

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 636/92

Date of Decision: 8-2-99

B.T.Mhatre & Another.

.. Applicant

Shri D.V.Gangal.

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(i) To be referred to the Reporter or not ?

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

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.636/92

pronounced this the 8th day of FEBRUARY, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Bawej, Member(A).

1. B.T.Mhatre,
Nagaon Post,
Taluka Uran,
Dist. Raigad.

2. K.B.Patil,
Mulekhand Pada,
Taluka Uran,
Dist. Raigad.

(By Advocate Shri D.V.Gangal)

... Applicant.

V/s.

1. The Union of India,
through The Flag Officer
Commanding-in-Chief,
Western Naval Command,
Fort, Bombay-400 023.

2. Logistic Officer,
INS Tuniv, C/o. Fleet Mail Office,
Bombay - 400 001.
(By Advocate Shri V.S.Masurkar).

... Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsels appearing on both sides.

2. The applicants' case is that in response to a requisition given by the second respondent, the names of applicants and other candidates were sponsored by the Employment Exchange for the post of Fireman, then the applicants and the other candidates were interviewed on 18th and 19th February, 1991. All

...2.

the original certificates were handed over by the applicants at the time of the interview. The applicants also came to know that they have been selected by the Committee. The applicants were waiting for getting appointment orders. They had an opportunity to attend the interview for other posts in O.N.G.C. but they could not go for the interview since they had produced all the original documents with the second respondent. Subsequently, the applicants received a letter dt. 24.10.1991 from the respondents stating that they are not selected since the posts are meant for SC/ST candidates. The applicants are not accepting the reasoning given by the respondents for not appointing them. Therefore, they have approached this Tribunal praying for a direction to the respondents to appoint them in the post of Fireman or alternatively as Labourers till vacancy of Fireman arises and for other consequential benefits.

3. In the reply, the respondents have stated that the applicants who are selected provisionally and original documents were taken for verification. The list was sent to the first respondent. He has given approval for appointment of only one candidate. The other posts were not filled up since they were meant for SC/ST candidates. Hence, no appointment orders were issued to the applicants. Necessary requisition has been sent to the Employment Exchange to sponsor only SC/ST candidates for the remaining posts. The applicants had been intimated about this position and they were even told to collect their original documents. That the applicants are not entitled to the reliefs prayed for.

4. The learned counsel for the applicants argued that the applicants are entitled to be appointed as Fireman as per the panel prepared by the Committee. The respondents counsel contended that since the posts were meant for SC/ST candidates, they could not be appointed.

5. The fact that the Employment Exchange had sponsored the names of the



applicants and that applicants came to be selected by the committee is not in dispute. According to the respondents it was only a provisional selection by the Committee subject to the approval of the Head of the Department viz. Flag Officer Commanding-in-Chief, Western Naval Command, Bombay. The learned counsel for the respondents has placed before us the concerned official files. The second Respondent has sent a letter dt. 22.7.1991 mentioning the names of candidates including the two applicants as selected candidates and in the proposal he has requested the Flag Officer Commanding-in-Chief to approve the panel for issuing appointment orders.

Then we have the letter from the Western Naval Headquarters which is dt. 16.8.1991. It is stated that only the name of the candidate at Sl.No.1 Shri Bhoir Naresh Balia has been approved and appointment order may be issued to him. Then it is stated that the remaining three posts are meant for SC/ST candidates (2 SC and 1 ST) and hence necessary requisition be sent to the Employment Exchange for filling those three posts.

6. From the records produced by the learned counsel for the respondents we find that there were in all 16 posts of Fireman, 12 posts have been filled up by the earlier panel, the remaining vacancies were only 4. No doubt, four candidates were selected by the committee including the names of the two applicants, but when the names were sent to the Competent Authority, he approved the name of the first candidate and further observed that the remaining three posts will have to be filled by SC/ST candidates and directed the second respondent to issue fresh requisition to Employment Exchange for filling up of the two SC posts and one ST post.

In this view of the matter, if the applicants are not appointed since the posts are meant for the SC/ST candidates, the respondents have not committed any illegality.

Therefore, in the circumstances of the case, we hold that non-appointment of applicants due to the fact that they are general candidates but the remaining three posts were reserved posts viz. two posts for SC and one post for ST candidates respectively and hence the applicants could not be appointed.

