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(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 142/92

Transfer Application No: .

DATE OF DECISION: 13/03/1995

G. G. Ladikar

Petitioner

Shri. S.H. Iyer

Advocate for the Petitioners

Versus

Union of India & Ors.

-----Respondent

Shri. R.P. Jarda

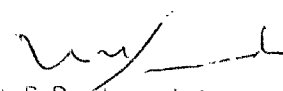
Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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 ?
 NO


(M.S.Deshpande)
Vice-chairman.

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A. 142/92

G. G. Ladikar

.. Applicant

Vs.

Union of India & Ors.

.. Respondents

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, Vice Chairman
2. Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearances

1. Shri. S.H. Iyer, counsel
for the applicant

2. Shri.R. P. Darda, Counsel
for respondents.

ORAL JUDGMENT

DATED : 13/03/1995

(Per Shri.Justice M.S.Deshpande, V.C)

By this application, the applicant challenges the omission to appoint him from Class IV to Class III post of Lower Division Clerk and the appointment of 4 persons who are junior to him in service.

2. The applicant was employed as Packer in class IV service. He passed the departmental examination held on 9th/10th July 1983 on 24th October 1983. His name figured at Sl. No. 9 in the result published. 4 persons who were junior to him were placed at Sl.No. 1 to 4 in the list and they have been added in the O.A as respondents No. 4 to 7. According to the applicant, the selection process was not properly followed and what was done was while holding departmental examination ^{it} which came to be equated with departmental competitive examination and ^{the respondents} adopted the process of selection by ignoring his seniority.

3. Our attention was drawn to the Recruitment rules published in the gazette of India on 4.5.1974 wherein for the post of L.D.C the method of recruitment was 90% by direct recruitment and 10% by promotion based on the departmental examination confined to Class-IV employee who have passed Matric examination or its equivalent examination and have rendered five years service in that grade. A class III D.P.C was to be composed for making appointments and the method of selection to Class-III showed that promotional post was to be a selection post. The new

recruitment rules of 1989 came into force after respondent No. 7 came to be appointed on 5.4.1989 and there is no dispute before us that the rules in force were 1974 Rules to which we have referred above. Shri. Iyer, learned counsel for the applicant urged that there was a difference in the language employed in the rules in respect of the posts of Upper Division Clerk which were to be followed for non-selection posts and that the method of recruitment was 75% by seniority-cum-fitness, 20% on the basis of competitive examination limited to departmental L.D.Cs, 5% by transfer of Stenographer Gr. II failing which promotion on the basis of seniority-cum-fitness. For promotion, competitive examination was to be held though the post was to be a non-selection post. The learned counsel for the applicant urged that upon comparison of the language, it would be apparent that for promotion from the post of Class IV to the post of L.D.C, a competitive examination was not contemplated and what was to be held was merely a qualifying examination and when this is so, the qualifying examination cannot be used for the purpose of assessing merit and if the applicant were to have qualified at that examination, he should have been appointed by virtue of his seniority, to the post of Class III (L.D.C). We find the difference in the language employed for the purpose of recruitment to the post of U.D.C and L.D.C to be entirely immaterial and we shall have to go only by the criteria mentioned for the post of L.D.Cs. Once the post is marked as a selection post, seniority cannot be the sole basis for ascertainment of suitability and comparative merit has to be taken into consideration for granting promotion. Merely because the rules referred to a departmental examination, it would not follow that it was to be only a qualifying examination and the marks obtained at that examination would be without significance. Once the post is designated as a selection post, the number of marks obtained and the ranking at the examination will be material for considering the merit. We find that the respondents No. 4 to 7 though juniors to the applicant stood higher in the ranking because they secured more marks than the applicant and the authorities were fully justified in considering the marks obtained by the candidates at the departmental examination as a measure of their merit.

4. The next contention raised by the applicant was that the vacancies were not filled by convening Class III D.P.C as stated in Column 13. This point was not raised in the pleadings and though we repeatedly asked the learned counsel

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for the applicant whether such ^{an} averment has been made in the application, he was not in a position to point-out to any material which can even be remotely construed as indicating this fact. In the absence of the pleadings therefore, we see no merit in the contention that the Class-III UPC has not been held. It was contended that the appointment of respondent No. 7 as late as on 5.4.89 when the result of the departmental examination was declared on 24.10.1983, would be contrary to the Rules. Our attention was drawn to para 3 of the Office Memorandum dated 8.2.82 issued by Government of India, Ministry of Home Affairs but that memorandum only mentions that normally recruitment whether from the open market or through a departmental competitive examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is a likelihood of vacancies arising in future; in case, names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates awaiting appointment. It also mentions that there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a Departmental Competitive Examination. The learned counsel for the applicant urged that since the appointments were made in the year 1983 of the first three persons on the panel, the appointment of Respondent No. 7, who stood 4th in the panel on 5.4.89 would show that he was not absorbed in the declared vacancy. In the petition, there is no mention whether the Respondent No. 4 was appointed in a declared vacancy or not and that would be a question of fact and unless those facts are pleaded, it will not be open for the learned counsel for the applicant to base his argument on this position. It was urged that there is no answer from the respondent to the material pleading. We were taken through the original petition as well as the reply filed by the respondents and we find that there was no need for the respondents to contravert ^a the statement which ^{was} have never been made in the original petition.

5. In the result, we see no merit in the application. It is dismissed with no orders as to costs.

M.R. Kulhatkar
(M.R. KULHATKAR)
MEMBER (A)

M.S. Deshpande
(M.S. DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

REVIEW PETITION NO.75/95.

IN O.A. NO.142/92.

G.G.Ladikar

... Applicant

V/s.

1. Union of India, through
The Secretary to the
Govt. of India,
Ministry of Health & Family
Welfare, Department of Health (CGHS),
Nirman Bhavan,
NEW DELHI - 110 011.
2. The Director General of Health Services,
Central Government Health Scheme,
Nirman Bhavan,
NEW DELHI - 110 011.
3. The Additional Director,
Central Government Health Scheme,
Qtr. No.1 Type III, Double Storey,
Central Government Colony,
Civil Lines,
Nagpur - 440 001.
4. Shri B.S.Karnaka, L.D.C. (Office of the
5. Shri T.N.Paunikar, L.D.C. (Additional Director
6. Shri S.B.Chaple, L.D.C. (C.G.H.S., Civil Lines,
7. Shri G.U.Warudkar, L.D.C. (Nagpur. ... Respondents.

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman.

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

Tribunal's

Order on Review Petition by

No.75/95 by circulation

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

Date 25-8-95

This is a review petition against our judgement dated 13/3/95 in which we had dismissed the OA of the applicant who had challenged the omission to appoint him from class-IV to class-III post of IDC in CGHS, Nagpur.

The Review Petitioner has also filed an MP-530/95 for condonation of delay. The main ground in the MP is that after receipt of the judgement, the vacation intervened and, therefore, there has been a delay of about a month. Delay condoned. MP-530/95 disposed of.

In the RP, the review petitioner has sought to traverse the same arguments which we had fully dealt

with in our judgement dated 13/3/95. The review petitioner has not made any cogent grounds relatable to rules under order-47 of CPC justifying review of our judgement dated 13/3/95. We, therefore, see no merit in the review petition which is accordingly dismissed without any orders as to cost.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

M.S. Deshpande

(M.S. DESHPANDE)
VICE CHAIRMAN

abp.