

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA.

O.A.No.: 1380 of 1996
(M.A.No.: 230 of 2001)

Date of Decision : 25th - JUNE - 2001.

Avijit Chowdhury, son of Late Satkari Chowdhury, by caste Hindu, by occupation unemployed, residing at 96/2, Kashinath Chatterjee Lane, Police Station Shibpur, District : Howrah, Pin Code No. 711 102..... APPLICANT.

By Advocate : Mr. I.N.Banerjee.

Vs.

1. Union of India, represented by its Secretary, Ministry of Customs, and Central Excise, New Delhi.
2. Collectorate of Central Excise, Calcutta-II, having its office at 15/1, Strand Road, M.S.Building, Calcutta-700 001.
3. Additional Collector (P&V), Central Excise, Calcutta-II, 15/1, Strand Road, M.S.Building, Calcutta-700 001.
4. Employment Officer, Sub-Regional Employment Exchange, Government of West Bengal, 12, Church Road, Howrah. 711 102. RESPONDENTS.

By Advocate : Mrs. K.Banerjee.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE).

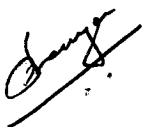
O R D E R

JUSTICE S.NARAYAN, V.C.:- The applicant Avijit Chowdhury, has prayed for a direction upon respondents no.2 & 3, to give him appointment forthwith to the post of Sepoy in terms of Memo No. CII(31) 9-ET/CAL-II/93/L/98028, dated, 2nd November, 1995, and as per Model Roster, being Annexure-G to the application, with all consequential benefits. The applicant learnt from the respondent no.4 i.e., the Employment Officer, Howrah, that the respondent no.3, has issued the aforesaid memo dated, 2nd November, 1995, to the effect that he (the applicant) had already been absorbed in his officer (i.e., in the office of the respondent no.3).

2. The controversy in the case is confined to a very short point arising out of admitted

truth on the record. Admittedly, the applicant had been empanelled to fill-in the vacancies in the grade of Sepoy and by the letter dated, 2nd November, 1995 (already referred to above, (though not produced on the record), the applicant was selected for the post of Sepoy. The respondents have, however, denied the appointment of the applicant on the ground that he was at sl.no.9 of the panel of 12 selected candidates among the Scheduled Caste and out of those 12 candidates, only six candidates i.e., from sl.no.1 to 6, could be given appointment. Further, the respondents pleaded, inter-alia, that the memo dated, 2nd November, 1995, was issued inadvertently by mistake and, accordingly, the applicant's Advocate was informed by a letter dated, 23rd September, 1996 (Annexure-J), that the earlier communication as per Memorandum dated, 2nd November 1995, was by mistake and that the applicant had not been selected for appointment. The parties have, therefore, joined issue only on the point as to whether the applicant, as per his position in the panel of selected candidates, was entitled to appointment on the post of Sepoy as per the Model Roster, meant for the candidates of Scheduled Caste to which he belonged.

3. In order to determine the issue, as above, some more facts need be placed on the record and, in that context, we have preferred to record only those facts which have been candidly admitted by the respondents in paragraph no.3 of their reply on affidavit. On 9th July, 1993, the authority concerned of the Central Excise requested the Employment Exchange and Zila Sainik Boards all over West Bengal to sponsor candidates for filling-up 41 vacancies in the grade of Sepoy. The Employment Exchanges and Sainik Boards forwarded names of candidates, including

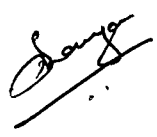


the name of the applicant. As a result of the physical test held on 18th March, 1994, the applicant qualified in the test and he was called for viva-voce test on 24th March, 1994, along with other candidates. A panel was prepared according to merit to give appointment serially as and when vacancies arose. The panel consisted of 35 candidates from general category, 12 from Scheduled Castes, six from Scheduled Tribes and the rest 13 from ex-serviceman, total being 66. The applicant's name appeared at sl.no. 9 of the 12 candidates in the panel from Scheduled Caste. Further, it was admitted that from the said panel, as many as, 12 candidates from general, four from Scheduled Caste, Two from Scheduled Tribe, Two from Ex-Serviceman, total being 22, were offered appointment for the vacancies of 1993-94, and again a set of 19 candidates, comprising of 12 from general, Two from Scheduled Caste, One from Scheduled Tribe and Four from Ex-Serviceman, were offered appointment for the vacancies of the year 1993-94. By these two lots, all told, 41 candidates (22 & 19) were considered for appointment from the aforesaid panel.