7. Then it was argued that the applicants had received interview letters from ONGC and they could not go there since their original documents were held up in the office of the second respondent. There is nothing to show that the applicants made a written request to the second respondent to return all the original documents to enable them to attend the interview in the office of the ONGC. According to the respondents they have informed the applicants orally or through their relative that they have not been selected and they can take back their original documents. Even otherwise, the applicants could have still attended the interview in ONGC and they could have told them that they have produced the original documents in the office of the second respondent and they will produce it at a later stage. We have come across many cases where the Competent Authority may grant time or extend time for production of original documents. The applicants made no attempt to attend the interview at ONGC and to make a request for grant of time for production of original documents. They made no written request to the second respondent for return of the original document.

Even otherwise, even granting for a moment that there was some negligence on the part of the concerned officer or clerk in not returning the original papers to the applicants, it will not give them right for getting appointed by the second respondent if the posts are meant for SC/ST candidates. It is open to the applicants to sue the concerned official or Government for damages for negligence. They can move the Government to take Disciplinary Action against the concerned officers for negligence for not returning original papers to applicants.



8. Another submission at the Bar is that even if the then three posts were meant for SC/ST candidates as and when future vacancies take place the applicants should be appointed since the panel once prepared is a permanent panel and it has no time limit and it has to be operated till the vacancies are filled up. Reliance was placed for this argument on a Government Circular dt. 8.2.1982 which is at page 40 of the paper book.

In our view, the 1982 Circular, no doubt, provides that the panel has to be exhausted till all the notified vacancies are filled up. It is not a case of a life-time panel or an indefinite panel which applies to all future vacancies. The object of the panel is that if the panel is prepared for certain notified vacancies, then till those vacancies are filled up the panel should be operated. But suppose some posts are abolished or the administration decides not to fill up certain posts, then a Court or Tribunal cannot direct the Government to exhaust the panel and fill up those posts. As has been pointed out by the Supreme Court in 1995 (1) SLJ SC 9 (U.P. Bhumi Sudhar Nigam Ltd. V/s. Shiv Narain Gupta), a person in the select list has no indefeasible right that he should be appointed, there is no such vested right in a candidate whose name finds a place in the select list to get an order of appointment.

In the present case, out of 16 vacancies, 12 vacancies have been filled up. Against four vacancies, the names of the applicants were sponsored but it is now transpired that out of four vacancies there is only one general vacancy, two vacancies are reserved for SC category and one vacancy is reserved for ST category. We have already seen that one general candidate who was at Sl.No.1 has already been appointed. As per the declared vacancies, there are no remaining vacancies for general candidates. Hence no direction can be given to the Government to appoint the applicants against SC/ST posts. Therefore, the panel cannot be operated to accommodate the applicants.

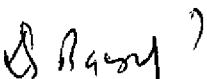


Even otherwise, the above argument of the learned counsel for the applicants on the basis of the 1982 Circular has no merit when the panel has not been approved by the appointing authority. The selection committee has sent the names of four candidates, but the Competent Authority approved only the first candidate and directed issue of appointment order only to him. Then the appointing authority has further mentioned in the letter which is in the file produced by the learned counsel for the respondents that the second respondent should take action to send a requisition to the Employment Exchange to fill up the two SC posts and one ST post. Since the panel so far as the applicants are concerned is not approved by the competent authority, it is not a valid panel and hence the applicants have no right to insist for its implementation.

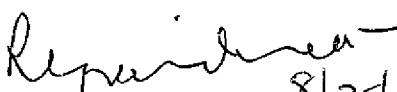
Hence, taking any view of the matter, the applicants have no legal right to compell the respondents to appoint them to these particular posts when they are reserved posts for SC/ST candidates.

In view of the above discussion, we hold that the two applicants in this case are not entitled to any other reliefs.

9. In the result, the O.A. fails and is accordingly dismissed. The applicants have filed M.P. 612/95 for condonation of delay in filing the Rejoinder, the M.P. is allowed and the Rejoinder filed by the applicants be taken on record.


(D.S. BAWEJA)
MEMBER(A)

B.


8/21/99
(R.G. VAIDYANATHA)
VICE-CHAIRMAN