

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 390
XXXXXX

1991

DATE OF DECISION 11.2.1992

Shri V. Ravindran

Applicant (S)

Shri M.R. Rajendran Nair

Advocate for the Applicant (S)

Versus

Union of India, Ministry of Respondent (s)
Urban Development, New Delhi
and 2 others.

Shri C. Kochunni Nair

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan - Member (Administrative)

and

The Hon'ble Mr. A.V. Haridasan - Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant is a member of a Scheduled Caste.

He joined the service of Government of India Press, Koratty, on 22.9.1979 as a Peon. While working as a Peon, in the year 1984 he was selected after trade test and was included in the panel for appointment to the post of Bindery Assistant towards 50% direct recruitment quota and the applicant was selected towards a reserved vacancy. Though there were vacancies to absorb the applicant and three other persons included in the panel

even in the year 1984, the respondents did not fill up the vacancies on the ground that there was a ban on direct recruitment. When the applicant was waiting for lifting of the ban for getting appointment, the Government of India issued a directive to all the establishments to fill up the backlog vacancies by way of special drive for recruitment of SC/ST candidates. In the light of the above directive, the applicant made a representation on 22.8.1990 to the second respondent requesting that he may be appointed as a Bindery Assistant on the basis of his selection in one of the existing vacancies. To this representation, the applicant received the Annexure-III reply dated 24.10.1990 expressing regret as it was not found feasible to accede to his request. One Shri A. Rajendran, who was rank number one in the select list filed original application No. O.A. 549/89 before this Tribunal for direction to the respondents to appoint him to the existing vacancy on the basis of his selection. This original application was disposed of by order dated 18.10.1990 directing the respondents to consider Shri Rajendran for appointment to the post of Bindery Assistant within a period of two months from the date of that order. The contention of the respondent before the Tribunal that there was a ban on recruitment was not accepted. Coming to know about the decision of the Tribunal in the case of Shri Rajendran

the applicant on 20.12.1990 made a representation before the second respondent that since he was also selected along with Shri Rajendran and was selected towards a post reserved for the SC candidates, extending the benefit of the judgement in Shri Rajendran's case, he may also be appointed as a Bindery Assistant. To this representation, the applicant received a reply informing him that the Ministry of Finance had decided that the judgement should be implemented in favour of Shri Rajendran only because the Central Administrative Tribunal has given weightage to his being handicapped deserving relaxation and, therefore, it was not possible to appoint the applicant as a Bindery Assistant on the basis of the decision of the Tribunal in Rajendran's case. In this background, the applicant has filed this application under Section 19 of the Administrative Tribunals Act praying that on the basis of his selection and inclusion in the panel in 1984, the respondents may be directed to appoint him as a Bindery Assistant from the date of occurrence of vacancy with all consequential benefits. It has been averred in the application that while the respondents did not appoint the applicant and the other persons selected towards direct recruitment quota on the ground that there was a ban on recruitment, they had filled

several posts of Bindery Assistants with effect from
by promotion
20.3.1989/and that this is opposed to the provisions
contained in the statutory recruitment rules. It has
also been averred that the rejections of the applicant's
representation for consideration for appointment to the
reserved post to which he was selected in the year 1984,
was without application of mind and the action of the
respondents in denying appointment to the applicant as
a Bindery Assistant is violative of statutory rules
and his fundamental rights.

2. In the reply affidavit filed by the respondents,
the fact that the applicant was selected to the post of
a Bindery Assistant against a direct recruitment vacancy
reserved for SC is admitted. The non-appointment of
the applicant to that post on the basis of his selection
is sought to be justified on the ground that there was
a total ban on recruitment by orders of the Government
of India issued on 3.1.1984 which was extended from
time to time. The case of Shri Rajendran has been
sought to be distinguished on the ground that Shri
Rajendran, apart from being selected along with the
applicant, was a person physically handicapped and
this has also weighed with the Tribunal in directing
that he should be appointed.

