

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A NO. 477/2006

Thursday this the 19th day of April, 2007

C O R A M

**HON'BLE MRS. SATHINAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

V.K. Subramanyan
Assistant Binder
Government of India Press
Khanna Nagar, Koratty
Thrissur District.

..Applicant

By Advocate Mr.C.T. Ravikumar

Vs.

1 Union of India represented by the
Secretary to Government
Ministry of Urban development
New Delhi.

2 The Director of Printing
'B' Wing, Nirman Bhavan
New Delhi.

3 The Manager /
Government of India Press
Khanna Nagar,
Koratty, Thrissur District.

Respondents.

By Advocate Shri George Joseph, ACGSC

O R D E R

HON'BLE MRS. SATHINAIR, VICE CHAIRMAN

The applicant herein is aggrieved by the inaction on the part of the respondents on his claim for selection as Key Board Operator (DTP Operator).

2 The applicant is presently working as an Assistant Binder in the Government of India Press, Koratty (the Press for short). The facts pertaining to the grievances of the applicant are stated as hereunder:- The applicant was originally appointed as a Compositor in the Press w.e.f. 12.12.1972 . At that point of time it was a Letter Press and due to the modernisation of the Letter Press in to Offset Press the post of Compositor became redundant. While the applicant and certain others were remaining as surplus hands a new post of Key Board Operator (Offset) was created in the Press. Recruitment Rules were also framed for appointment of surplus hands against that post. Later, the said rule were amended w.e.f. 12.3.1990 enabling filling up of certain percentage of the said posts by transfer from Letter Press. Though 4 posts of Key Board Operators were created at the time of modernisation only 2 posts became available as one desk top Publishing machine could not be installed. As against the said 2 posts one Govindankutty, a non SC candidate and one C. Hariharan a Scheduled Caste candidate were selected. The applicant is senior to the said Sri C. Hariharan and there was no provision in the Recruitment Rules for reserving the said vacancy for SC/ST candidate. Hence, the applicant staked a claim that he ought to have been appointed in place of the said Sri C. Hariharan. Later, the selection of Sri C. Hariharan was cancelled. However, the respondent authorities did not take any action to select the applicant in the vacancy occasioned on account of the cancellation of the selection of the said Sri C. Hariharan despite the

receipt of the applicant's representation for that behalf. In the said circumstances the applicant had to approach this Tribunal by filing O.A. 1539/92 to redress his grievances with regard to his non-selection as Key Board Operator (Offset).

3 It is averred that considering the subsequent incidents and the rival contentions this Hon'ble Tribunal disposed of the said O.A. as per order dated 10.11.1993 a with specific directions. A true copy of the said order dated 10.11.1993 in the said O.A. is produced herewith and marked as Annexure A-1. The operative portion of Annexure A-1 reads thus:

"In the light of Annexure -5 and the statement contained therein that the selection of Shri Hariharan has already been cancelled, the only relief that can be granted in this application is a direction to the respondents to consider the applicant also for posting as Key Board Operator, in case leave vacancy or other regular vacancy arises, having regard to the fact that the applicant is the seniormost surplus hand awaiting for appointment who was denied an earlier opportunity of getting due to the administrative lapses committed by the respondents by the illegal selection of Shri Hariharan. We do so."

4 The applicant has further submitted that in the light of the above order of the Tribunal he had been waiting for occurrence of the vacancy on account of leave or on regular basis in the post of DTP Operator in the Press. A vacancy was due to occur on 30.6.2006 on the retirement on superannuation of Sri M. Govindankutty. In order to honor the directions of the Tribunal in Annexure A-1 order issued OM dated 13.1.2006 (Annexure A-2

order) calling for willingness of the applicant to undergo 6 months training in DTP Operation and qualify the Trade Test to consider the deputation of the applicant for training. The applicant submitted his willingness within the time stipulated and also followed up with representations but there is no response from the respondents. Thinking that any further delay in the matter would hamper his prospects he has approached this Tribunal for the following reliefs:

- (i) to direct the respondents 1 and 2 to take further appropriate action on the recommendation of the third respondent in the matter of filling up of the post of DTP Operator, as is obvious from Annexure A-2 consequent on the retirement of the present incumbent in the said post, Shri M. Govindankutty and the post the applicant in the resultant vacancy and to depute him for training.
- (ii) to grant such other reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the necessary in the facts and circumstances of the case.

