

In the Central Administrative Tribunal
Calcutta Bench

OA No.989/97
MA Nos 435/97, 335/01 & 30/99

Present : Hon'ble Mr. Mukesh Kumar Gupta, Member(J)
Hon'ble Mr.N.D. Dayal, Member(A)

Subit Kumar Das

-Vs-

- 1) Union of India, service through Secretary, Ministry of Information and Broadcasting, Government of India, Sastri Bhawan, New Delhi
- 2) The Director General, All India Radio, Akashvani Bhawan, New Delhi
- 3) The Chief Engineer,(EZ) AIR & TV, Akashvani Bhawan, Calcutta
- 4) Station Director, All India Radio, Calcutta-1
- 5) Shri S.K. Bandyopadhyay, Superintending Engineer, AIR, Calcutta
- 6) Shri P.C. Sikdar, Station Engineer, AIR, Calcutta
- 7) Shri Basudeb Halder, Divisional Engineer, Computer Telephone Kendra, P-10, New CIT Road, Calcutta-73
- 8) Shri Niranjan Mondal, S/o Shri M.N. Mondal, C/o B.D. Bhattacharjee, 298, Kamdahari Purba Para, P.S. Garia
- 9) Shri Bijoy Naskar, S/o Shri N. Naskar of Bansdroni, Purba Simanta Bag, H.D. Sarkar Road, Calcutta-70
- 10) Shri Tribeni Ram, S/o Shri B. RAM OF 41, Hem Chandra Street, Watgung, Calcutta-28

For the applicant : Mr.D. Basu Mallick, Counsel

For the respondents : Ms K. Banerjee, Counsel

Date of Order : 9. 12. 97

ORDER

Mr. N. D. Dayal, Member(A)

The applicant in this case is seeking an order directing the respondents to appoint him in the post of Technician in All India Radio, Calcutta and to cancel, set aside the selection made of the 1st, 2nd and 3rd persons on the panel.

2. The applicant belongs to Scheduled Caste and is Higher Secondary pass in Science group. His name was sponsored by the Employment Exchange and along with other candidates he appeared before the Selection Committee on 15-1-97. He was held to be No.4 in order

of merit and since the selection was limited to 3 candidates against three vacancies his name was placed on the reserved panel at Sl.No.1. The private respondent Nos.6,7 and 8 were selected and placed at Sls 1,2 and 3 of the panel. The applicant has submitted that he possessed the necessary qualifications and did well in the selection, but was placed only 1 in the 4th position. It is alleged by him that the Selection Committee selected private respondents 6,7 & 8 in a biased manner without following the proper procedure. The applicant had been asked to appear before the Interview Board and contrary to OM dated 3-6-93 providing for 75/25 marks in practical/interview, no practical test was held for the post and the applicant was released after asking certain questions.

3. It is specifically alleged that Shri Niranjan Mondal, Private Respondent No.6 was not qualified as per recruitment qualifications spelt out in memorandum dated 25-6-96 because instead of 2 years experience after obtaining the certificate from ITI in Air Conditioning and Refrigeration, he only had one year's experience. It is alleged that the Selection Committee selected him by going out of its way at the instance of Mr.P.C. Sikdar, Station Engineer, All India Radio, who was one of the members of the Selection Committee and he was allowed to join even though the Police Verification Report was incomplete. It is submitted that other posts of Technician are lying vacant and as such the respondents are duty bound under law to consider the appointment of the applicant. It is asserted that a person requires to be considered for appointment if his name is appearing on the panel as is the case with the applicant. By adopting a wrong procedure the panel has been prepared which amounts to discrimination because ineligible persons have been selected. On 25-8-97 the Tribunal had ordered that any appointment given to private respondents 6,7 & 8 shall abide by the result of the application.

