

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 432/88
~~TX XXXX NoX~~

198

DATE OF DECISION 22.1.1990

Shri B.R.Patil & anr. Petitioners

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India & ors. Respondents

Shri R.K.Shetty for Respondents Advocate for the Respondent(s)
 No. 1 to 4 and Mrs. P.R.Shetty
 for Respondent No. 5.

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
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*

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 432/88

Shri B.R.Patil & anr.

... Applicants

v/s.

Union of India & ors.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. G.S.Walia
Advocate
for the Applicants

Mr. R.K.Shetty
Advocate
for Respondents No. 1 to 4

Mrs. P.R.Shetty
Advocate
for Respondent No.5.

ORAL JUDGMENT

Dated: 22.1.1990

(PER: M.B.Mujumdar, Member (J)

The undisputed facts are that applicant No. 1, B.R. Patil was appointed as Peon in the Advanced Training Institute at Bombay in 1970. He was promoted as Workshop Attendant in March 1980. In 1984 he passed the course in welding trade conducted by the National Council for Vocational Training. In December, 1985 he passed SSC examination. On the recommendations of the Departmental Promotion Committee he was promoted as Assistant Stores Keeper/Tools Stores In-charge on 7.5.1987. Applicant No. 2, S.U.Thakor was appointed as Lower Division Clerk in the institute in February, 1980. Respondent No. 5, Rajesh Kumar Magwana was appointed as Assistant Stores Keeper/Tools Stores Incharge on compassionate grounds on 16.7.1986.

2. It is the case of the applicants that Respondent No. 5, Magwana should not have been directly appointed as Assistant Stores Keeper/Tools Stores Incharge even on compassionate ground because the recruitment rules do not provide for filling up that post by direct recruit ^{next} in the first instance. They had sent Advocate's notices dated 19.2.1988. The Additional Director of Training in the Ministry of Labour, Director General of Employment & Training sent the following letter dated 13.10.1983 to the Director of the Advanced Training Institute, i.e. Respondent No. 3.

"To

The Director,
Advanced Training Institute,
Bombay.

Subject:- Representation of Shri S.U.Thakur,
L.D.C. for promotion to the post of
Assistant Store Keeper at Advanced Training
Institute, Bombay - reference from
Member of Parliament.

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Sir,

I am directed to refer to the representation of Shri Suhas U.Thakur, received through Shri Sharad Dighe, M.P.(LS), for his promotion to the post of Assistant Store Keeper/Tool Room Incharge and also the complaint dated 30.1.1987 from Shri R.R.Bhoye, M.P.(LS) regarding violation of Recruitment Rules. Copies of both sent to you vide this office letters of even number dated 15.1.1987 and 27.2.1987 respectively and also the correspondences resting with your letter No. ATIB-A-17011/7/82-Estt/3589, dated 10.9.1987 and to say that the case of Shri Thakur vis-a-vis that of S/Shri B.P.Patil and R.K.Makwana was taken up with the Department of Personnel & Training, Department of Legal Affairs with a view to settle the same, by giving promotion to Shri Thakur and adjusting Shri Makwana against the post of L.D.C. being vacated by Shri Thakur and retaining the seniority of Shri B.R.Patil above Shri Thakur. Extracts of relevant notes of Department of Personnel & Training and Legal Affairs are enclosed. You are requested to initiate action on the basis of the advice of Department of Personnel & Training and Legal Affairs, by adjusting Shri Rakesh Kumar Makwana against the post of L.D.C. being vacated by the officer recommended by the DPC of the Unit. The action taken in the matter may please be communicated to this Directorate at the earliest so that the Hon'ble M.Ps concerned could be informed accordingly."

3. On 14.6.1988 the applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 claiming the following two reliefs: (i) Direct respondents No. 1 to 4 to implement the letter dated 10.3.1988 (in the prayer clause the word "April" is wrongly typed), (ii) To Hold and declare that the applicants are entitled to be promoted as Assistant Stores Keeper/ Tool Room Incharge and they should be accordingly promoted from the date the vacancies in the said post arose with all consequential benefits.

4. Respondents No. 1 to 4 have resisted the application by filing the affidavit of Mr.D.M.Somkuwar, Director of Institute dated 11.8.1988. Respondent No. 5 has also filed a separate written statement dated 4.10.1988.

5. We have just now heard Mr. G.S.Walia, learned advocate for the applicant, Mr. R.K.Shetty, learned advocate for Respondents No. 1 to 4 and Mrs. P.R.Shetty, learned advocate for Respondent No. 5.