5 The applicant's claim is based on the direction of this Tribunal in Annexure A-1 order and the finding entered into by the Tribunal that the denial of opportunity for getting selection and training was due to the administrative lapses committed by the respondents by the illegal selection of Shri Hariharan and subsequently cancelling the selection and also that the applicant is the seniormost and waiting for appointment to the post of Key Board Operator.

6 In the reply statement filed the respondents have admitted the factual position regarding the service of the applicant and background of the earlier litigation in O.A. 1539/92 (Annexure A-1). However, they further submitted that when the vacancy of Key Board

Operator occurred only on 30.6.2006 after the passing of the order of the Tribunal, on consideration of the candidature of the applicant it is found that the applicant is no more a surplus hand awaiting appointment as contended in the O.A as he has already been redeployed in the post of Assistant Binder w.e.f. 16.8.1993 (Annexure R-1). Apart from that, as per the provisions of extant Recruitment Rules for the post of DTP Operator, the qualification prescribed is 5 years regular service in the post of Technical Assistant or Line Operators, Mono Operators, Readers and Compositor Grade-I with six months of DTP training and qualifying the trade test. The upper age for absorption is also prescribed as 45 years. The applicant is not in any of the categories mentioned above and had already crossed the age of 57 years. Hence the applicant has not been found eligible to be appointed as DTP Operator. The applicant has been redeployed as Assistant Binder w.e.f. 16.8.93 and granted two financial upgradations under the ACP Scheme in the same pay scale of Rs. 4500-125-7000 as that of DTP Operator and therefore even if the applicant is granted promotion to the post of DTP Operator, no pay fixation will accrue to the applicant. The respondents have therefore prayed that they may be allowed to fill up the post of DTP Operator as per the provisions of the extant Recruitment Rules.

7 In the rejoinder, the applicant has contended that the respondents cannot deny him the right accrued in the light of

Annexure A-1 order of the Tribunal and that it is a fact that he was adjusted against the post of Assistant Binder by Annexure R-1 order dated 18.8.1993. w.e.f. 16.8.1983 but Annexure A-1 order of the Tribunal on 10.11.1993 was subsequent to the Annexure R-1 order.

Hence

the respondents are not justified in resisting his claim for a posting as Key Board Operator which is in a higher scale than the Assistant Binder on the reason that he is not a surplus hand. It is also pointed out that he is working as Binder Grade-II in the post w.e.f. 12.12.1972 to 15.8.1993 and that this service cannot be denied in terms of the Recruitment Rules. The applicant has also submitted that no employee is going to be affected adversely by the absorption of the applicant in the post of Key Board Operator.

8 The respondents have filed additional reply statement. They have submitted that the finding of the Tribunal based on the Recruitment Rules which were prevalent at that time. The action for redeployment of surplus employees would be deemed to have been concluded on the date on which he joined another post carrying the pay scale matching his current pay scale. The respondents have already redeployed the applicant in a suitable post carrying the very same pay scale. Hence there is no betrayal on the part of the respondents. The interest of the applicant has been fully protected and nothing legitimate to him was denied.

9 During the pendency of the O.A. the respondents filed M.A. 231/2007 praying for early posting of the O.A as the post of DTP Operator in question is under deemed abolition on 30.7.2007 as the vacancy of DTP Operator will elapse on that date. Hence they have urged for a final decision on the O.A at the earliest.

10 We have heard Shri C. Ravikumar the learned counsel of the applicant and Shri George Joseph, ACGSC appearing for the respondents. The counsel for the applicant reiterated the position that the respondents were bound to honour the commitment given before the Tribunal and the directions of the Tribunal in the O.A. 1539/1992 filed by the applicant. The stand of the respondents has mainly been that the Tribunal's orders were implemented at that point of time and since the vacancy has arisen in 2006 only the Recruitment Rules have undergone change and the applicant does not fulfill the requisite qualification or age limit prescribed under the new Recruitment Rules.

11 The tenor of the arguments in the reply as well as additional reply though short, is that the respondents are very keen to honour the direction of the Tribunal but it is only the rules which are standing in the way. The applicant has urged that it is correct that the vacancy arose after such a long gap of 14 years, therefore the provisions in the new rules should not stand in the way of his being accommodated in the post as otherwise the consideration shown by

the Tribunal in O.A. 1539/1992 will have no meaning and the vacancy would lapse on 30.7.2007 thereby shutting out his opportunity for ever.

