

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NO
opportunity of
appearing in examination
AHMEDABAD BENCH

O.A. No. 293 OF 1991.

~~XXXXXX~~

DATE OF DECISION 16-12-1992.

Jamesnathan & Anrs. Petitioner s

Mr. J.S. Yadav, Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Defence Respondent s
& Ors.

Mr. Akil Kureishi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman,

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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 Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Jamesnathan
3/39/13, Nobelnagar,
Sweiman Park-2,
Naroda Ahmedabad.

Makwana Tulsibhai Bhawanbhai
Shanker Society,
Meerawadi
At & Post Dhanduka
District Ahmedabad.

Applicants.

Advocate Shri J. S. Yadav.

Versus

1. Secretary,
Ministry of Defence
Canteen Stores Department
New Delhi.

2. The Chairman,
Government of India,
Ministry of Defence
Canteen Stores Department
Adelphi, 119, MK Road,
Bombay.

3. The Depot Manager
Canteen Stores Department
Sardar, Near Military Camp,
Shahibaugh, Ahmedabad.

Respondents

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

In

O.A. 293 of 1991

Date : 16-12-1992.

Per Hon'ble Shri R.C. Bhatt Member (J)

per
This application has been filed under
section 19 of the Administrative Tribunals Act, 1985,
by two applicants who were working -

as daily rated L.D.C in the Canteen Stores Department of respondent authorities since five to seven years. The case of the applicants is that as per the administrative action of the respondents they held some examination allowing some employees having experience of five years etc. to appear in the said examination and if they cleared the same their services were to be regularised. It is the case of the applicants that they also appeared in the examination but they failed. The applicant no.1 failed in the examination held in or about October 1988. The applicant no. 2 continued to work since August 1987, but he failed in the examination held by the respondents.

2. It is not disputed that both the applicants were terminated by the respondents as they failed in this examination held by the respondents. The intention of the respondents was to regularise the daily rated employees like the applicants working since long in the department as per the circular dated 20-7-1988 vide Annexure A-4 and hence the opportunity was given to the applicants to appear in the examination. The applicants unfortunately failed in the examination. The applicants allege that the respondents have acted illegally and their action was in violation of Article 14 of the Constitution of India in as much as that the second opportunity of appearing in the examination was denied to the applicant and hence the termination order against the applicants should be quashed. The respondents have filed reply controverting the averments made by the applicants in the application.

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3. At the time of hearing the learned Counsel for the applicant drew our attention to the letter Annex. A-1 addressed to the applicant No.1 by the Manager (P) dated 21st September 1990, in response to the representation dated 25th August 1990, which is as under :

"2. As you are aware that Govt. has turned down the case for re-test in respect of these candidates who have failed in the departmental Examination held on 11th October 1998.

3. Please note that the examination held on 20th August 1990, for regularisation of daily rated L.D.C.s was as per directives issued by the Courts in respect of those daily rated LDCs covered under Court Stay Order. "

4. The learned Counsel for the applicant therefore, submitted that it would be just and proper in this case also to give equal treatment to the applicants by directing respondents to hold the examination of the applicants to give them second chance to appear in the examination and if the applicants qualify in the suitability test then the respondents may appoint them in the regular vacant post as per the scheme. For this purpose the learned Counsel for the applicant relied on the decision in Amerika Prasad and Others Vs. Union of India and Ors. decided by the Patna Bench of Central Administrative Tribunal, in OA 134/1989 dated 4th May 1990. It was the case of a daily rated LDCs in the Canteen Stores Department of District Hazaribagh. In that case also the applicants were aggrieved by the order by which their services were terminated and they challen-

ged their termination order and had prayed for reinstatement and regularisation. The Tribunal after considering the documents on record and also considering the decisions of the Gawahati and New Bombay Bench of C.A.T held that equity and fair play demanded that the services of applicants should not be summarily terminated and the second test should be held to judge the suitability of such employee who had failed in the first test. In short, the direction given by the Gawahati and New Bombay Benches of the Central Administrative Tribunal ~~were~~ followed in O.A. 134/89 by the Patna Bench and orders of termination of services of the applicants in that case were quashed and they were allowed to continue in job and another test was directed to be held to judge their suitability for regular appointment and in case they were found suitable their services were directed to be regularised. The distinguishing feature in this case and in the case of Patna Bench is that the applicants in O.A. 134/89 before the Patna Bench had obtained interim order of stay against their termination while in the present case the applicants have filed the applications after the termination order and there is no stay in this case. Moreover the order of termination by the respondents is also not challenged. However that fact should not come in the way of the applicants in getting the relief atleast for the directions to respondents to hold the second test of the applicants to judge their suitability for the post. Bombay Bench of C.A.T had directed the respondents to consider the case of the applicants for regularisation of their services after allowing them the chance for atleast in the regular Departmental examination-cum-typewriting test within a period of three months ~~xx~~ of re-instatement of applicants in that case.

5. Having regard to the above decisions, we are inclined to dispose of the present application giving the following directions to the respondents.

O R D E R

6. The application is partly allowed. The respondents are directed to hold the second test of both the applicants to judge their suitability by holding requisite Departmental Examination within three months from the date of receipt of this order of this Tribunal. In case the applicants qualify in the said Departmental Examination, the respondents shall consider their cases for regularisation/regular appointment in the service, in future when the vacancy occurs as per the scheme of the respondents. The applicants be considered for any vacancy at any place if it is permissible and possible for the respondents to employ the applicants in that place as per rules and the applicants should be given appointment in that vacancy provided first they qualify successfully in the examination.

Application is disposed of accordingly. No order as to cost.

Raval
(R.C. Bhatt)
Member (J)

Chu
(N.V. Krishnan)
Vice Chairman.

*AS.