

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 193/2000

Date of Decision : 26.2.2000

R.G.Aswar Applicant.

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

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 Benches of the Tribunal ? *X*
- (iii) Library *X*

B.N. Bahadur
(B.N. BAHADUR)
MEMBER (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.193/2000

Monday this the 26th day of February, 2000.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

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

Ravindra Genu Aswar,
At Post : Kuruli,
Tal.Khed, Dist.Pune.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
Through the Secretary,
Ministry of Defence,
DHQ, PO, New Delhi.
2. The Commandent,
512, Army Base Workshop,
Khadki, Pune.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R (ORAL)

{Per : Shri B.N.Bahadur, Member (A)}

This is an application made by Shri R.G.Aswar seeking the relief from this Tribunal in substance as follows :-

"(a) to hold and declare that the applicant is entitled for the appointment as Machinist under Respondent No. 2 against post reserved for SC Quota of 15% of cadre strength of the Machinist Trade.

(b) to direct the Respondents to appoint the applicant to post of Machinist against vacant post of a SC quota on the basis of selection already done by the Respondents No. 2.

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(c) to grant all other consequential benefit to the applicant on his appointment under Respondent No. 2."

2. The case made out by the applicant is that he is aggrieved in the action of the respondents in not appointing him to the post of Machinist against the reserved post/vacancy for Scheduled Caste candidates, although he has cleared the written examination and the practical/oral test. The applicant avers that he is otherwise also suitable in all respects and that in terms of the percentage of vacancies required to be filled by Scheduled Caste, there are vacancies to enable him to be appointed. The Applicant alleges that the relevant rules have been violated by the Respondents.

3. Further, in the application the applicant gives the other details regarding his qualification and the chronology of events calling for applications for filling up the post of Machinist, written examination and subsequent developments.

4. The defence taken in the written statement of the applicant is that in terms of the calculations made regarding the post available and percentage for reservation, there are no vacancies for the quota of Scheduled Caste. This point was argued on the last time when adjournment was granted, to enable Respondents to give us further details in the matter. In fact, the learned counsel Shri Shetty has expounded the view made in the written statement, to the effect that two candidates from the

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the Scheduled Castes, who had been selected in the open merit list had been taken against Scheduled Caste vacancies by the Department in the calculation. Time was given on the last date to both sides to bring available law on the subject.

5. We have again heard learned counsel Shri S.P.Saxena and Shri R.K.Shetty, on behalf of respective sides. Considering various facts regarding a number of vacancies and the calculations made, we come to the crux of the problem whereby admittedly two persons from the Scheduled Caste who were selected and appointed against open vacancies, have been taken later as occupying reserved posts. The consequence of such calculation has been resulted in the stand that no further vacancy is available for Scheduled Caste candidates and which has directly affected and aggrieved the applicant before us.

6. The point that arises for our determination therefore is whether the calculations made by the respondents are, in principle, correct. We are in no doubt that the candidates from the Scheduled Castes who were selected against open vacancies, and appointed as such, cannot be taken to occupy the reserved posts. In fact in today's arguments this comes out as an admitted position in view of the decision in the matter of R.K.Sabarwal vs. Union of India & ors. (1995 SCC (L&S) 548). In view of the clear guidance available to this Tribunal through this judgement, there is no need to discuss the matter in further detail.

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7. The respondents will therefore need to re-assess the vacancies available against the posts for appointment to the post of Machinist by disregarding the calculations of the aforesaid two persons who were counted against post reserved for Scheduled Caste. Thus, two posts clearly become available for being provided to S.C. candidates.

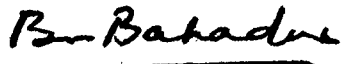
8. In the consequence, this OA. is allowed, to the extent and, in terms of the following order :-

The selection of the applicant be considered in position determined above in this order, and he is held to be eligible to be appointed against two S.C. vacancies if he is otherwise fit and high enough in merit list. Needless to say this will be subject to other conditions/rules like medical fitness etc. The order shall be implemented as early as possible, but in no case later than four weeks from the date of receipt of a copy of this order. There will be no orders as to costs.


(S.L.JAIN)

MEMBER (J)

mrj.



(B.N.BAHADUR)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CONTEMPT PETITION No. 44 of 2001

in O.A. 193 of 2000

Dated this the 21st day of September, 2001

Coram: Hon'ble Mr. Justice Birendra Dikshit - Vice Chairman
Hon'ble Mr. B.N. Bahadur - Member (A)

R.G. Aswar,
Post Kuruli,
Taluka Khed,
District Pune
(By Advocate Shri S.P. Saxena) - Applicant

VERSUS

1. Brig. R.S. Sahota,
Commandant & M.D.,
512 Army Base Workshop,
Kirkee Pune 411 003.
2. Col. S.C. Mukerjee,
General Manager (P&A),
512, Army Base Workshop,
Kirkee, Pune 411003.
(By Shri R.K. Shetty) - Respondents

ORAL ORDER

Per: Hon'ble Mr. Justice Birendra Dikshit - Vice Chairman-

This Contempt Petition has been filed on the ground of wilful disobedience of the order passed on 26.2.2000 in O.A. 193 of 2000; (Ravindra Genu Aswar Vs. Union of India and another). While passing the order this Court directed that "order passed be implemented as early as possible but in no case later than four weeks from the date of receipt of a copy of the order." The copy of the order was served on the respondents on 15.3.2001. As the order was not complied with, the Contempt Petition has been filed.

2. An affidavit has been filed today, sworn by Brig. R.S. Sahota, respondent-contemner no.1. The explanation for delay is that the matter related to appointment of applicant and as it involved verification by Police, the Police Report was wanting

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till 10.9.2001. The deponent on affidavit has also stated that the applicant has undergone medical examination and was found fit on 18.9.2001. It is further stated that he has been appointed on 19.9.2001. We are satisfied that there is no wilful disobedience of the order by respondent-contemner and whatever delay_{has} occurred, it is due to want of Police Verification:

3. In above circumstances, the Contempt Petition is dismissed. Notices are discharged:

B. Bahadur

(B.N. Bahadur)
Member(A)

B. Dikshit

(Birendra Dikshit)
Vice Chairman

mb

Ordinary
~~order/~~ sent despatched
to Appl. respondent(s)
on _____

23/10/2001