12 We have given due consideration to the arguments on both sides. We notice that the case of the applicant is mainly one of missed opportunity for reasons not attributable to him. He was a surplus employee and his services had been extended on assurances and guarantees that the surplus staff would be adjusted against newly created post of Key Board Operators and Plate Makers. Surplussage had been created as a result of modernisation in the Government of India Press. Unfortunately for the applicant those two posts of Key Board Operators were surrendered due to financial stringent measures and only two posts became available and the respondents selected two candidates on the mistaken inference that one post was earmarked for S.C. as per the roster. Ultimately it was found that reservation was not applicable and the selection of that candidate was cancelled. However, after the cancellation, the post itself came to be abolished. If the applicant was given the benefit of selection at the initial stage treating the post as general category he would have continued in the post and the post would not have been abolished. The Tribunal found there was no legal justification for selection of an SC candidate for filling up the vacancy and the selection of the SC candidate was clearly wrong. The Tribunal therefore in para 6 of the order held as follows:

"6.....The applicant is forced to suffer on account of administrative lapses and it would cause gross injustice to him. He further submitted that under these circumstances, he may be given the benefit of appointment in the post of Key Board Operator notwithstanding the age bar or in relaxation of the age restriction under the recruitment rules. This request deserves consideration by the competent authority.

7 In the light of Annexure A-5 order and the statement contained therein that the selection of Shri Hariharan has already been cancelled the only relief that can be granted in this application is a direction to the respondents to consider the applicant also for posting as Key Board Operator, in case leave vacancy or other regular vacancy arises, having regard to the fact that the applicant is the seniormost surplus hand awaiting for appointment, who was denied an earlier opportunity of getting selection and training due to the administrative lapses committed by the respondents by the illegal selection of Shri Hariharan. We do so."

13 It is evident from a reading of the order of the Tribunal as a whole that the Tribunal had taken into account the circumstances leading to the faulty selection of the SC candidate depriving the applicant opportunity of selection and also the fact that the Recruitment Rules have been amended w.e.f. 12.3.1990 and thereafter consciously given the direction that the applicant should be considered to the post of Key Board Operator in any regular vacancy or leave vacancy arising for the reason that he was denied an earlier opportunity of getting training/appointment due to administrative lapse committed by the respondents. It is this fact that we have to keep in mind while dealing with the request of the applicant in the present O.A. It is unfortunate that the applicant had

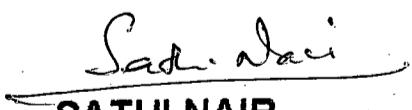
to wait for long for the vacancy to arise. The vacancy having arisen he is faced with the same problem that there is a threat of deemed abolition of the post if it is allowed to be kept vacant till 30.7.2007. The respondents' contention regarding the Recruitment Rules as well as the age bar etc. would operate only in normal conditions of recruitment. Here the question arises as an offshoot of the implementation of the order of the Tribunal which had considered all these contentions regarding age bar, relaxation of Recruitment rules and then entered upon the finding that in the circumstances of the case the applicant was entitled to be appointed as Key Board Operator. In fact if that post had not been abolished at that time the Tribunal would have directed straightaway to appoint the applicant. The hands of the Tribunal were tied only on the ground that the post had ceased to exist and therefore the direction to consider him in future vacancy. Under these circumstances, the contention of the respondents regarding the non-fulfilling of the condition in the Recruitment Rules, etc. are not applicable even if any such relaxations are required, the respondents shall accord relaxations to the applicant to enable him to be appointed.

14 There is a further contention of the respondents that the applicant is no longer a surplus candidate and that he is already adjusted against the post of Assistant Binder. It is now clear from the averments of both sides that the applicant's adjustment against the post of Assistant Binder had taken place before the order of the

Tribunal in Annexure A-1. It is not correct for the respondents to contend that the Tribunal had ordered appointment of the applicant only on the ground that he was the seniormost surplus Keyman. The main ground on which the relief was granted to the applicant was not on account of the fact that he was a surplus candidate awaiting appointment but that he was clearly denied an opportunity of getting selection and appointment due to administrative lapse committed by the respondents by illegal selection of one Shri Hariharan. Therefore viewed from all angles and from the point of view of natural justice the applicant's case deserves consideration, Hence, we direct the respondents 1 & 2 to take further appropriate action for filling up the post of DTP Operator which had fallen vacant on 30.6.006 at the earliest in any case not later than 30.7.2007 on which date according to the respondents themselves the post will be abolished. The applicant shall be considered for appointment in the said post in relaxation of Rules, if necessary and he shall be appointed and deputed for training as required under the rules. These directions shall be complied with within two months from the date of receipt of a copy of this order.

Dated 19-4-2007.


DR. KBS RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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