

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.s 6/88, 80/89, 237/89, 760/87, and
 900/88. 198
 ExxxxNax

DATE OF DECISION 7.11.1990

Shri B.N.Wagh & Ors.

Petitioner

Shri S.R.Atre.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri Ravi Shetty.

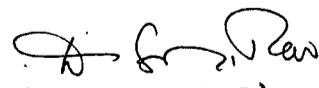
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.Surya Rao, Member(J),

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. Whether it needs to be circulated to other Benches of the Tribunal ? NO


 (D.SURYA RAO)
 MEMBER (J).

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT AURANGABAD.

1. Original Application No.6/88.

Shri B.N.Wagh. ... Applicant.
V/s.
Union of India & 3 others. ... Respondents.

2. Original Application No.80/89.

Shri M.G.Kavade. ... Applicant.
V/s.
Union of India & 3 others. ... Respondents.

3. Original Application No.237/89.

Shri M.R.Jadhav. ... Applicant.
V/s.
Union of India & 2 Others. ... Respondents.

4. Original Application No.760/87.

Shri V.R.Zare. & 3 others. ... Applicants.
V/s.
Union of India & 3 others. ... Respondents.

5. Original Application No.900/88.

Shri M.M.Namde, & Others. ... Applicants.
V/s.
Union of India & 3 others. ... Respondents.

Coram:- Hon'ble Member(J), Shri D.Surya Rao,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Shri S.R.Atre.
Respondents by Shri Ravi Shetty.

JUDGMENT:-

(Per Shri D.Surya Rao, Member(J)) Dated: 7-11-1990
five
All these/applications raise common questions of
fact and law and can be conveniently disposed of together.
In O.A. 760/87 there are three applicants. They claim
that they were called for an interview for the post of
Peon/Chowkidar on 19.7.1984 by Respondent No.3, that their
names had been sponsored by the Employment Exchange,
Ahmednagar, that after an interview they were selected and
that a Police verification in regard to their antecedents
was also conducted. Their grievance is that they are yet to
be given appointment orders. Initially they were denied

appointment on the ground that there was a ban on appointments. They allege that subsequently in 1985 certain persons were appointed ignoring the applicants and that in 1987 action was being initiated by Respondents to interview and appoint other fresh candidates to the posts of Peons/Chowkidars. They pray that directions be issued to the respondents to appoint them, forthwith. Original Application No.6/88 is filed by a single applicant. He was interviewed on 19.7.1984 by the 3rd respondent for the post of Safaiwala after being sponsored by the Employment Exchange. He claims that he was selected and that his antecedents were also got verified. His grievance is similar to that of the applicants in O.A. No.760/87, the relief claimed is also similar. The applicants in O.A. No.900/88 are twenty two in number. They allege that they were interviewed for the posts of Mazdoors on 22.7.1987 but are yet to be given orders of appointment. In addition to the contentions raised in the other Original Applications they contend that by virtue of a circular dt. 4.4.1983 issued by the Ministry of Home Affairs, once a select list is prepared the persons included therein have to be appointed in the first instance before resorting to fresh selections. The applicant in O.A. 80/89 contends that he was interviewed on 24.9.1984 for the post of Mazdoor after having been sponsored by the Employment Exchange, Ahmednagar, that persons similar to the applicant had approached this Tribunal in 1987 and obtained a direction on 4.9.1987 that they should be appointed if found suitable, that the applicant thereupon approached the respondents seeking similar reliefs by virtue of his selection in 1984, but he was overaged. He contends that he cannot be denied appointment as he was within the age limit at the time of recruitment. He seeks similar directions as in the case of the applicants in the other OAs.

O.A. 237/89 is also filed by a single individual. His case is identical to that of the applicants in O.A. 760/87 except that he was interviewed and selected for the post of Mason. As in O.A. 80/89 he contends that his case is covered by the Judgment of this Tribunal in O.A. Nos. 370/87 and 430/87 dt. 4.9.1987, and that he cannot be denied promotion on the ground that he is now overaged. As in the other cases he seeks a direction to the respondents that he should be given appointment but as a Mason.

2. Replies have been filed by the Respondents in all the applications ⁱⁿ opposing the claims of the applicants. It is admitted that selections were held on 19.7.1984 for recruitment of the posts of Peons/Chowkidars, Safaiwallas and Mason as alleged in O.A. Numbers 760/87, 6/88 and 237/89. It is also admitted that interviews were also held on 22.7.1987 and 24.9.84 for the posts of Mazdoors as alleged in O.A. Nos. 900/88 and 80/89 and selections made. It is however denied that the third applicant in O.A. 760/87 B.T.Mokate or M.L.Harale and D.Y. Labade applicants 12 and 14 in O.A. 900/88 were selected or included in the respective panels. It is admitted that the other applicants in the various panels were duly selected and included in the respective panels. A preliminary objection is raised that the applications are not maintainable since none of the applicants have been appointed. We can straightaway reject these preliminary objections since it is well settled that this Tribunal under Section 14(1) of the Administrative Tribunals Act, 1985 has jurisdiction to determine claims of persons to recruitment to posts under the Government. It has been further held by a Full Bench of the Tribunal ~~in~~ that claims of casual labourers recruitment are maintainable and the Tribunal has jurisdiction to entertain such claims.