6. It is the case of Respondents No. 1 to 4 that Respondent No. 5 was appointed as Assistant Stores Keeper/Tools Room Incharge w.e.f. 16.7.1986 on compassionate ground. Applicant No. 1 had become eligible for that post in December, 1985 but he could not be considered for that post as there was ban on filling up of posts including that post from 3.1.1984. Applicant No. 2 became eligible for that post in December, 1986. According to Respondents No. 1 to 4, the ban on filling up of posts was vacated in October 1986. Respondent No. 5 has supported the stand taken by Respondents No. 1 to 4 and justified his appointment.

7. But the recruitment rules show that the post of Tools Stores Incharge/Assistant Stores Keeper can be filled up by the following method only :- By promotion failing which by transfer on deputation, failing all by direct recruitment. Admittedly, Applicant No. 1 became eligible for the said post in December 1985. But he was not considered because of the ban on filling up of posts which was in force at that time. According to Respondents No. 1 to 4 the ban was not applicable to compassionate appointments. But this does not mean that the post can be filled up on compassionate ground even though the recruitment rules do not permit filling up the post by direct recruitment in the first instance. The post in question could have been filled up by direct recruitment only if it could not have been filled up by promotion or by transfer on deputation. Hence, we are of the view that the appointment of Respondent No. 5 to the post of Assistant Stores Keeper/Tools Room Incharge was contrary to rules and hence liable to be quashed even though the intention behind that appointment may be good.

8. On the contrary, the post of Lower Division Clerk can be filled up by direct recruitment and hence if Respondents No. 1 to 4 wanted to help Respondent No. 5 on compassionate ground, they should have appointed him to the post of Lower Division Clerk instead of appointing him as Assistant Stores Keeper/Tools Room Incharge. The letter dated 28.9.1987 - 8.10.87 from the Ministry of Labour, Govt. of India shows that the President had accorded sanction to abolish two posts of LDC/Time Keeper in the Advanced Training Institute with immediate effect. Hence, when Respondent No. 5 was appointed on 16.7.1986 as Assistant Stores Keeper/Tools Room Incharge, two posts of LDC must be lying vacant. This is an additional ground why we feel that the appointment of Respondent No. 5 in question was bad in law.

9. We have already quoted the letter from the Additional Director of the Institute dated 10.3.1988. Instead of complying with the directions given in that letter, the Director of the Institute (Mr.D.M.Somkuwar) has tried to justify the action of his predecessor in appointing Respondent No. 5 as Assistant Stores Keeper/Tools Stores Incharge. We may point out that in April 1988 the Director of Apprenticeship Training in the Ministry of Labour, Director General of Employment and Training had replied to the Advocate of the applicant pointing out that necessary instructions were issued to Director, Advanced Training Institute, Bombay to hold fresh DPC for filling up the post of Assistant Stores Keeper/Tools Room Incharge by reverting Respondent No. 5 and hence there could not be any change in the present position of applicant No. 1. Not only this but by telex message dated 5.8.1988 the Director of the Institute was informed by Director of Apprenticeship Training that the department have no further instructions to issue apart from those communicated in letter dated 10.3.1988. Even considering the point independently, we are of the view that the appointment of Respondent No. 5 was contrary to recruitment rules and hence bad in law.

10. But Applicant No. 1, Mr. B.R.Patil, is already promoted as Assistant Stores Keeper/Tools Room Incharge on 7.5.1987 on the recommendations of the DPC in its meeting on 6.5.1987. As there was a ban on filling up the post till October 1986, we cannot direct that he should be promoted w.e.f. some earlier date. As regards Applicant No. 2, Shri S.U.Thakor, he has become eligible for promotion to the post of Assistant Stores Keeper/Tools Room Incharge in December 1985. He was also considered for promotion along with applicant No. 2 by the DPC in its meeting on 6.5.1987. But as at that time only one post was available, the other being filled up by Respondent No. 5, the DPC recommended the name of applicant No. 1 only for promotion to that post. In any case even now we cannot direct Respondents No. 1 to 4 to promote applicant No. 2. He shall have to be cleared by the DPC.

11. In result, we pass the following order :-

- (i) The appointment of Respondent No. 5 as Assistant Stores Keeper/Tools Room Incharge by order dated 21.7.1986 is hereby quashed and set aside.
- (ii) Respondents No. 1 to 4 should hold a DPC meeting for considering candidates for promotion to the post of Assistant Stores Keeper/Tools Room Incharge. The DPC should be asked to consider the name of applicant No. 2, S.U.Thakor along with other candidates who would be eligible according to rules.
- (iii) On the basis of recommendations of the DPC Respondents No. 1 to 4 should promote the selected person to the post of Assistant Stores Keeper/Tools Room Incharge against the post vacated by Respondent No. 5.
- (iv) The above directions should be complied with within three months from the date of receipt of a copy of this order.
- (v) Respondents No. 1 to 4 should appoint Respondent No. 5, Rajesh Kumar Magwana, to the post of Lower Division Clerk or to some other post to which he can be appointed according to rules.
- (vi) Parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J)