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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

.....

Date of Order : 28.05.2003.

O.A. NO. 91 OF 2002

Santosh Kumar S/o Shri Ram Chandra, aged about 29 years, By caste Bhil (ST), Resident of Outside Nagori Gate, Kaga Road, Bhil Basti, Jodhpur (Rajasthan).

...Applicant. ....

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Commanding, 32 Wing, Air Force Station, Jodhpur.
3. Shri Vinod Kumar S/o Shri Badri Lal, Resident of Plot No. 49, Jawahar Colony, Near Sardar Club Scheme, Jodhpur (Rajasthan).

...Respondents. ....

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman  
Hon'ble Mr. G.C. Srivastava, Member (Adm).

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Mr. S.K. Malik, counsel for the applicant.  
Mr. Kuldeep Mathur, counsel for respondent No. 1 & 2.  
Mr. P.P. Choudhary, counsel for respondent No. 3.

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ORDER

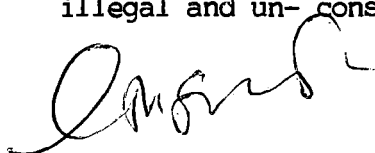
[Per Hon'ble Mr. Justice G.L. Gupta]

The reliefs claimed in this O.A. are as follows :-

- "(a) that by an appropriate writ, order or directions impugned Letter No. 32W/2207/8/PC dated 16.2.2002 (Annexure A/1) be declared illegal and be quashed and set aside by the Hon'ble Tribunal,
- (b) that the respondents may be directed to consider the case of the applicant for appointment against the S.T. post and give him appointment on the post of Cook with effect from 16.2.2002, the date from which Respondent No. 3 has been given appointment with all consequential benefits,
- (d) exemplary cost be imposed on respondents for causing undue harassment to the applicant,
- (e) any other relief/s which is found just and proper may be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal."

2. The applicant, who belongs to the ST category applied for the post of Cook in response to the Employment News of 10.11.2001 whereby, three posts meant for Scheduled Caste/Scheduled Tribe and General category one each. were advertised. The applicant appeared before the selection board in the month of March, 2001. A list of the successful candidates was prepared in which, it is alleged, the applicant was found fit amongst the Scheduled Tribe candidates, yet, he has not been given appointment and has been shown in the waiting list.

2.1. The say of the applicant is that he had a right of appointment on the post meant for the Scheduled Tribe category but, the official respondents have given appointment to the respondent No. 3 on that post whereas, he is not of Scheduled Tribe category and is a member of Scheduled Caste. It is averred that the respondent No.3 has been given appointment on the post contrary to the record and the action of the official respondents is arbitrary, illegal and un-constitutional.



3. In the reply the official respondents have resisted the claim of the applicant mainly on the ground that he had been declared medically un-fit for the post. It is averred that the services of the Cook was urgently required due to Indo-Pak relations and no other Scheduled Tribe category candidate was found medically fit to serve in the field area, therefore, Shri Vinod Kumar, who belonged to the Naik community, was appointed as Cook as per the recommendations of the Board of Officers against the post of category of Scheduled Tribe.

4. In the reply filed by the private respondent, almost same facts have been stated. A preliminary objection has been taken that as applicant was not found medically fit, he was not entitled to get the appointment and hence he cannot challenge the appointment of respondent No. 3.

5. We have heard the learned counsel for the parties and perused the documents placed on record as also, the original file placed before us by the learned counsel for the official respondents.

6. The learned counsel for the private respondents raising the preliminary objection contended that as the applicant was not found fit in the medical examination, he did not have a right of appointment and hence he cannot challenge the appointment of the private respondent. He drew our attention to the contents of the medical report Annexure R/6 with particular reference to Item No. 26 placed on record.

7. On the other hand, the learned counsel for the applicant contended that the post advertised was not of field area but was for the Air Force Station, Jodhpur and, therefore, the applicant could

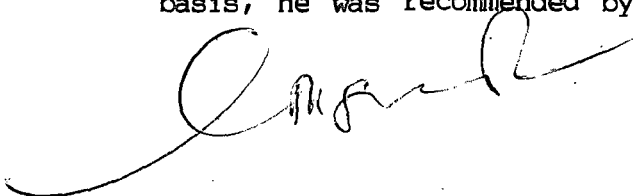
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not have been treated as unfit for the post on the basis of the medical report. He pointed out that the medical officer had declared the applicant unfit for the field area and that too temporarily on account of hypertension, but, as the post was not meant for the field area, he contended, the medical officer had not declared the applicant unfit. Mr. Malik, learned counsel for the applicant, further pointed out that the official respondents have given the appointment to respondent No. 3 treating him to be a member of Scheduled Caste whereas, the appointment was to be given to a member of Scheduled Tribe candidate.

8. The learned counsel for the official respondents contended that the private respondent is a member of the Scheduled Caste but as the Scheduled Tribe candidate was not available and there was urgency, appointment was given to the respondent No. 3, who is a member of the Scheduled Caste.

