

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA891/97

Date of order:5.10.2004

Present : Hon'ble Mr. Sarveshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Jadav Kayal

Applicant

v.

Union of India and others

Respondents

For the applicant : Mr.A.Chakraborty

For the respondents : Mr.B. Mukherjee

O R D E R

Per Mukesh Kumar Gupta, Member (J)

1. Shri Jadav Kayal, in this application, seeks the following reliefs:


- "a) Direct the respondent No.2 and/or any other respondent/respondents to allow your petitioner to join in the service/post offered for by virtue of the call letter being the telegraphic message (Annexure B) and they may further be directed to fix his seniority on the basis of merit on the panel following which the invitation to join in the service was given;
- b) Direct the appropriate respondent/respondents and/or any central investigative agency to find out the person/persons who has/have been so illegally inducted in the service by overstepping the merit marked serials of the panel meant for the post concerned and if they find any such illegally recruited navik in the concerned batch suitable action may be taken against all offenders;
- c) Direct the respondents to make payment to the petitioner all arrear salary since 17.4.1997 as if he had joined in service that day and had been continuing in service without any absence or break in service and further direct them to pay bank rate interest on the whole arrear as may be worked out;
- d) And/or to pass any such other order/orders as to Your Lordships may seem fit and proper in the interest of justice."

2. The facts as stated are that pursuant to the advertisement appeared made in Karmakshetra dated 4th June 1996 for the post of "Navik" under Domestic Branch



of Coast Guard, the applicant being eligible applied for the said post and subsequently he was called for written examination followed by interview and medical test. Based on his performance, he was empanelled for the said post and was awaiting offer of appointment. He received purported telegram offering appointment, from the respondents Baruipur Post Office only on 15.4.1997, which was delivered to him on 16.4.1997 and on the next day he went to second respondent's office for joining the said service. It is alleged that when he reached the office of second respondent he was not allowed to join and when he was leaving the office of second respondent frustrated, someone approached him for helping him out to join the said service provided he was ready to pay Rs.20,000. Being totally disillusioned he sent a legal notice through his advocate and also lodged a complaint with Commanding Officer, Coast Guard. It is contended that once the applicant was empanelled someone in the respondents' office played foul or committed negligence in transmitting the offer of appointment in time and, therefore, he cannot be made to suffer.

3. The respondents contested the claim of the applicant by stating that the applicant qualified in the selection test and his name was placed in the merit list in general category at Sl.No.17 out of 19 successful candidates. The first nine candidates in the merit list were offered appointment against nine general vacancies. Since only six candidates reported for duty till 2.4.1997, three wait listed candidates ranked at Sl.No.16, 17 and 18 respectively were



directed telegraphically to report for appointment by 10.4.1997. The applicant herein who was ranked at Sl.No.17 did not report by the stipulated date and after waiting for another four days, on 15.4.1997 two unfilled vacancies were surrendered to Coast Guard Hqs., New Delhi so that it could be filled from wait listed candidates from other four regions. The applicant herein reported only on 17.4.1997 and by that time the vacancies were already allotted to other regions.


4. We heard the learned counsel appearing for the parties at length and perused the pleadings carefully.

5. Shri A.Chakraborty learned counsel appearing for the applicant seriously contended that the telegraphic message was dispatched only on 15.4.1997, and he having received the same only on 16.4.1997 reported to second respondent without any undue delay on the very next day i.e., 17.4.1997. A copy of the said telegram was appended by the applicant as Annexure B at page 13 of the O.A. which we perused carefully. This tribunal vide order dated 13.9.2004 felt that it is necessary to examine from the record as to when the telegrams were issued to the applicant and, therefore, they were directed to produce the selection records. When the matter was fixed for 5.10.2004, learned counsel for the respondents again sought time to produce the said records, but keeping in view the fact that on an earlier occasion i.e. on 21.9.2004 also the respondents were granted time to produce records, we

[Handwritten signature]

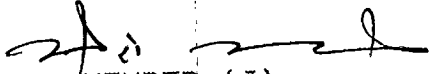
did not deem it fit to adjourn the matter and decided to proceed with the matter further based on the documents available on record.


6. We have carefully considered the pleadings as well as the original of the telegraphic message produced by the applicant. The applicant's contention seems to be that the said telegram was received by the Baruipur Post Office only on 15.4.1997 and he received it on 16.4.1997. A careful perusal of the said document, in our view, shows that the said telegraphic message was received in the post office on 5.4.1997 and not 15.4.1997, as contended. It is an admitted fact that by the said telegraphic message the applicant was directed to report by 10.4.1997 and he reported only on 17.4.1997, by which time the vacancy had been surrendered to the Coast Guard Headquarters, New Delhi. It is well settled law by the Constitution Bench of the Apex Court (1991) 3 SCC 47 Shankar⁸shan Dash V. Union of India that even if a number of vacancies are notified for appointment and adequate number of candidates are available the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. The State is under no legal duty to fill up all or any of the vacancies. At the same time the state has no licence to act in an arbitrary manner.



In the present application it is not the case of the applicant that any person was appointed to the post in question subsequently. That being the case, we do not find that the applicant has any indefeasible right for appointment.

7. In view of the discussion made hereinabove we do not find any justification in the present O.A. and accordingly the same is disposed of.


MEMBER (J)


MEMBER(A)

bsv