

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 763/99

Date of Decision : 14th September 01

A.K.Yadav Applicant

Shri Suresh Kumar Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.D.Vadhavkar for
Shri M.I.Sethna Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other ^{Ad} Benches of the Tribunal ?
- (iii) Library yes

J.(S.L.JAIN)
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.763/99

Dated this the 14th day of September 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Ajay Kumar Yadav,
R/o 1255, Block No.34,
Sector 7, CGS Colony,
Antop Hill, Mumbai.Applicant

By Advocate Shri Suresh Kumar

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
South Block, New Delhi.

2. Chief Commissioner of Custom,
New Custom House,
Ballard Estate, Mumbai.

3. Deputy Commissioner of Customs,
Personnel & Estt. Deptt.,
New Custom House,
Ballard Estate, Mumbai.

....Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking declaration that the applicant is illegally left out in regularising of casual labour vide impugned order dated 12.8.1999 with the direction to the respondents to consider the applicant against the vacancies reserved for OBC, fill up one vacancy in the cadre of Scaleman.

5/201 -

..2/-

2. The applicant was engaged as casual labour on compassionate grounds w.e.f. 26.3.1990. The applicant filed OA.No.76/98 before this Bench which was pending on 4.6.1998 and the applicant was conferred temporary status w.e.f. 4.6.1998. The applicant vide letter dated 21.8.1998 submitted the OBC Certificate. On 15.3.1999 the respondent issued a circular calling application from casual labours for the post of Scaleman. The applicant being eligible applied for the same, was called for interview, appeared for the same on 15.4.1999 but could not secure the place in the result declared and published on 12.8.1999.

3. The respondents have stated in para 8 that another person belonging to OBC category has performed better than that of the applicant and was selected for the post of Scaleman. In para 9 they have stated that as per the prevailing practice for selection to the post of Scaleman, performance in the personal interview is the criteria for final selection. Thus, it is the fact that criteria for selection which was adopted by them is the selection method, i.e. selection based on merit. The said position is also borne out from the record placed by the respondents for perusal of the Tribunal and also so admitted during the course of arguments.

SYN

..3/-

4. The grievance of the applicant is that the procedure for selection which is adopted by the respondents is not the correct procedure and they must have adopted the procedure seniority-cum-fitness. The learned counsel for the applicant relied on the Recruitment Rules meant for promotion to Group 'D' and argued that the post is not a selection post, hence the principle to be followed must be seniority-cum-fitness. I agree with the learned counsel for the applicant in view of the Recruitment Rules applicable to such promotions:

5. The learned counsel for the respondents relied on an order passed by this Bench in C.P. in case of Atmaram Shankar Kamble & Ors. vs. Union of India & Ors. decided on 10.11.2000 particularly on para 8 of the order which is as under :-

"8. The scope of the contempt application is limited one, i.e. to examine whether the order passed by the Tribunal has been complied with. If no manner of compliance is stated, there are no Recruitment Rules, the respondent/contemner is free to adopt any procedure of selection. In a case where the matter in OA. was not that what procedure is to be followed for consideration of the applicants for regularisation and if the respondents have followed the procedure - selection on merit, in absence of Recruitment Rules, while the applicant contends that fit or unfit method is to be followed, this point cannot be decided in the contempt petition."

(Emphasis supplied by us)

6. The decision of the Tribunal is based on the ground that there exists no Recruitment Rules and in the order passed in OA., there was no direction about the procedure to be followed in selection on promotion basis. In absence of the Recruitment Rules, the said observation was made. Now the fact which is established is that the Recruitment Rules do exist hence the case is to be decided on the basis of the said Rules:

7. As the procedure adopted by the respondents in the process of selection is illegal one, the said selection do not survive from the stage from where the error crept in, as the whole procedure is not illegal one. The error crept at the final stage, i.e. after the marks were allotted to the candidates by placing them on the basis of merit and not seniority cum fitness.

8. As the persons who are selected on the basis of merit are not parties to the OA., they have been empanelled and are working as Scaleman, any order to their disadvantage deserves not to be passed without following the principles of natural justice. It is not desireable to add them as respondents after a period of more than 2 years after filing the OA., as the period of limitation is one year, the only course open to this Tribunal is to direct the respondents to cancel the said selection after notice from where the error crept in to the persons already selected within a period of one month from the date of receipt of the copy of the order and then to proceed ahead from the stage where the error has crept in and pass the order in view of the principle of law decided above treating the applicant as OBC candidate as he has submitted the certificate much earlier to the issue of Notification. If the applicant has any grievance even thereafter, he may agitate the matter in accordance with law. No order as to costs.

S.C.J.
(S.L.JAIN)

MEMBER (J)

mrj:

10-7-2002

Ms. Supriya Shawee proxy for
Shri Nagesh Kumar, Counsel for
applicant. Shri V.D. Vadhankar, proxy
Counsel for Shri M.I. Sethna, Counsel
for respondent.

Let this case be listed
alongwith OA 172/2002 and OA 176/2002
on 12.7.2002.

~~B.N. Baladur~~ ^{B.S.} ~~B. Dikshit~~ ^{B. Dikshit}
M(A) ^{M.C.}

H.

12/7/2002-1
Applicant by Shri Nagesh
Kumar. Respondents by
Shri V.D. Vadhankar for
Shri M.I. Sethna, Counsel
for Respondents.
Let the CP-4/2002 be
listed on 18/10/2002.

~~B.N. Baladur~~ ^{B.S.} ~~B. Dikshit~~ ^{B. Dikshit}
M(A) ^{M.C.}

alp

13/12/2002 —

The Applicants in OA-763/94
have filed CP-4/2002 alleging that
the respondents have shown disrespect
of the decisions of the Tribunal
in implementing the same and
seek action under the Contempt
of Courts against them.

We have disposed of OA-172/2002
and OA-176/2002 in which we
have held that the decision in
OA-763/99 has been rendered
too per casu and is not
binding.

In the circumstances, CP-4/2002
is dismissed and notices to
alleged contemners are discharged.

L-1
(Smt. Shanta Shastri)
M(A)

R
(A. V. Haridasan)
V.C.

alp

order/Judgment despatched
to _____ on _____ date(s)
on 13/12/02