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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
JODHPUR.

Date of Decision: 10.07.2002

OA 97/2001

Premraj Naik, Cleaner, <sup>Area</sup> CSD Depot, Bikaner.

... Applicant

V/s

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Headquarters Canteen Stores Department, Ministry of Defence, 'ADELPHI', 119, M.K.Road, Mumbai.
3. The Area CSD Depot, Canteen Store Department, through its Manager, Bikaner.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.R.S.Bhadauria

For the Respondents

... Mr.Vinit Mathur

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADM.MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, Applicant Premraj Naik has mainly prayed for a direction to the respondents to consider him for appointment on the existing post of Driver-cum-Mechanic from the date the posts are lying vacant, the applicant having been placed at S.No.1 in the panel, with all consequential benefits.

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2. Applicant's case is that he was initially appointed on the post of Cleaner with the respondent department in April, 1992. The applicant has been trying for appointment on the post of Driver-cum-Mechanic from 1995. Ultimately, he was selected for appointment to the post of Driver in the panel approved by the competent authority on 16.8.99. Applicant's name figured at S.No.1 of the said panel. The respondent department had also demanded from the applicant various documents vide their letter dated 27.8.99 so as to appoint him on the post of Driver-cum-Mechanic. However, in the meantime, the respondents received an order dated 1.11.99 from Hon'ble the Supreme Court directing the respondents to appoint one Kishan Chand Sharma, Cleaner of Jabalpur Depot, as Driver against one vacancy available at Bikaner Depot. Accordingly, the respondent department appointed Shri Kishan Chand Sharma vide their order dated 8.11.99. Thus, the applicant, though appearing at S.No.1 of the select list, could not be appointed on the post. The applicant now prays that he may be appointed on the post vacated by one Shri Ravindra Mishra, who has been transferred to Bareilly. Hence this application.



3. In the counter, contentions of the applicant are denied by the respondents. It is stated by them that inclusion of the name in the select panel does not give indefeasible right to the applicant to be appointed on the post. It has also been stated by the learned counsel for the respondents that he is not aware if there is

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any post of Driver vacant in the Bikaner Depot. In the circumstances, it is urged by the respondents that the application is devoid of any merit and is liable to be dismissed. It is also stated by the respondents that there being ban on fresh appointments vide Government of India OM dated 5.8.99, the applicant could not be considered for appointment to the post of Driver. The learned counsel for the respondents has also cited the judgements in Government of Orissa v. Harprasad Das & Others - (1998) 1 SCC 487, Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor & Others - (1998) 7 SCC 469, and All India SC & ST Employees Association & Another v. A.Arthur Jeen & Others - (2001) 6 SCC 380.



4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is not denied that the applicant was at S.No.1 of the select panel dated 16.8.99. It is also not disputed that the respondent department had initiated process for appointment of the applicant on the post of Driver, but for the direction of Hon'ble the Supreme Court the applicant could not be appointed on the post of Driver. We have carefully examined the judgements cited by the learned counsel for the respondents. In all these judgements it has been held that inclusion in the panel of selected candidates

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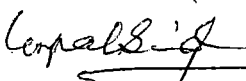
does not confer any indefeasible right even against the existing vacancies. In Government of Orissa v. Harprasad Das & Others, it has <sup>also</sup> been held that judicial direction to fill up post should be avoided unless the Government decision is arbitrary. It has also been held that to fill up or not to fill up post lies within the policy decision of the Government. We have no disagreement with all these judgements. Fact remains that the applicant was at S.No.1 of the select panel dated 16.8.99 and the respondent department had initiated the process of appointing the applicant on the post of Driver but because of the directions of Hon'ble the Supreme Court his case could not be processed further. The respondents have also urged that there is a ban on appointment vide Government of India OM dated 5.8.99 (Ann.R/5). We have carefully gone through this circular. This circular deals with the Guidelines on Expenditure Management - Fiscal prudence and Austerity and it is provided in this circular that the existing ban on creation of non-planned post will continue and should be strictly enforced. It is thus clear that there is no ban on fresh appointment but there is a ban on creation of non-planned post. It has already been pointed out by the applicant that a vacancy is available because of transfer of one Shri Ravindra Mishra to Bareilly. The learned counsel for the applicant has also produced before us a letter dated 26.6.2002, which is the movement order of transfer of Shri Ravindra Mishra.

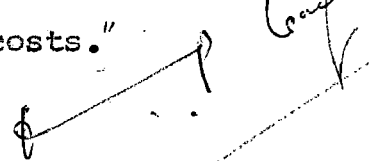


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It is also seen from this order that Shri Ravindra Mishra is apparently being transferred to Bareilly at his own request as he has been deprived of transfer benefits. The learned counsel for the applicant has also produced transfer order No.196/2002 dated 21.6.2002 of Shri Ravindra Mishra, wherein it has been provided that he may be relieved ~~on~~ on or after 30.9.2002. It is thus clear that a vacancy in the cadre of Driver would be available with the transfer of Shri Ravindra Mishra to Bareilly after 30.9.2002. The applicant has also prayed for consideration of his case for appointment to this post. The panel dated 16.8.99, wherein the applicant's name figured at S.No.1, was further extended till February, 2001 and thereafter lapsed. The vacancy would now be available after 30.9.2002. We are of the view that ends of justice would be met if a direction be issued to the respondents to consider the case of the applicant for appointment to this post as a direct recruit alongwith other candidates. Accordingly, we pass the order as under :

"The OA is allowed. The respondents are directed to consider the case of the applicant for appointment on the post of Driver becoming available with the transfer of Shri Ravindra Mishra to Bareilly, as a direct recruit alongwith other candidates called from Employment Exchange to fill up this post. The respondents are given four months time to comply with these directions. No costs."

  
(GOPAL SINGH)  
ADM. MEMBER

  
(JUSTICE O.P. GARG)  
VICE CHAIRMAN



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Sent to ~~Judge~~ pet. by post-  
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Part II and III destroyed  
in my presence on 24.7.02  
under the supervision of  
section officer (J) as per  
order dated 14/7/02

Section officer (Record)  
[Signature]