4. In their reply the respondents have disputed the relief sought

by the applicant. It is submitted that against requisition sent to Employment Exchange on 23-8-96 for 4 vacancies (2 SC, 1 ST and 1 OBC) of Technician that originally arose in All India Radio, Calcutta. Employment Exchange sent a list of 13 SC candidates and 1 OBC but none of ST Community. Meanwhile due to promotion one more vacancy arose for SC category as per roster point. It was therefore decided to make recruitment against 3 posts of Technician reserved for SC Category from amongst 13 SC candidates that were sponsored by Employment Exchange. It is stated that the Selection was carried out as per laid down procedure by holding oral interview and practical test of all the 13 candidates. The Selection Committee was constituted strictly in accordance with procedure and rules and it followed the requirement of 75 marks for practical and 25 marks for interview in respect of all candidates. The applicant was well aware of the procedure and participated in the selection. The private respondents 6,7 & 8 were empanelled in the first three positions in order of merit for appointment against the existing three vacancies and subsequently they were also given appointment from 1-7-97, 15-5-98 and 15-5-98 respectively after verification from civil authorities in respect of character and antecedents. Based on the marks secured by the applicant his name was placed at Sl.No.1 on the reserved panel on the condition which is stipulated in the proceedings of the selection committee that such candidates will be appointed only in case the first three empanelled candidates do not join the post. It is also submitted that the applicant cannot be appointed against subsequent vacancies, if any, as per rule.

5. The allegation that respondent No.6 was selected out of the way at the instance of Station Engineer, Mr.P.C. Sikdar is denied as false and motivated because the selection was based on the marks awarded. It is asserted that none of the members of the selection board were related to any of the candidates. Nothing has been

mentioned in the Police Verification Report that address of respondent No.6 is not proper. Other particulars have been verified from the original certificate and marks-sheet. However, it is noticed that neither the PVR nor the other documents have been produced by either side.

6. The applicant has filed a rejoinder and clarified that initially by memo dated 9-10-96 the Sub Regional Employment Exchange, Calcutta had nominated only 11 SC candidates. Later on by letter dated 7-11-96 the respondents wrote back to the Employment Exchange that no list had been received from any other Employment Exchange. They had pointed out that in case no further list was received in 10 days they would initiate steps for recruitment from the list already supplied and nominations received thereafter will not be taken into consideration. It was further requested that non-availability certificate in respect of ST & OBC candidates be also sent, so that their recruitment may be taken up from other sources as only one OBC candidate was also not sufficient to make a selection. On 13-12-96 the Employment Exchange sent two more names of SC Candidates, i.e. Pvt. Respondent No.6 and one other which were accepted. It is contended that the time limit of 10 days was violated. Also the authorities had to call six candidates per vacancy but considered only 13 candidates for 3 vacancies and as such the selection could not be valid.

7. From the order dated 2-4-97 of Chief Engineer, AIR and TV, Calcutta regarding transfer of Technicians enclosed with the rejoinder it is seen that one Gautam Naskar, Technician, was transferred from Kharagpur to AIR, Calcutta at his own request without TA/DA. It is questioned that if there were only 3 posts then after appointment of private respondents 6,7 & 8 how could Gautam Naskar be transferred and as such it is clear that there were 4 vacancies and hence the 4th

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vacancy should have been given to the applicant who was at Sl.No.1 in the reserved panel. The applicant had moved MA 435/97 seeking the following relief :

a) an interim order restraining the respondents, their agents, subordinates from giving any fresh appointment from the panel without first giving appointment to the petitioner and not fill up the existing vacancies to all the technicians by transferring the employees from other station.

The respondents filed a reply and stated that some more vacancies of Technicians accrued after formation of panel on 15-1-97 and there was nothing wrong in filling them up by transfer. The MA has been taken up by us along with the OA.

8. Again one Biswajit Mondal of 24 Parganas (South) was addressed by the respondents on 23-12-98 asking him to appear for interview on 15-1-99 because his name had been sponsored by the Employment Exchange for the post of Technician AIR Calcutta. The applicant had therefore filed another MA 30/99 before this Tribunal seeking an ad-interim order by way of injunction restraining the respondents from preparation of any fresh panel by holding interviews on 15-1-99 for the post of Technician against requisition to Employment Exchange in 1998 without first appointing the applicant on the basis of the selection made by the authorities earlier. The learned counsel for the respondents had submitted before the Tribunal that till filling up of post of one OBC and one ST is taken up the applicant's case would not be considered and that as soon as vacancy would arise against the SC quota the applicant would be absorbed. In these circumstances by its order dated 15-1-99 no injunction was granted and it was observed that the applicant would get all benefits if he succeeds in the OA. However, taking the cue from such commitment by the respondents the applicant preferred another MA 335/01 seeking absorption against existing vacancies which were, however, not being filled. He has annexed to the MA a copy of order dated 31-1-01 of CE(EZ) AIR and TV Calcutta promoting Technicians with resultant vacancies & sought

