

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1164/92
Transfer Application No.

Date of Decision : 28.7.95

Pramod Vithalrao Jadhav

Petitioner

Shri S.P. Saxena

Advocate for the
Petitioners

Versus

Union of India and others

Respondents

Shri R.K. Shetty

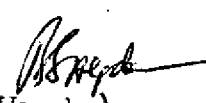
Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

6

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1164/92

Pramod Vitthalrao Jadhav

... Applicant.

V/s.

Union of India through
the Secretary
Ministry of Defence
South Block,
New Delhi.

Engineer-in-Chief
Army Headquarters
New Delhi.

Chief Engineer
Southern Command
Poona.

Chief Engineer
Pune Zone,
Pune.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastawa, Member (A)

Appearance:

Shri S.P. Saxena, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 25.7.95

¶ Per Shri B.S. Hegde, Member (J) ¶

The applicant has filed this application against the order of the respondents dated 18.5.92 (Annexure A-1). Accordingly the applicant sought for a direction to the respondents that he should be considered for appointment to the post of Surveyor-Assistant Grade II on the basis of the selection by the Selection Board and appoint him in the said post with effect from the date Shri Gunjal who is junior to him has been appointed.

2. The un-disputed facts are : the applicant was appointed as Tracer on 6.4.85 in the scale of pay of Rs. 975 - 1540. He has passed the

H.S.C.' examination in 1980 and also passed the I.T.I. diploma course of Draughtsmen course in 1980-82. The respondents in 1987 have called for application for the post of 'Surveyor Assistant' Grade II through Employment Exchange to be filled in by Direct Recruitment. The applicant, while working as 'Tracer' sponsored his candidature to the post of Surveyor Assistant Grade II stating that qualification prescribed for Direct Recruit, he had already possessed and offered himself as a candidate for the said post. The Department issued no-objection certificate. He was interviewed alongwith others in 1987. The respondents after completion of the interview selected candidature of all the candidates and prepared a select panel of candidates in the order of merit. The applicant's name is listed at serial No.11 and list contains 23 names. The vacancies were filled up from amongst the select panel and one Shri Gunjal who was selected along with the applicant and whose serial No. is 12, junior to the applicant was appointed, overlooking the claims of the appointment of the applicant. Aggrieved by the denial of the applicant, he made representation, which was replied by the department rejecting his candidature (Annexure A-6) vide letter dated 22.2.92. Again, the applicant submitted another representation dated 7.3.92 against which the impugned order was passed by the respondents vide letter dated 18.5.92. Hence the applicant filed this O.A.

3. In reply, the respondents denied the various contentions of the applicant and reiterated that the applicant has not rendered three years continuous service in the department. Initially the

applicant was appointed as Tracer in 1985. Applications were called for the post of 'Surveyor Assistant ' Grade II and interview took place in 1987. Though the applicant was called for the interview and selected in the panel that does not bestow him any right to be appointed, because the applicant, admittedly, do not fulfil the service conditions i.e. three years continuous service in the department and selection for the post and empanellment does not confer him the right for appointment in the department. Though he appeared for the Direct Recruitment vacancy, the applicant was a departmental candidate and he had not completed three years of continuous service in the department. Whereas Shri Gunjal is not a departmental candidate he is directly taken/recruited from the Employment Exchange hence the applicant cannot be compared his case to that of Shri Gunjal who is an Employment Exchange nominee, within the age limit and having the requisite qualification. The applicant is over aged and does not fulfil the conditions as per the recruitment Rules. Therefore, the plea of discrimination is not sustainable. Though the mere fact that he has been empanelled, that by itself does not bestow any right which he is otherwise not entitled to.

4. Heard the learned counsel for the parties and perused the records.'

5. The main contention of the applicant is that the applicant's candidature has been sponsored by the department who has been considered for the post. Secondly, the SRO is very clear that minimum qualification prescribed is Matriculate and Diploma in Civil Engineering. Since he possessed both the