4. In the backdrop of the aforesaid admitted facts, the contending official respondents i.e., the Central Excise Department, contended that out of 12 candidates in the panel of Scheduled Caste, only Six (sl.no. 1 to 6) were offered appointment and the applicant, being at sl.no.9, could not be appointed. Naturally, therefore, a question arises as to whether, the applicant's position in the seniority was liable to be covered by the Model Roster of Scheduled Caste or not? In answer to this question, our attention was straightway drawn to a Model Roster Chart appended to the rejoinder to amendment application for and on behalf of the applicant, as at Annexure-G.

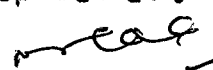
That reservations and concessions in Government services meant for West Bengal were contained at sl.no.22 of the Model Roster published as per Department of Personnel & Training O.M. No.36012/22/93, Estt, dated, 29th December, 1993 & 23rd February, 1994. As per this roster, the number of posts which ought to have been reserved for candidates of Scheduled Caste in the panel of 41 would be ten. Hence, in the panel of 12 candidates, exclusively of Scheduled Caste, the candidates from sl.no. 1 to 10 ought to have been offered appointment in order to secure the legal command of reservation for Scheduled Caste. Admittedly, the applicant's position was at sl.no.9. That being as such, the applicant ought to have been offered appointment as per the Model Roster. What we find in the instant case is that only Six (4 + 2) candidates from the Scheduled Caste were offered appointment. This was, therefore, in utter violation of the reservation policy as demonstrated in the Model Roster, referred to above. Here, it would not be out of place to mention that the concerned authority of the Excise Department had, therefore, rightly issued an office memo dated, 2nd November, 1995, for a selection/appointment of the applicant on the post of Sepoy. There was no reason for the respondent authority to go behind this office memo.

5. Before coming to a conclusion to the aforesaid effect, we have also perused the original file of the selection process together with the Minutes of the Selection Committee. On perusal thereof, we are confident that the applicant ought to have been offered appointment as per the memo dated, 2nd November, 1995. It would not be out of place also to mention that the contending respondents submitted in paragraph no.4 of their reply to the amendment application that certain candidates, being 15 in number, were regularised from



Departmental Contingent Staff against the aforesaid vacancies. This appears to be quite contrary to the earlier plea in the original reply as per which 41 candidates were to be employed from amongst the panel which had been prepared out of the direct candidates whose names had been sponsored by the Employment Exchange and Sainik Boards. The relevant employment notice through which the Excise Department had invited application was only for direct candidates and it was never meant to fill-in vacancies by way of regularisation from Departmental Contingent Staff. In any view of the matter, the claim of the applicant can not be defeated by unusual method of regularisation of the services of any Departmental Contingent Staff. Respondents' plea to that effect introduced on the record at a belated stage contradicting the earlier stand was, therefore, not at all acceptable.

6. In the result, this O.A. must succeed and, accordingly, it is allowed. The concerned respondents of the Collectorate of Central Excise are, accordingly, directed to pass an appropriate order for selection/appointment of the applicant in terms of their office memo dated, 2nd November, 1995, within six weeks from the date of communication of this order. The applicant would be entitled to the inter-se seniority as per empanelment irrespective of the date of appointment. There shall be no order as to costs. In view of above, the M.A. also stand disposed of.


(L.R.K. PRASAD)
MEMBER(A)

25.6.01


(S. NARAYAN)
VICE-CHAIRMAN

25-6-01

skj