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absorption restraining their filling up till then. By their reply the respondents have disputed the contention raised by the applicant in the MA. They have mentioned that the Hon'ble Supreme Court in their latest Judgement has observed that the candidates in the waiting list/reserve list has no legal right to be appointed after expiry of the period of the said panel. However, no citation has been given. It has been stated with reference to the commitment made before the Tribunal in MA 30 OF 1999 to absorb the applicant that his case would be considered by a fresh interview against SC quota when such situation arises namely, the general ban on recruitment imposed by the Government is withdrawn. It is further submitted that there is no vacancy available in SC category and due to conversion of roster from vacancy based to post based it has been found that 3 officials in SC Category are excess. The respondents contend that since the name of the applicant is not on the panel, if subsequent vacancies are available they have every right to go in for fresh recruitment after interview and fill them as per post based roster. The applicant has given a rejoinder wherein he has denied and disputed the submissions made by the respondents and reiterated that the learned counsel appearing on behalf of the respondents has already given an undertaking to this Tribunal that as soon as vacancy is created they will engage the applicant.

9. From the certificate of AIR dated 7-6-96 at page 23 annexed to the rejoinder, it is seen that the Installation Officer, AIR Calcutta has certified that Niranjan Mondal has been working in the Installation on casual basis since June 1995 in a phased manner and that during this period he had been assisting in various fields, viz. Electrical, Electronics and Mechanical and also in Refrigeration as required for this installation. The applicant has annexed a similarly worded certificate dated 30-10-95 at page 24 annexed to the rejoinder issued in respect of N.K. Naskar who was invited vide letter dated

14-6-95 at page 25 for interview for the post of Safaiwala. He contends that the similarity in the two certificates casts a doubt on the genuineness of the certificate dated 7-6-96 issued in favour of the private respondent No.6.

10. The applicant has further claimed to be similarly circumstanced with the applicant in OA 95/89 wherein the Tribunal directed appointment as Technician against the vacancy that arose in the general category immediately after the appointment of the empanelled candidates. He has further relied upon Apex Court's decision in Prem Prakash v. Union of India (AIR 1984 Supreme Court 1831) and S. Govindaraju v. K.S.R.T.C. (1986 (3) SCC 273), according to which the candidates who are previously placed on the list got a right and should not be ignored in subsequent appointments and there should be no limit on the period of validity of the list because once a candidate is selected he has a right of appointment as and when vacancies arises and even if the vacancy undergo change.

11. Private Respondents Niranjan Mondal and Triveni Ram have submitted Affidavits contesting the averments made by the applicant. Niranjan Mondal has indicated that he had passed Madhyamik Examination in 2nd Division and Trade Test in Refrigeration and Airconditioning after attending training from August 1991 to July 1993 at ITI Tollygunge, Calcutta obtaining 483 marks out of 700. He then worked as Asstt. Mechanic for six months with M/s Frigid (India) from 26-9-93 to 30-3-94 and then joined Airport Authority of India as Apprentice Mechanic, where he underwent training for a period of one year twenty two days i.e. from 31-3-94 to 21-4-95. During such apprenticeship he attained the necessary working experience. He has further been awarded National Apprenticeship Certificate by National Council for Vocational Training and was working with AIR Calcutta from June 1995 on casual basis in various fields. He was selected and appointed as Technician on temporary basis after observing all

formalities including police verification. As such he had all required qualifications and no relation with the authorities working in AIR. The applicant's case is motivated and malafide since his father was working in All India Radio and T.V. Calcutta whose influence is being misused by him. Thus the allegations of the applicant are denied. Pvt. Respondent Tribeni Ram has also denied the allegation of the applicant and by and large reiterated the averments made by Niranjan Mondal, besides justifying his own eligibility and selection as Technician. The applicant has filed rejoinder contesting their averments and denied the allegation made against him while reiterating the earlier stand and questioning their eligibility qualification. It has been alleged that Niranjan Mondal was the servant of P.C. Sikdar, Member, Selection Committee, but there is no material to substantiate the same.