9

conditions he should be considered for the post of Surveyor Assistant Grade II. Thirdly, it is not open to the respondents to add something new to the SRO which was issued under Article 309 of the Constitution vide their letter dated 3.3.90 stating that three years continuous service in the department as prescribed which is contrary to the Rule. The learned counsel for the applicant also draws our attention that since the applicant has already brought on panel, therefore, he has got the right to be considered for the post of Surveyor Assistant Grade II. In support of this contention he relied upon the decision of the Tribunal in Nirmal Kumari and Another V/s. Delhi Administration and another 1990(1)CAT 347 (P.B.). In that case it has held that the petitioners selected and empanelled for appointment as P.G.Ts in Sanskrit and Economics but respondents without exhausting panel proceeded to fill up posts by inviting applications by Direct appointment not valid. Having been empanelled has a right to be appointed and they cannot be by passed as such. He also relied upon another decision of the Tribunal in A.P. Mohamed Ali V/s. The Secretary, Ministry of Home Affairs, Union of India and others 1992(2) CAT 102 (Mad) it was held that One whose name is included in select panel acquires to right to promotion if vacancy is available etc. The ratio laid down in those decisions are different from the present case and ^{is} distinguishable. The cases were decided on the basis of facts and circumstances of that cases. Hence they are not relevant to the facts of this case.

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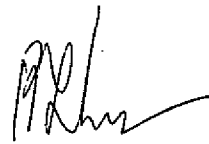
6. The learned counsel for the respondents, Shri Shetty has drawn our attention to the decision of the Supreme Court in State of Bihar and Ors. V/s. Secretariat Assistant Successful Examinees Union 1986 and Ors. 1994 ILLJ SC 625 it was held that a person who is selected does not, on account of being empanelled alone, acquire any indefesible right of appointment. Empanellment is at best a condition of eligibility for purpose of appokntment and by itself does not amount to selection or create a vested right to be appointed unless relevant service Rule says to the contrary.


7.

In the light of the above, the short question for consideration is whether on a mere fact that the applicant has ^{been} placed on panel, is he entitled to be appointed for the post of Surveyor Assistant Grade II. The answer is in the negative. Admittedly, the applicant is a Departmental candidate and can be appointed by Direct Recurit provided he fulfils the requisite conditions. In the instant case, the applicant is over aged which requires to be relaxed as per the O.M. of DOP issued in the year 1976. For Departmental candiates relaxation of the upper age limit is upon 35 years for appointment by Direct Recruitment to Group 'C' and 'D' posts and they should put in atleast three years continuous service in the Department. The aforesaid conditions is in no way contrary to the provisions of the Recruitment Rule which can be construed at the most to be supplementary to the existing SRO - 309. The only contention of the applicant is that since

he has empanelled, he has got the right to be appointed as stated earlier. In any event he cannot compare himself to that of Shri Gunjal who is a Direct Recruit, whereas the applicant is a departmental candidate whose candidature has to be sponsored in accordance with O.M. dated 3.3.90 (Exhibit R-1). The learned counsel for the applicant conceded that as per SRO Recruitment Rules to the post of "Surveyor Assistant Grade II" is by Direct Recruit. Merely, because he possesses/requisite qualification that by itself does not entitle him to be appointed to the said post unless he fulfil the requisite conditions as prescribed in the aforesaid O.M. It is not a promotional post. All the conditions laid down in the O.M. of 1980 the applicant ^{does} ~~do~~ not fulfil, therefore, we cannot find fault with the impugned order dated 18.5.92.

8. In the result, we see no merit in the O.A., accordingly the O.A. is dismissed but no order as to costs.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

R.P.NO. 91/95

in

OA.NO. 1164/92

Shri P.V.Jadhav

V/S.

Union Of India & Ors.

... Applicant

... Respondents

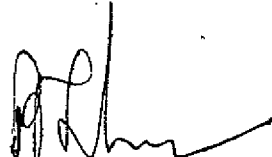
CORAM: Hon'ble Member (J) Shri B.S.Hegde
Hon'ble Member (A) Shri P.P.Srivastava

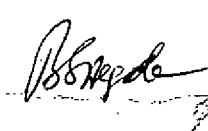
Tribunal's Order by Circulation

(PER: P.P.Srivastava, Member (A))

Dated: 13.11.95

The grounds brought out in the Review Petition do not bring out anything new which has not been argued at the time of hearing of the OA. The review petition has tried to show that the judgement has been rendered by over-looking certain facts. The submissions are in the nature of finding out fault with the judgement. These are not the errors which are apparent on the face of the record. The applicant is fully entitled to seek remedy if he is not satisfied with the judgement in the appropriate forum. However, he has not been able to bring out any material which would warrant review of the decision which has already been given in the OA. The Review Petition is, therefore, dismissed in-lemine.


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

mrj.

13/11/95
order/Jud. despatched
to applica respondent (s)
on 1112