3. Other contentions raised in the replies are that though the candidates were duly sponsored by the Employment Exchange/Zilla Savik Welfare Board and that they were selected after a process of regular selection, the selections were not approved by the Chief Engineer Pune Zone the appropriate authority. Approval was not given because of a ban imposed by the Central Government on recruitment. It is contended that the selections have therefore lapsed. It is not denied that subsequently in 1987 a fresh process of recruitment was resorted to and panels prepared in 1987 for filling in posts of Mazdoors, Peons/Chowkidars. It is also not denied that some other similarly placed persons had filed O.A. Nos. 376/87 and 436/87 and that this Tribunal had allowed the applications. ^{The reliefs granted were} It is however subject to certain conditions viz. that the employees should be medically fit, that their antecedents should not be adverse and that they are within the age limit as on 15.6.1987 the date of the next interview. It is stated that pursuant to those directions of the Tribunal some of those applicants were appointed and are in position. It is contended that the applicant in Original Application No.80/87 was not within the age limit ^{as} on 15.6.1987 and hence he is not eligible for appointment.

4. We have heard the arguments of Shri S.R.Atre, learned Counsel for the applicants in all these cases and the objections of Shri Ravi Shetty holding the brief of Shri R.K.Shetty, learned Counsel for the respondents. The fact that the applicants other than S/Shri B.T.Mokate, M.L.Harale and D.Y.Lohade were selected and empanelled is not denied. Merely because the panels were not approved by the Chief Engineer Pune Zone, would not be a ground for depriving the applicants of their right to appointment which is vested in them by virtue of their having gone through the process of selection and getting empanelled. It is not as

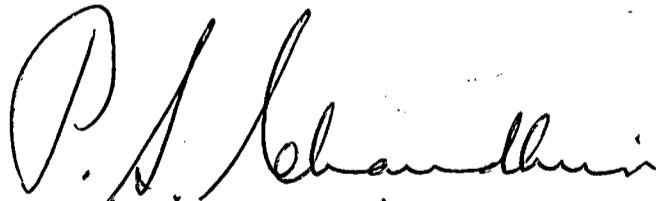
though there is any irregularity in the mode of selection or that their selections have been set aside. We would respectfully concur with the observations of the Bench of this Tribunal in O.A. Nos. 376/87 and 436/87 dt. 4.9.1987 that persons empanelled earlier should be appointed prior to those empanelled as a result of the interviews held on 15.6.1987. Apart from this decision the rights of the applicants who were selected and empanelled stand protected in view of the instructions of the Ministry of Home Affairs (Department of Personnel and Administrative Reforms O.M. No.22011/2/79-Estt.(D) dt. 8.2.1982 in regard to validity of period of a panel. While observing that "there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct recruitment or through a departmental competitive examination", it was further clarified that once a person is selected according to merit, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change and that if selected candidates are awaiting appointment, further recruitment should be postponed or the intake of fresh recruits should be reduced till those previously empanelled are absorbed. The applicants in the instant case having been empanelled pursuant to orders of the Zonal Chief Engineer, Pune are in terms of the O.M. dated 8.2.1983 entitled to preferential claims over those empanelled later and cannot be denied appointment on the ground that there was a ban on appointments. The ban has only to be read as a suspension or a temporary change in the number of vacancies and consequently those included in the panels cannot be denied their vested right to appointment.

R *Am*

5. It was sought to be contended by Shri Shetty that some of the applicants have become age barred, that the order of the Tribunal in O.A. 376/87 and 436/87 has imposed a condition that only if the applicants are within the age limit on 15.6.1987, the date of the next recruitment, that they would be eligible for appointment. No rule or instruction has been brought to our notice that a person who was within the age limit at the time of recruitment, but goes beyond that limit on the date of appointment, becomes ineligible for appointment. O.M. 22011 dt. 8.2.1983 which provides that the panel should be exhausted does not prescribe that those awaiting empanelment are to be within the age limit as on the date of empanelment. This O.M. was not brought to the notice of the Division Bench which decided O.A. Nos. 376/87 and 436/87. Hence we are unable to agree with the contention of Shri Shetty that those applicants who are beyond the age limit as on 15.6.1987 are to be denied employment.

6. Shri Shetty has also contended that the applications are time barred and hit by Section 21 of the Administrative Tribunals Act, 1985. He also contends that after the order in O.A. 376/87 and 436/87 some employees have been appointed. We do not see how Section 21 of the Act can be a bar in view of the order in O.M. 22011 dt. 8.2.1983. By this order the panel is kept alive and whenever the respondents seek to induct persons empanelled later than those empanelled earlier, the latter get a fresh course of action. No doubt because of the delay in approaching the Tribunal others (though *Junior*) might have got appointments, but the applicants are not questioning those appointments nor are those appointees made parties to the present application. Hence while holding that the applications are not time barred we do not propose to disturb ^{the} appointments already made.

7. To sum up the applications of S/Shri B.T.Mohite, M.L.Harale and D.Y.Lambade are rejected. The other applicants will be entitled to appointment against existing and future vacancies against the posts for which they they are empanelled, according to their date of empanelment and seniority position in the panels i.e. they would be entitled to preference in regard to employment over those empanelled later than them. But persons already appointed prior to the applicants approaching this Tribunal will not be disturbed for this purpose. Also, the other applicants herein will be entitled to the seniority that the date of their empanelment and panel position entitles them. If the applicants were within the age limit at the time of empanelment then the fact that they have subsequently crossed the age limit will not be a ~~debar~~ to their appointment. The appointment of the applicants will be subject to the conditions that they were/are found medically fit and that there are no adverse reports in regard to their antecedents which would debar them from being considered. With these directions the applications are allowed, but the parties will bear their own costs.


(P.S. CHAUDHURI)
MEMBER (A)


(D.SURYA RAO)
MEMBER (J)

7/11/1990