3. We have heard the arguments of the counsel
on either side and have also carefully gone through
the documents produced. Now that the respondents have

have admitted that the applicant was selected for appointment to the post of a Bindery Assistant in the direct recruitment quota in the reserved vacancy, the question to be considered is whether the inaction on the part of the respondents which resulted in his not being appointed from the year 1984 onwards is justified. The applicant has averred in the application that while according to recruitment rules, 50% of the vacancies in the cadre of Bindery Assistants are to be filled by direct recruitment and the remaining 50% are to be filled by promotion and that the respondents have with effect from 30.3.1989 filled up several posts of Bindery Assistants by promotion without appointing those who have been selected towards direct recruitment quota. This averment is not disputed. The case of the respondents is that the ban on recruitment extended only to direct recruitment. In O.A. 549/89 filed by Shri A. Rajendran against the respondents complaining against the inaction of the respondents in appointing him as Bindery Assistants, the respondents raised the same contentions. But by judgement dated 18-10-1990 to which both of us were parties, this contention was rejected and the respondents were directed to consider Shri Rajendran for appointment as a Bindery Assistant on the basis of his selection and inclusion in the panel with effect from 20.3.1989, the date on which two vacancies were filled up by promotion, if he was found

suitable for appointment treating the ban, if any, did not apply in that case. Rejecting the arguments of the respondents that the ban extended to direct recruitment alone, we had observed in the above judgement as follows:-

"According to the relevant Recruitment Rules, 50% vacancies of the Bindery Assistants are to be filled by promotion and the remaining 50% is to be filled by direct recruitment. In the guise of relaxing the ban for filling up of vacancies only by promotion, it is not open to the Government to dilute the Recruitment Rules framed under Article 309 of the Constitution of India. When filling up of vacancies is permitted, then in making appointments to fill up the vacancies, the Recruitment Rules have to be strictly adhered to. Therefore, the administrative instructions contained in Annexure R(5) permitting filling up of vacancies only by promotion and barring appointment by direct recruitment thus contravening the Recruitment Rules cannot be sustained because Recruitment Rules which have got statutory force cannot be modified by administrative instructions. Therefore, we are of the view that there is no merit in the contention of the respondents that the applicant though became qualified for appointment as Bindery

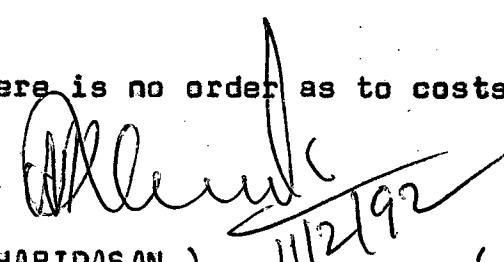
Assistant in the year 1984, could not be appointed because of the ban."

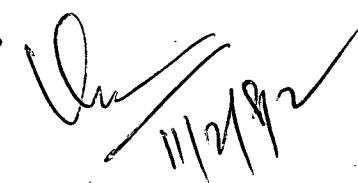
The above observation is applicable to the case of the applicant before us also because the applicant and the applicant in O.A. 549 of 1989 were both selected for direct recruitment at one and the same selection. The case of the respondents that the appointment of Shri Rajendran was on consideration that he was physically handicapped and that was what weighed with the Tribunal in directing his appointment is not fully correct. In the order it was also observed that Shri Rajendran being a handicapped person, taking into account his long experience as Bindery Assistant, even if there existed a ban, the respondents should have sought a relaxation in his case. Though this observation is peculiar to the case of Shri Rajendran, it was not solely on this ground that O.A. 549 of 89 was allowed. It was basically on the ground that it is not open to the administration to dilute the recruitment rules by issuing administrative instructions that the application was allowed. Further, as the applicant belongs to a Scheduled Caste and was selected towards a reserved vacancy, in this case as well the respondents should have sought relaxation of the ban in case the ban still existed. We are, therefore, of the view that the applicant in this case also is entitled to the same relief as was given to Shri Rajendran, the applicant in O.A. 549 of 89.

(Y)

4. In the result, we allow the application and direct the respondents to consider the applicant, within a period of two months from the date of communication of this order, for appointment to the post of Bindery Assistant on the basis of his passing the trade test in the year 1984 towards the vacancy reserved for a SC and to appoint him to that post, if he is found not otherwise unsuitable with effect from 20.3.1989, the date on which two vacancies were filled up by promotion, as if the ban, if any, against such recruitment does not apply to this case.

4. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

11.2.1992

*PS