

(13)
Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1232 of 2006

Wednesday day this the 27 ⁵ day of February, 2008

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

1. Pradeep Kumar S/o Sri Brahma Nand Sharma R/o 115-A Arvind Enclave, Nagloi, Delhi-110041.
2. Praveen Kumar S/o Shri B.L. Kaushik, R/o House No. 29, T.M.-III, R.B.T.B. Hospital Kingway Camp, Delhi-110009.
3. Satish Kumar S/o Shri Ram Chandra R/o Village Sultanpur, Dabas, Post Pooth Khurd, Delhi-110039.

Applicants

By Advocate Sri Shyamal Narain

Versus

1. Union of India through the Director General Archeological Survey of India, Janpath, New Delhi.
2. Superintending Archeologist Archeological Survey of India Agra Circle, 22 The Mall Agra.

Respondents

By Advocate Sri Pranay Krishna

O R D E R

By K.S. Menon, Member (A)

All the three applicants have filed this O.A. against the inaction of the respondents on their joint representation dated 18.11.2005 seeking appointment to the post of Attendant (Group D) in the Office of respondent No.2 w.e.f. the date they communicated their acceptance of offer of appointment made by the respondents, in the same manner the appointment was given to a similarly placed candidate. They have sought the following reliefs: -

- (i) issue a writ order or direction in the nature of mandamus commanding the respondents to issue the appointment letter to the post of attendant with antecedent effect since the initial offer for their appointment dated 22.01.2001 in the office of respondent no.2.
- (ii) issue a writ order or direction in the nature of mandamus commanding respondents for payment of arrears and salary and

(14)

back wages whatever may be accrued to applicants on account of their initial offer since 22.01.2001.

(iii) Any other writ order or direction which this Hon'ble Tribunal may deems fit and proper under the facts and circumstances of the instant Original Application may be granted.

(iv) Award the cost of the Original Application to the applicants.

2. The applicants say that they were directed to appear for an Interview on 21.01.2001 for selection to the post of Attendant as per the letter dated 02.01.2001, issued separately to all of them by respondent No.2. They attended the interview and were selected. Thereafter respondents made an offer of appointment on 22.01.2001, directing the applicants to submit their acceptance to the offer as well as other terms and conditions of service alongwith Character and medical certificate and the other documents by 31.01.2001. The applicants submit that they had submitted the said acceptance letter enclosing all relevant documents, as asked for including character and medical certificates within the stipulated date. No appointment order was issued by the respondents subsequently.

3. It appears that a similarly placed candidate Sri Harsh Mani also attended the interview alongwith the applicants and was duly selected and the offer of appointment by the respondents was also made to him. Sri Harsh Mani accepted the said offer and submitted all requisite documents but he also did not receive any offer of appointment. Being aggrieved by this action, Sri Harsh Mani filed O.A. No. 1185 of 2002 seeking direction to the respondents to appoint him on the post of Attendant. In their counter affidavit, filed in this O.A., the respondents have confirmed the existence of 10 vacancies in the post of Attendant, which were to be filled from Open Market. Out of these 10, three were for the reserved category. Respondents to the question as to why offer of appointment was not made to Sri Harsh Mani, the respondents admitted that they were about to issue him offer of appointment but were restrained from doing so in view of directions given by the Tribunal in O.A. No. 895 of 1992 in the matter of Khubi Ram and others Vs. Union of India and others. The respondents further clarified that they were ready to issue the appointment letter once the said ban imposed by the aforesaid order of the Tribunal was lifted. This Tribunal disposed off the said O.A. No. 1185 of 2002 vide Order dated 24.11.2004 by observing that the respondents had under a misconception regarding Tribunal's direction in Khubi Ram's case (supra) not issued appointment letter to Harsh Mani. They observed that Khubi Ram's case pertained to

92

(15)

regularisation of casual labours whereas Harsh Mani's case pertains to appointment from the open market and hence has no bearing whatsoever with Harsh Mani's case. The Tribunal accordingly directed the respondents to appoint Sri Harsh Mani as an Attendant w.e.f. the date he was initially issued the offer of appointment by giving him the benefit of seniority and age relaxation, if any, required. They had also made it clear that Sri Harsh Mani would not be entitled to any back wages. The applicant in the present O.A. claimed that on hearing about the Judgment in Harsh Mani's case, they immediately filed a representation dated 18.11.2005 for grant of appointment on par with Harsh Mani's case. When the respondents did not comply with the direction of this Tribunal dated 24.11.2004, Sri Harsh Mani filed a contempt petition No. 76 of 2005. During the pendency of this Contempt Petition, the respondents issued offer of appointment to Sri Harsh Mani vide their letter dated 29.07.2006 initially as a Monument Attendant, which was later modified to Attendant. Consequently, this Tribunal dropped the Contempt Petition vide Order dated 12.09.2006. The applicants in the present O.A. thereafter filed several representations to the respondents on 08.07.2006, 07.08.2006, 14.08.2006 and finally a detailed representation was submitted on 22.09.2006, in which they had reiterated the fact that their case was fully covered by the Judgment passed by this Tribunal in O.A. No. 1185 of 2002 (Harsh Mani's case). Since no action on the above representations was taken by the respondents, they filed this O.A. on 06.11.2006 seeking the reliefs prayed for, as mentioned in paragraph No.1 above. This Tribunal vide its Order dated 04.12.2006 passed an interim order directing the respondents not to fill up three posts of Attendants in the establishment in question.

