

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1217/92

Transfer Application No.

Date of Decision : 6.4.95

R.Narsing Rao

Petitioner

Shri S.P.Saxena

Advocate for the
Petitioners

Versus

Union of India and others

Respondents

Shri Ravi Shetty for

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 M.R. Kolhatkar, Member (A)

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? X

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 1217 OF 1992.

R. Narsing Rao
General Secretary,
M.T.S.S.D. Workers Union,
70, Market Road,
Khadki,
Poona.

... Applicants

VERSUS

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

Director General of Ordnance Services
(O.S.BC)-II,
M.G.D. Branch,
Army Headquarters,
New Delhi.

Officer-in-Charge,
A.O.C. Records,
P.O. Tirmelgheeri,
Secunderabad.

The Commandant
C.A.F.V.D.,
Khadki,
Poona.

... Respondents.

CORAM :

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

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri S. P. Saxena,
Counsel for the applicant.
2. Shri R. R. Shetty for
Shri R. K. Shetty,
Counsel for the respondents.

ORAL JUDGEMENT :

DATED : 06.04.1995.

[Per. Shri M. R. Kolhatkar, Member (A)].

1. The applicant was selected as Messenger on 16.04.1987. He competed for Group 'C' Posts reserved for Schedule Castes and Scheduled Tribes. It is not in dispute that he could not have been considered against the promotion quota for which he has not completed three years of service at the relevant time namely, 23.08.1989 which was the last date for filing the application. The results were announced on 10.09.1989 at Exhibit A-5 in which applicant's name has been shown as having been selected against the post of Store Keeper (Reserved for SC) at serial no. 2. After this, the results were modified subsequently on 16.11.1989 at exhibit A-2 and the name of the applicant was deleted and name of one Miss Sharmala B. Kamble was included at the stage of approval of the minutes of selection committee at exhibit R-1 to the written statement. It is seen that initially the name of the applicant was shown as a selected candidate but subsequently at the time of approval of the minutes an arrow was shown against the name of another candidate namely Miss Sharmala B. Kamble who has thus been selected. The applicant's contention is that although he was selected rightly for the post but subsequently his name has been deleted illegally. The Learned Counsel for the respondents relies for this deletion on Army Ordnance Corps Records letter dated 02.09.1989 at exhibit R-3 which states that the educationally qualified Group 'D' departmental employees can compete with the nominees of the employment exchange

for the posts filled by direct recruitment in Group 'C' posts, only against 10% quota and over lapping to this reservation is not allowed in any circumstances. It is the contention of the respondents that 10% promotion quota in respect of Group 'C' posts was already filled up.

2. The Learned Counsel for the applicant however contends that the clarification by AOC D/2-9-89 is contrary to SRO dated 30.09.1986 and the Home Ministry's instructions on this point. In this connection, the Learned Counsel for the applicant has invited our attention to exhibit R-1 to the sur-rejoinder having SRO dated 30.09.1986. According to this SRO, the method of recruitment is shown as 10% by promotion and 90% by transfer failing which by direct recruitment. It is not in dispute that the applicant competed against 90% quota reserved for the Direct recruitment. The applicant further relies on clarification of the Home Ministry at exhibit R-5. This is the circular of the Home Ministry dated 26.12.1962 which appears as appendix-A to CPRO 37/63. This makes it clear that there is no objection to persons serving in a particular office being allowed ~~to~~ compete with nominees of the Employment Exchange for posts filled by direct recruitment in that office provided they fulfill the prescribed age and educational qualifications and that no preferential treatment is given to them in any respect. It is clear that the applicant who competed against direct recruitment quota fulfilled the age and the educational qualifications. The action of the respondents therefore, to rely upon

the circular dated 02.09.1989 is not in accordance with SRO and the instructions of the Home Ministry. Therefore, it was patently wrong. The Learned Counsel for the respondents relies on Patna High Court judgement dated 11.10.1991 in the case of the Secretariat Assistant Successful Examinees Union & Others V/s. Union Of India & Others reported in 1992 (3) SLJ 85. In this case, it was held tha-t :

"the petitioners are legitimately demanding their right to be considered first for such appointment on the posts of Secretariat Assistant against the vacancies available on the date of publication of their results. They are unemployed graduates. Most of them may be on the verge of crossing their age bar to appear in any further tests and they are being denied the right of employment and are being deprived of their livelihood which amounts to deprivation of life and is thus violative of Article 21 of the Constitution of India (para 11).

In our opinion, this case does not apply to the facts of the instant case. The Learned Counsel for the respondents further relies upon the case of P.K. Nayak and others V/s. National Insurance Co. & Others (Orissa) reported in 1992 (3) SLJ 124 of which the ratio is "selection of a person does not give him any right to the post." According to us, this judgement is also not applicable. The applicant has been selected and he has been denied the appointment solely on the particular interpretation of the Rule and it is not on account of any specific reduction of posts. On the other hand, another person was substituted in place of the applicant.

3. The Learned Counsel for the applicant states that at present the post is vacant because the candidate selected namely Miss Sharmala B. Kamble has since expired. For whatever reasons the post is still vacant.

4. In view of the discussion^{above}, we dispose of this O.A. by passing the following order :-

: ORDER :

The letter No. 0403/S/Est-NI dated 16.11.1989 deleting the name of the applicant from the select list of candidate is hereby quashed and set aside. The respondents are directed to take action in terms of letter no. 0403/S/1/Est.NI dated 08.09.1989 which shows the name of the applicant in the select list of candidate for the post of Store Keeper. The respondents are directed to offer the appointment to the applicant in terms of letter Dated 08.09.1989 within a period of two months from the date of communication of the order. There will be no order as to costs.


(M. R. KOLHATKAR)

MEMBER (A).


(B. S. HEGDE)

MEMBER (J).