

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 21 day of Feb, 2010

PRESENT:

HON'BLE MR. A.K.GAUR, MEMBER-J
HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A

Original Application No.1156/2003
(U/s 19 of the Administrative Tribunals Act 1985)

Anil Kumar Bajpai,
S/o Shri J.K. Bajpai,
Resident of Q.No.235/10,
Babupurwa Labour Coloney,
Kidwai Nagar, KANPUR. ...Applicant

(By Advocate : Sri R.K.Shukla)

Versus

1. Union of India through the Secretary,
Ministry of Defence & Supplies,
Department of Defence Production,
Government of India, New Delhi-11.
2. The Secretary,
Ordnance Factory Board,
10-A, Shaheed Khudiram Bose Road,
KOLKATA -1.
3. The General Manager,
Ordnance Equipment Factory,
KANPUR. ...Respondents.

(By Advocate : Sri.R.C.Shukla)

ORDER

HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A

The applicant was initially appointed as Sewing Machine
Mechanic (Semi-Skilled) on 1.4.1985. Subsequently, he was

Manjulika Gautam

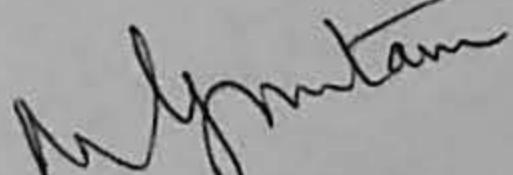
appointed on the post of LDC w.e.f. 22/1/1998 in Ordnance Equipment Factory, Kanpur. On 30.8.2000 the respondents issued Circular inviting applications for appearing in the Limited Departmental Competitive Examination for the post of Chargeman Grade-II. The applicant gave his willingness for the same. He was informed vide letter dated 28.9.2000 that the examination will be held on 9th & 10th December 2000 and was given admit card and Roll No. 299/RTIKN. The applicant appeared in the examination and was declared passed and asked to attend the interview on 1.5.2001 vide letter dated 23.4.2001. After the interview, the following four candidates were declared successful for the Clothing Technology Stream;

1. Shri Vinod Kumar Examiner
2. Sumit Kumar Srivastava, LDC
3. Raghu Nath Prasad, LDC
4. A.K.Bajpai, LDC

Out of them only first three candidates were promoted as Chargemen Grade-II while the Petitioner was left out.

2. According to the provisions of O.M.No.2201/2/79-Estt (D) dated 8.2.1982 issued by the Department of Personnel and Administrative Reforms,

"Where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates"



already awaiting appointment should be given appointment first before starting appointments from a fresh list from a subsequent recruitment or examination."

Instead of acting according to the above mentioned instructions the respondents issued fresh circular dated 29.9.2001 inviting fresh application for existing vacancies of Chargeman Grade II/Clothing Technology. It was also laid down that B.Sc. candidates will be considered for Clothing Technology only. In spite of having passed the LDCE 2000, the applicant again applied for the vacancies of 2001, but twenty days prior to the date of examination, the respondents issued a circular dated 29.9.2001 restraining candidates holding B.Sc. Degree from appearing in the examination. The applicant had requested for allowing him to appear in the examination for the year 1999 also, and he had applied for the post of Leather Technology and he was again issued Admit Card and Roll No. But only three days' prior to the scheduled date to the examination vide orders dated 9.2.2000 he was restrained from appearing for the examination. Aggrieved by this the applicant moved a representation dated 17.8.2002 requesting to permit him on the post of Chargeman Grade-II on the basis of the result declared in LDCE 2000. The applicant has also referred to the action of the respondents regarding all candidates who passed LDCE in 1998 and who were accommodated before conducting LDCE 1999. In the case of the petitioner he had not been promoted on the basis of LDCE 2000, because, there were

M. Jayaram

three vacancies, but subsequently, three more vacancies arose for which notification was issued for holding examination, whereas he should have been accommodated first. The applicant submitted another representation dated 5.4.2003. Getting no response the applicant has filed the present O.A. seeking the following reliefs:

i. *To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 6.9.2002 (Annexure A-1) denying the promotion/appointment on the post of Chargeman Grade II/Clothing Technology despite of being declared pass and availability of vacancies.*