4. The respondents in their Counter Affidavit have refuted the contention of the applicants. Their argument is that the applicants did not submit the character and medical certificates and other documents, which were required to be submitted alongwith their acceptance of offer of appointment letter. They further contend that the applicants have kept quiet since 2001 when the cause of action arose and chose to take up the matter only in 2005. During this period they neither represented nor filed any Court case, besides they have not filed the requisite documents. They, therefore, contend that the applicants have no grounds to seek any relief from this Tribunal. In support of this contention, they have cited 2007 (2) SCC 725 A.P. Steel Re-Rolling Mills

9

Ltd. Vs. State of Kerala and others. Paragraph No. 40 of the Judgment reads as under: -

"The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

The respondents have also cited a Judgment of U.P. Jal Nigam and another Vs. Jaswant Singh and another (2006) 11 SCC 464, in which it has been held that

"Laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years.

In view of the above, they submit that applicants' case has no merit and same deserves to be dismissed.

5. We have heard Sri Shyamal Narain, learned counsel for the applicants and Sri Pranay Krishna, learned counsel for the respondents and perused the pleadings.

6. It is observed that the respondents have not denied that the applicants were offered appointment after being duly selected through an Interview. Their main contention is that the applicants cannot be given the same benefit, as given to Sri Harsh Mani, as they were not a party in that O.A. Admittedly, the applicants had been selected by due process of selection and were found fit for grant of appointment letter and it is very evident that it is on some misconception, on the part of the respondents, that the appointment letters could not be issued to the applicants. The respondents seem to have taken the stand that the applicants have not submitted the requisite documents including character and medical certificates, as one of the reasons for not issuing the appointment letter. It is, however, seen that the applicants have annexed the said documents jointly in annexure A-4 of the O.A. at pages 18, 19 and 20. The medical certificates of applicant No.1 and 3

(17)

have been annexed at Annexure R.A.-1 and R.A.2 and of applicant No.2, it has been submitted that medical certificate has been sent to the respondents, however since no copy was retained by him, same could not be annexed with the O.A. Though these documents have been annexed with the Original Application, there is nothing to show that they have been duly received by the respondents and have been acknowledged by them. It is also to be noticed that once the applicants have been duly selected and the respondents have made an offer of appointment it is highly unlikely that the applicants would not submit the required documents, which was considered an essential prerequisite for them being appointed on such a post. This Tribunal vide its Order dated 24.11.2004 had clearly brought out the fact that once it was established that respondents had misread the Judgment in the case of Khubi Ram and others, the only course left with them was to issue appointment letter in respect of all others who had been duly selected in the interview and to whom offer of appointments had been issued, including the applicants. The respondents' contention that applicants have remained silent from 2001 to 2005 is not tenable because the applicants were under the firm belief that having been duly selected by the respondents a letter of appointment would be issued in due course. Subsequently they were also given to understand that there was some problem based on the Judgment in Khubi Ram's case, which prevented the respondents from issuing the said appointment letters. It is subsequently when applicants came to learn about the Judgment passed in Harsh Mani's case that they represented to the respondents on 18.11.2005 seeking similar treatment. Thereafter, the matter had been under constant correspondence with the respondents through several representations made by the applicants from the above, it cannot be said that the applicants had remained silent and hence cannot be given the same relief as given to Sri Harsh Mani. It is also to be seen that even in the case of Harsh Mani, the respondents had challenged the Tribunal's order in the Hon'ble High Court as well as in the Supreme Court and their cases were dismissed on 09.11.2005 and 03.07.2006 respectively. It can also be said in favour of the applicants that during pendency of Harsh Mani's case in the High Court and Supreme Court, there was no likelihood that the respondents would have granted the applicants their relief. So, the contention of the respondents regarding the delay on the part of the applicants cannot be accepted.

92

7. We are, therefore, of the view that applicants have been made to suffer enough and ends of justice would be met if the applicants are given appointment as Attendant against 3 posts kept vacant, as per interim order of this Tribunal dated 04.12.2006 w.e.f. the date applicants communicated their acceptance of offer of appointment, made by the respondents. This exercise will be completed within a period of 3 months from the date of receipt of certified copy of this order. It is made clear that applicants would not be paid any back wages. With the above directions, O.A. stands allowed. No costs.

J. Meeson
Member (A)

[Signature]
Member (J)

/M.M/