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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH.

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Registration O.A. No. 98 of 1989

Ramakant Chauhan Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Mazdoor in the office of the respondent no. 4 w.e.f. 5.4.1983 and worked there till 9.5.1988, thereafter he was transferred to the office of AGE Bakshi-ka-Talab under the control of the respondent no. 5. As per rules, he became eligible to appear for promotion test, namely for the post of Motor Pump Operator in the year 1986, after completing three years of service. Therefore, he appeared in the examination which took place on 4.3.1987. The result of the successful candidate was declared but according to him, his result was not declared. He brought it to the notice of the commanding officer and sent reminders after reminders but no action in the same was taken. Although one who appeared in the examination held on 25.4.1987 his result was declared but the applicant was informed on 4.11.1988 that as the seniority of the candidates upto 31.12.1982 was taken into consideration and as his seniority is from 5.4.1983, he was not selected for test. Due to wrongful deprivation of the applicant by the respondents for his promotion, the applicant by means of this application has prayed that the respondent Nos. 3 and 4 be directed to declare the result of the applicant ^{in the examination} conducted by the respondent no. 4 for the post

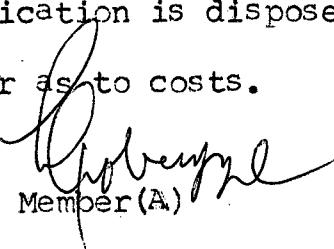
of Motor Pump Attendant on 4.3.1987, and the result so communicated be entered in the service book of the applicant by issuing suitable command to respondent Nos. 2 and 5.

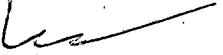
2. The respondents in their counter affidavit have stated that the proceedings of the trade test board were not approved by the Chief Engineer and were returned vide his letter dated 3.4.1987 for rectification of the discrepancies in terms of the guidelines spelled out therein. It was pointed out that the number of trade tested should not exceed three times the number of vacancies available. It was further pointed out that the trade test should be held in accordance with three grade structure and only feeding categories are to be allowed to appear in the trade test. Thus, the Chief Engineer ^{way} advised to conduct the test again keeping in view the guideline as ~~as~~ envisaged in the above letter. Consequently, the proceedings of the trade test held on 4.3.1987 were cancelled and another trade test took place on 23.4.1987. The applicant was not eligible to appear in the said trade test in accordance to the above instructions. So far as the provisions of rule is concerned, he appeared in the trade test for the post of Valveman for which sufficient number of vacancies were available and the eligible penal was large enough to include his name based on the principle of three persons to be considered for every one vacancy. The eligibility was determined on the basis of guideline received from the Chief Engineer, and as such, the contention of the applicant that he has wrongly been deprived is not correct. This Tribunal vide its order dated 13.11.1990 after noticing that the main defence of the respondents is that the applicant did not fall within the zone of

consideration on the basis of the criterion of the three candidates for one vacancy. They were directed to file a supplementary counter affidavit within 6 weeks stating there in the number of vacancies of Motor Pump Attendants for 1986 which the trade test was held on 4.3.1987. They were also directed to file the seniority list of the eligible candidates, but the same has not been done.

3. The learned counsel for the respondents who in the mean time produced the record before us which indicates that there were 37 vacancies in the month of March, 1987 when the applicant appeared and obviously, the applicant succeeded in the same and it is said that no such cancellation order has been produced on the record except that a reference finds place in some letters. In the second examination, the assertion made by the applicant that his position was at Sl. No. 75 has not been denied, but what has been stated by the respondents is that he was not within the merit list. The position was explained to the applicant by the Garrison Engineer vide his letter dated 22.2.1988. The applicant has been informed that the result of the trade test held in March, 1987 was not considered necessarily due to less number of vacancies. Seniority to the trade test was taken into consideration upto 31.12.1982, although, this appear not to be the case. As according to the plea which has been taken in the counter affidavit, it appears that three persons were considered against one vacancy. It appears that no clear stand has been taken by the respondents, as such, there appears to be no reason why the contention of the applicant should not be accepted. As the applicant has already passed the trade test, in which he appeared because he was permitted by the respondents, he shall be given an appointment in respect of the available vacancies. In case, the applicant's

position was within the number of vacancies when the first examination took place, he may given an appointment. But, when the test took place second time, and the applicant has gained the position countable in the merit list, he ~~may~~ ^{can be given} get appointment taking into consideration the number of vacancies. The respondents have committed an error in allowing more candidates to appear in the examination and the candidate should not be made to suffer entirely on the fault of the department. The application is disposed of ⁱⁿ with the above terms. No order as to costs.


Member (A)


Vice-Chairman

Dated: 16.7.1992

(n.u.)