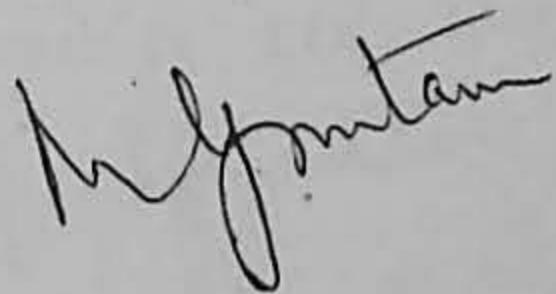
ii. *To issue a Writ, order or direction in the nature of mandamus directing the respondents to promote the petitioner on the post of Chargeman Grade/ Clothing Technology on the basis of pass reset declared by the respondents w.e.f. from the same date from which his colleagues have been promoted with all consequential benefits in view of the provisions made in respondent's O.M. dated 8.2.1982.*

iii. *To issue a writ, order or direction in the nature of Mandamus directing eh respondents to refund the examination fees for which he was restrained to appear in the examination on false grounds.*

iv. *To issue a writ, order or direction in the nature of Mandamus directing the respondents to compensate the petitioner in restraining the petitioner to appear in Limited Departmental Examination for the post of Chargmen Grade II(Tech) or Non-Tech. on the in correct grounds of having B.Sc. degree with P.C.M. just one or two weeks earlier to the date of examination, in utter violation of the provisions made in Circulars and recruitment rules for the purpose.*

3. Vide letter dated 6.9.2002 the respondents have disposed of the representation of the applicant dated 17.8.2002 saying that:

"Vacancies to be filled up through LDCE are calculated and

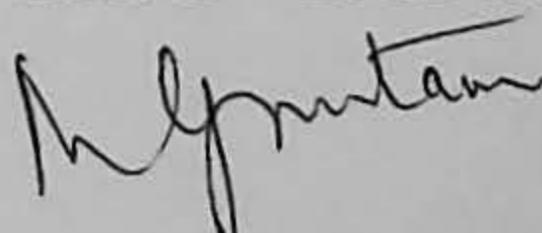


notified year-wise. Next year's vacancies can't be filled up from previous examination."

In view of the above his representation has been rejected.

4. According to the counter affidavit filed by the respondents the applicant secured 4th position in order of merit in the LDCE 2000. Since there were only three vacancies, candidates who are higher than him in merit were appointed. The counter affidavit also states that, with reference to the O.M. dated 8.2.1982 issued by the Department of Personnel and Administrative Reforms, clarifications were issued by Ordnance Factory Board vide letter dated 6.4.1990 advising the factories that, "in case of direct recruitment, a list of selected candidates is to be prepared to the extent of the number of vacancies and thus no waiting list is to be maintained. According to them the same procedure governs selection of candidates through LDCE and the applicant was not kept on the waiting list although he had been declared successful in the examination.

5. Regarding the precedent of filling up of seven vacancies against the earlier notified three vacancies in the year 1998 it has been clarified that four posts increased in the year 1998 before the examination was conducted. Therefore, all seven posts were filled in order of merit in LDCE 1998. In the case of the applicant in



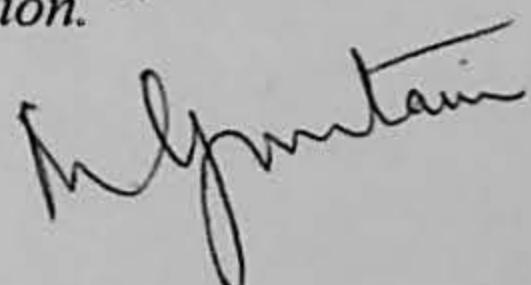
LDCE 2000 there were no increase or decrease in declared vacancies and therefore, the applicant could not be accommodated.

6. We have heard both parties and perused the record on file. The relevant document in this O.A. is Annexure C.A.-I which is instructions to all factories regarding preparation of list of selected candidates for direct recruitment, issued by the Ministry of Defence, Ordnance Factory Board. The relevant extracts are as follows:

"Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies. (Other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment)."

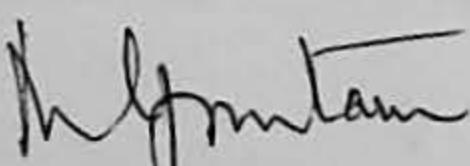
7. Similarly, in the case of LDCE, the list of selected candidates should be based on the number of vacancies on the date of declaration of the list and based on merit.

"Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes change, after his name has been included in the list of selected candidates. Thus, where the selected candidates are awaiting appointments recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment. Such candidates should be given appointment first before starting appointment from a fresh list from a subsequent recruitment or examination."

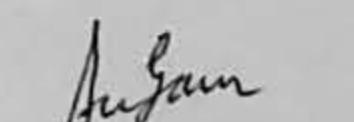


8. A perusal of the records available on file will show that the applicant was declared successful after the written examination and the interview, but was not appointed because there were only three vacancies available. As far as the status is concerned, the applicant was a selected candidate and therefore, as per circular referred to above, dated 8.2.1982, it is clear that it is the responsibility of the respondents to appoint him on subsequent vacancies before starting fresh recruitment. The respondents have not denied the applicant's statement that vacancies were available and which have not yet been filled.

9. In view of the above, the O.A. is allowed. The impugned order dated 6.9.2002 is quashed and set aside. The respondents are directed to promote the applicant against vacancies which arose subsequently within a period of three months from the date of receipt of a copy of this order. No costs.



MEMBER(A)



MEMBER(J)