9. We have given the matter our thoughtful consideration.

10. It is now admitted position of the parties that Santosh Kumar (applicant), who is a member of Scheduled Tribe got 50% marks out of 100 and was declared fit for appointment by the selection committee. No other candidate of the Scheduled Tribe was declared fit by the selection board. The respondent No. 3, who belongs to the Scheduled Caste, obtained 58 marks. It is seen that one more candidate of Scheduled Caste Shri Narendra Kumar, got 59 marks. As Shri Narendra Kumar had obtained more marks, he was selected for the post meant for Scheduled Caste category. Obviously, there was no vacancy available for Shri Vinod Kumar in the Scheduled Caste category. What is seen from the papers produced before us, is, that Shri Vinod Kumar, was shown as Scheduled Tribe candidate and on that basis, he was recommended by the selection commission. It appears



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that afterwards by way of over-writing, he was shown as Scheduled Caste candidate. Be that as it may, it is now admitted position that the respondent No. 3 belongs to Scheduled Caste category.

11. The question for consideration is, whether appointment could be given to respondent No. 3 in preference to the applicant on the post meant for the Scheduled Tribe candidate. The applicant has been denied appointment on the ground that he was not found medically fit.

11.1. It is not understandable how the applicant could be considered as medically unfit on the basis of the medical report Annexure R/6. At the various items where the names of the diseases are stated, it is recorded that the applicant did not suffer from these diseases. At item No. 13 it is stated that the Heart and Arteries of the applicant were healthy. The relevant item No. 26 reads as follows :-

" State whether the candidate is

- (a) Fit for field service ..... N.A. (Not Applicable).
- (b) Temporary unfit for field service on account of ..... Hypertension.
- (c) Permanently unfit for field service on account of .....N.A. (Not Applicable).  
But, fit for service in peace station,
- (d) Permanently unfit for service even in peace stations .....NA (Not Applicable)."

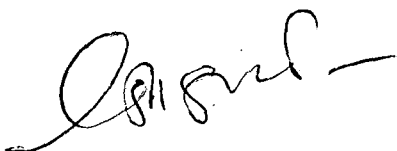
11.2. The gist of the report is that the applicant was found fit permanently for the peace stations. The medical fitness of the applicant was required not to be considered for the field duties. His fitness was to be considered for the peace station only. As already stated, the posts for which the applications were invited was meant for the Air Force Station, Jodhpur. It is clearly stated at Item No. 26 of the report that the applicant was fit for service in peace station. When the post advertised was meant for peace



stations, how can it be said on the basis of the medical report that the applicant was found unfit for the post advertised. It may be that there was slightly higher blood pressure and on that account, the applicant was not fit for field service temporarily, but, he was not required to work on the field. Therefore, on the basis of the report, particularly of Item No. 26 (b), the applicant could not be held to be medically unfit for the post.

12. The contention of learned counsel for the private respondents that the applicant has not challenged the medical report and, therefore, he cannot get the relief in this case, is not tenable. There was no need of challenging the medical report because even accepting the medical report as such, the applicant could not be said to be medically unfit for the post of Cook at Jodhpur. Therefore, there was no need of challenging the medical report in order to assail the appointment of the private respondent.

13. Since the applicant was selected for the post meant for Scheduled Tribe candidates on the basis of the marks obtained by him, he could not be denied appointment on the basis of the report Annexure R/6. The respondents have acted arbitrarily when they have denied appointment to the applicant. The stand of the official respondents that the services of the Cook were urgently required due to Indo-Pak relations and no other Scheduled Tribe candidate was found medically fit and hence, Shri Vinod Kumar was given appointment, is not sustainable. As already stated, the recruitment was not made for the field duties, it was for the peace stations and the applicant was found medically fit for that post and, therefore, there could not be any justification for giving appointment to private respondent, who did not belong to the Scheduled Tribe category. The appointment order of the private respondent is, therefore, liable to be quashed.



14. Consequently, the O.A. is allowed. The appointment order of the private respondent, Annexure A/1, is hereby quashed. The official respondents are directed to give appointment to the applicant on the post with seniority from the date the private respondent was appointed. The learned counsel for the applicant conceded that his client will not claim salary for the period from on which he has not worked on the post. For the seniority purposes, the applicant shall be deemed to have been appointed on the date on which the private respondent took charge of the post.

15. The applicant shall get costs of Rs. 1,000/- from the official respondents.

  
(G.C. Srivastava)

Adm. Member

  
(G.L. Gupta)

Vice Chairman


jrm

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High School Union

Received copy  
for P.P. Choudhry

R. G. Swami  
 30/5

Rec  
  
Adv  
2/6/03

Part II and III destroyed  
in my presence on 12-29-09  
under the supervision of  
section officer (1) as per  
order dated 5/12/08  
VADAN  
Section officer (Records)