12. We have heard the learned counsel for both parties at length and perused the voluminous pleadings. From the recorded minutes of the selection carried out on 15-1-97 by the Selection Committee of three it is seen that private respondents 6,7 and 8 were selected in order of merit for the first three positions based on the marks awarded to them as per attached mark-sheets wherein marks were given for both oral test out of 25 and practical test out of 75 and then combined together to determine the order of merit. Accordingly, the applicant's name and that of Sukumar Das were placed at Sls 1 and 2 of the reserved panel only for appointment in case the first three selected candidates did not join the posts. The applicant has alleged favouritism and improper appointment against Niranjan Mondal in particular based also on his lack of qualification and experience as per the requirements contained in memo dated 25-6-96. The qualification/experience of Niranjan Mondal recorded in the papers which were before the Selection Committee were as under :

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ITI in Ref. & A. Cond. Mech. One year experience at Airport Authority of India. One year's experience in AIR installation from June 95 to 7-6-96 vide I.O. letter No.CAL/REF/1NST/96 dated 7-6-96.

Clearly the certificate dated 7-6-96 has been relied upon in justification of the required length of experience in his case. No doubt there is a similarity between the certificate given in the case of Niranjan Mondal and the Safaiwalla but on the face of it, it cannot be said that the certificate dated 7-6-96 was in respect of Casual Labour such as that of a Safaiwalla. As such there appears to be no departure from the procedure and instructions required to be followed in selection. The Hon'ble Supreme Court in UPSC v. Hiranyalal Dev,

AIR 1988 SC 1069 observed -

"The powers to make selection were vested unto the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee".

In another case of Dr. Duryodhan Sahu & Ors etc. v. Jitendra Kumar Mishra & Ors (1999 (1) AISLJ 205 (SC), the Apex Court while considering the question of eligibility qualification held -

"Once the concerned authorities are satisfied with the eligibility qualifications of the person concerned it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person (Para 23)."

13. Further the allegation of bias can hardly be attributed to the members of the Selection Committee of three who have all considered the same records and each has separately awarded marks whereby Niranjan Mondal scored the highest amongst all candidates. Bijoy Naskar and Tribeni Ram secured the next highest and the applicant was 4th candidate placed in the reserved list. Further, no objection appears to have been raised by any of them with regard to his qualification and experience either. We are of the opinion that the

records of the selection proceedings do not reveal any infirmity or bias that would vitiate the selection. The applicant with whom the burden of proof lies, has also not established by any material produced that the candidate was related to any member of the selection committee.

14. It is noticed that DOPT OM dated 7-3-89 contained in Swamy's Manual on Establishment and Administration for Central Government Offices, 8th Edn. at page 180 lays down that if sufficient SC/ST candidates are not available with the local Employment Exchange candidates from other Exchanges are to be sponsored. Evidently, the respondents addressed the Employment Exchange a second time in pursuance of such instructions. At page 179 it is indicated that sufficient time should be given to the Employment Exchange for the purpose. No rule has been produced to show that time limits indicated are inflexible and cannot be extended by the competent authority. Similarly there appears to be no stipulation that a specific number of candidates per vacancy should be considered in the case of direct recruitment as required in the case of promotion. The applicant has also not produced any document to support such contention.

15. We find that the respondents had placed requisition on the Employment Exchange on 23-8-96 for 4 vacancies which included 2 of SC Category. Thereafter one more vacancy arose in SC category and it was decided to recruit against these three posts of Technician reserved for SC category. The selection was completed on 15-1-97 but before any of the three selected persons have been given appointment, one B. Naskar, Technician was transferred from Kharagpur to Calcutta at his own request by order dated 2-4-97. As per reply in MA 435/97, this vacancy seems to have arisen afterwards. However filling up the vacany by transfer cannot be questioned unless it is contrary to the recruitment rules which have not been produced. The applicant has repeatedly contended that further vacancies have also arisen from time

to time for which recruitment has been initiated but his claim was ignored. In view of the clear stipulation in the record of the selection committee, the applicant's prospects of appointment would appear to be restricted only to that selection and subject to any of the first three selectees not joining the post.

