

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 166/2000.

Date of Decision : 6-5-2004

All India Atomic Energy
(DPS Store Staff Asson.

Applicant

Shri K. Shivramakrishnan

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R. Shetty

Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.K. Agarwal, Vice Chairman

The Hon'ble Shri S.G. Deshmukh, Member (J)

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

X


(A.K. AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.166/2000

Dated this the 6th day of May 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh, Member (J)

1. All India Atomic Energy (DPS)
Store Staff Association
through its Chairman Shri B.R.Chasia,
Central Stores Unit (DPS),
B.A.R.C., Trombay, Mumbai.
2. All India Atomis Energy (DPS) Store
Staff Association (Western Region)
through its President Shri R.J.Jumani,
Central Stores Unit (DPS), B.A.R.C.,
Trombay, Mumbai.
3. Shri R.J.Jumrani
4. Smt.Radha Hariharan
both working as Store Keepers,
Central Stores Unit at B.A.R.C.,
Trombay, Mumbai.

...Applicants

By Advocate Shri K.Shivramakrishnan

vs.

1. Union of india
through Secretary,
Department of Atomic Energy,
Govt. of India,
Anushakti Bhavan,
Near Gateway of India,
Mumbai.
2. Director of Purchases & Stores (DAE),
V.S.Bhawan, Anushakti Nagar,
Mumbai.
3. Shri B.D.More,
Dy.Director of Central Stores (DPS),
Trombay, Mumbai.

...Respondents

By Advocate Shri R.R.Shetty

..2/-

O R D E R


{Per : Shri A.K.Agarwal, Vice Chairman}

This OA. has been filed by the applicants for quashing and setting a panel dated March, 2000 drawn for the post of Assistant Stores Officers.

2. The main contention of the applicants is that upto now the promotion to Assistant Stores Officer are being done on the basis of norms for appointment and promotion as contained in O.M. dated 25.5.1977, since there are no statutory Recruitment Rules. As per these norms, 20% of the post of Stores Officers are to be filled up by direct recruitment and remaining 80% by promotion from Store Keeper. All posts of Store Keepers are to be filled up by Junior Store Keepers which is the feeder cadre. Direct promotion to the post of Assistant Stores Officer is not permitted from the post of Junior Store Keeper. In 1992 Store Keeper with an experience of 8 years service were given exemption from the examination and 20% of the ASOs posts were reserved for this category. Even after the O.M. dated 23.6.1992, the cadre of the Store Keeper remained the only feeder cadre for filling up the posts of ASO's by promotion.

3. The applicants have therefore contended that the consideration of Junior Store Keepers for inclusion in the panel for ASO's is invalid, is in breach of the norms laid down for the promotion and is violative of Article 14 & 16 of the

..3/-




Constitution. The detailed norms laid down by O.M. dated 25.5.1977 indicate the qualifications, method of recruitment for various levels and these cannot be modified by way of telex message issued on January 5, 1993 allowing Junior Store Keepers who have completed 8 years service to appear for the departmental examination for the post of ASO.

4. The learned counsel for the respondents mentioned that the main issue raised in this OA. i.e. of the eligibility of Junior Store Keeper for promotion as ASO has already been decided not once but twice by this Tribunal. He mentioned that OA.No.58/95 was disposed of vide order dated 29.10.1999 and towards the end of para 9 of order it was held that :-

"In the case of Assistant Stores Officer, only Store Keeper with 5 years was eligible and now the feeder cadre is extended to include Junior Store Keeper with 8 years service as also eligible. If by chance the rule had made that an Assistant Store Keeper with 5 years service is eligible, then probably the rule could have been questioned or attacked on the grounds of being arbitrary and unreasonable. But, here the rule is 5 years service as a Store Keeper, 8 years service as a Assistant Store Keeper. In our view, there is no illegality in having two feeder cadres of which one may be lower than the other for the purpose of promotion to a next higher grade. Hence, the argument on this point urged by the learned counsel for the applicant has no merit and is hereby rejected."

5. The matter was again challenged by the President, General Secretary, All India Association of Employees of the Department of Stores and Purchase of Atomic Energy, Bombay Region for allowing deputationist from the Department of Atomic Energy to

..4/-




Nuclear Power Station to participation in the departmental examination. The ratio relating to eligibility of Junior Store Keepers with 8 years service was also questioned. It was held in the Tribunal's order that :- "In view of change in the norms, there is no basis for the contention of the applicants that allowing the Junior Store Keepers with 8 years service to participate in the examination is against the Recruitment Rules."

6. The learned counsel for the respondents further mentioned that the applicants are challenging the selection in which Applicants No. 3 & 4 had actively participated. In the case of Madan Lal vs. State of J&K, 1955 (2) SLR 209, it has been held that :-

"It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted."

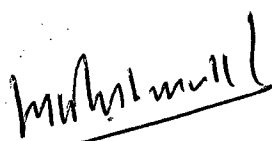
7. The learned counsel for the applicant stated that the rulings quoted by the learned counsel for the respondents is not binding and it is well settled law that when there is an error of facts, then the judgement is not binding. In the feeder cadre for the promotion to the level of ASO as prescribed vide O.M. dated 25.5.1977 and subsequently modified vide O.M. dated 26.3.1992, There is no amendment and the feeder cadre continues

..5/-



to be that of Store Keeper for promotion to ASO. He stated that in the ruling cited by the learned counsel of respondents, there was no dispute regarding the feeder cadre.

8. After hearing both the counsels and going through the record of the case, we find that the relief for quashing and setting aside the panel for promotion as ASO is being sought essentially on the ground that Junior Stores Keepers are not eligible for promotion to the post of ASO. On this very issue, the verdict of the Division Bench of this Tribunal was given on 29.10.1999 while disposing of OA.NO.58/95. It was clearly held that provisions for eligibility of five years as a Store Keeper or 8 years as Junior Store Keeper cannot be attacked on the grounds of being arbitrary or unreasonable. We, therefore, hold that action of the respondents in allowing Junior Store Keepers with 8 years experience for appearing in the examination and the panel prepared on this basis does not suffer from any legal infirmity. As a result, the OA. is devoid of merit and is dismissed accordingly. No order as to costs.


(S.G. DESHMUKH)

MEMBER (J)


(A.K. AGARWAL)

VICE CHAIRMAN

mrj.