filed CA and resisted the claim. It was stated that the OA was not maintainable as an OA had earlier been filed by the applicant for the same reliefs.



Further it was stated that the applicant cannot claim promotion by claiming age relaxation especially when the same had been considered by the respondents as directed by the Tribunal in the earlier OA. Respondents stated that as there was only one vacancy of Foreman there was no question of appointment of the applicant who stood second in the order of merit. Further, they stated that the case of age relaxation was forwarded to Army HQ, who considered the same and refused the same as there was no Government Order for relaxing the age twice. Respondents stated that EME Records had intimated vide letter dated 22-11-1984 that since the applicant had been appointed as Senior Chargeman in accordance with the particular Board proceedings the same became null and void and ceased to have any cognizance in the case of applicant.

5. The applicant filed Rejoinder Affidavit and reiterated the points made in the OA.

6. Heard learned counsel for the parties. We have given careful consideration to the rival pleadings and perused the whole record.

7. As the applicant has mainly claimed the reliefs as per the OM dated 8-2-1982 of Ministry of Home, Department of Personnel and Administrative Reforms, we propose to examine this OM in detail. This OM has been issued clarifying the validity of period of list of selected candidates prepared on the basis of direct recruitment or departmental competitive examination. According to para 2 of this OM, in case of direct recruitment the list of selected candidates is to be prepared to the extent of number of vacancies, (other persons found suitable being put on a reserve list, in case some of the persons of the list of selected candidates do not become available for

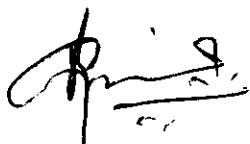


appointment), and in the case of departmental competitive Examinations the list of selected candidates has to be based on the number of vacancies on the date of declaration of result. Further according to para 3 of the OM, normally, recruitment whether from open market or through departmental competitive examination should take place only when there are no candidates available from an earlier list of selected candidates.

8. According to the applicant's own submission there was only one general vacancy of Foreman in 1978-79 and the same was to be filled by direct recruitment for which candidates sponsored by Employment Exchange and Departmental candidates who fulfilled prescribed eligibility conditions were considered. In the merit list that was prepared after the selection for the post of Foreman, the applicant was placed at Sl No.2. We are of the view that by this placement at Sl. No.2, the applicant cannot be stated to have been placed in the select list, as there was only one vacancy. The applicant can claim the post of Foreman only if the candidate placed at Sl No.1 of the merit list had not joined as Foreman. As the applicant cannot be stated to be in the select list he cannot lay claim for the vacancy of Foreman which had been released for being filled up on 27-12-1983. In fact the applicant in his representation dated 6-3-1984 addressed to respondent no.5(Annexure-A-III) himself states that he is on the top of the waiting panel. The vacancy of Foreman which had been released for being filled up had been notified vide Daily Order part I dated 27-2-1984 (Annexure-A<sup>2</sup> XIII). This Rectification had been correctly issued in accordance with the OM dated 8-2-1982. The applicant has to fulfil




the eligibility conditions prescribed in this notification ~~xxxxxxx~~ including the age specified therein for being considered for the vacancy of Foreman of December, 1983. Regarding the applicants' claim that EME Records accorded approval for the applicants' promotion as Foreman, we find from the copy of this letter enclosed as Annexure-A-IIIA of the OA that no such approval is there in this letter. In fact, it is very clear that the applicants' name was not there in the select list for the post of Foreman and it was necessary to issue an amendment to the Board proceedings. It is also stated in the letter dated 22-11-1984 (Annexure-A-VIII) that once the appointment of the applicant had been made as Senior Chargeman as per the Board proceedings the same proceedings become null and void and cease to have any cognizance. In view of the foregoing, we do not find the applicant entitled for the reliefs sought under paras 8B and C. Moreover, as pointed out by the respondents, these reliefs, on the same facts, were claimed by the applicant earlier and the present OA is not maintainable as far as these two reliefs are concerned as they are barred by resjudicata. But the OA had been filed challenging the decision taken by the respondent no.2 on the representations filed by the applicant. We have given our detailed reasons as to why and how the applicant is not entitled for reliefs sought under para 8B and C of the OA. The detailed reply dated 9-12-1991 given by respondent no.2 also states the same thing may be in a different language. Therefore, we do not find any reason

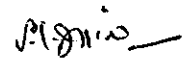


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to quash the same. Thus, the applicant is not entitled for the reliefs (on merit and is barred by resjudicata).

9. In view of the foregoing this OA fails and accordingly we dismiss this OA with no <sup>order</sup> as to costs.

  
21/5/97  
Member (A)

  
Member (J)

Dube