16. The applicant has relied upon a decision of this Tribunal in OA 95/89 delivered on 3-4-90 in Rabindra Prakash Pandey V. Union of India and Others. In that case a panel of five names was prepared by the selection committee to fill up the posts of Technician in Doordarshan Transmitting Centre (DTC) Muzaffarpur. The name of the applicant who belonged to General Category (GC) was at S1.3 of the panel. The first two candidates were appointed against two G.C. vacancies and the candidate at S1.4 got appointment against the reserved post. Two more vacancies arose thereafter but the applicant was not appointed. Instead steps were initiated for fresh recruitment. It was alleged that this has violated the instructions of the Ministry of Home Affairs contained in OM dated 8-2-82 and also the Apex Court's decision in Prem Prakash (supra) and S.Govinda Raju (supra) which also have been cited by the present applicant. The respondents had stated that the name of the applicant therein was kept only in the reserved waiting list and he could not claim appointment against the subsequent vacancy which arose after the selection for the earlier vacancies. At the behest of the respondents the Tribunal took note of an earlier decision dated 6-2-90 in OA 202/89 where the name of the applicant was included in the panel prepared by the selection committee for appointment as Helper in DTC, Muzaffarpur. The application was dismissed on the ground that name of the applicant though included in the panel was specifically put in the reserved. Further, the Tribunal had found that according to OM dated 8-2-82 in the case of direct recruitment a list of select candidates is prepared to the extent of the number of vacancies and other persons found

suitable are to be on reserved list. It is further laid down in the OM that once a person is declared successful according to merit list of the selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes change after his name has been included. In OA 95/89 the Tribunal observed that there was nothing to indicate that the name of the applicant was included only by way of reserved. In fact, it had been categorically specified that the panel was for appointment against available vacancies. The requisition to the Employment Exchange also mentioned that the number of vacancy in the unreserved category was likely to be increased. The Tribunal came to the conclusion that when the application was filed a vacancy was there in the G.C. against the post of Technician and in the circumstances directed the appointment of the applicant as a Technician against the vacancy that arose in the G.C. immediately after the appointment of candidates at Sl.No.1 and 2 in the panel. While arriving at its decision the Tribunal had taken into account the decision of the Apex Court in Prem Prakash (supra) and S. Govinda Raju (supra) as well. By the order of the Tribunal in OA 95/89 it is clear that the applicant in the present case has been correctly placed on the reserved list. Further in OA 202/89 the Tribunal had in fact dismissed the application for appointment on the ground that the applicant's name was included in the panel but specifically put in the reserved which is also the position in the present case. In fact the OA 95/89 relied upon by the present applicant was allowed because the name of the applicant therein was on the panel and not on the reserved list. As such decision in OA 95/89 and above citations are of no assistance to the applicant.

17. The Hon'ble Supreme Court in Surinder Singh and Othrs V. State of Punjab and another (1999 (1) AISLJ 75) has held that candidates in the waiting list have no vested right to be appointed

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except when a candidate selected does not join and waiting list is still operative. It was observed that waiting lists cannot be used as a perennial source of recruitment for filling up the vacancies not advertised. The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. The candidates included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly. Again in *Sanjoy Bhattacharjee v. Union of India and Others* (1997 (4) SCC 283) the Apex Court has held that -

"Merely because the petitioner has been put in the waiting list, he does not get any vested right to appointment. It is not his case that anyone below his ranking in the waiting list has been appointed which could give him cause for grievance. Thus he cannot seek any direction for his appointment".

Therefore in so far as the respondents have taken fresh initiative for recruitment, it cannot be interfered with on the ground that reserved panel prepared on the basis of selection held on 15-1-97 had not been fully utilised and the applicant should be given appointment before any new person is selected.

18. As per the order of this Tribunal dated 15-1-99 in MA 30/99 the learned counsel for the respondents had stated before the Tribunal that till filling up of the concerned reserved quota of one OBC and one ST is taken up the applicant's case would not be considered and that as soon as the vacancy would arise against the SC quota the applicant would be absorbed. Therefore, by their subsequent qualification of this assurance it cannot be conceded that the respondents will not be bound by the submission made by them before the Tribunal in MA 30/99. Hence, the respondents are directed to consider the case of the applicant in terms of the assurance given by them to this Tribunal as above and take steps to absorb him against