

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, GULESTAN BUILDING NO. 6
PRESCOT ROAD, FORT, MUMBAI-400001.

O.A. 375/93

Dated this 19th day of November 1996.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A)

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By advocate Shri P.M. Pradhan)

... APPLICANTS

Ph

versus

- 1) Union of India
The Secretary
Ministry of Defence
South Block
New Delhi 110 001.
- 2) Admiral Superintendent
Naval Dockyard
(Recruitment Section)
Mumbai 400 023.
- 3) The Fire Officer
Office of Naval Superintendent
Naval Dockyard
Mumbai 400 023.

(By advocate Shri V.S.
Masurkar, Central
Govt. Standing Counsel)

... RESPONDENTS

O R D E R

[Per: B.S. Hegde, Member (J)]

This O.A. is filed not against any impugned order passed by the respondents but has filed the same in respect of recruitment to the post of Fireman Grade II in the office of the Naval Dockyard, Bombay. The contention of the applicants is that they are selected after passing the final trade test and interview and the Respondents have directed the applicants to report to the Fire Officer, Naval Dockyard in connection with appointment of Fireman Grade II on 9th July, 1991 vide their letter dated 27th June 1991. Therefore, the applicants are seeking mandamus to the Respondents to appoint the applicants to the post of Fireman Grade II.

The applicants have filed writ petition before the High Court being W.P. No. 211/93. The Respondents have taken a plea that the High Court has no jurisdiction inasmuch as the petitioners are seeking appointment to the post of Fireman Grade II, which is civil post and the issue raised in the petition can be decided only by Central Administrative Tribunal under the Administrative Tribunals Act. Accordingly, the writ petition was transferred to the Tribunal and has been registered as T.A. No. 1/93. The said T.A. No. 1 was heard on 11-10-1993 by the Bench and the same was dismissed. Again, the applicants have filed the present application seeking identical relief etc. Regarding the factual averment, there is no dispute that the applicants have passed the trade test and were selected. It is made out that the selection made by the Board could not be given effect due to the ban on recruitment at the relevant time.

2. The Respondents in their reply have stated that the then ASD approved recruitment of Fireman Grade II being an essential service and relaxation was granted to only SC/ST candidates and on compassionate appointment and the vacancies arising out of death/retirement/promotion etc. Accordingly, requisition was raised on the local Employment Exchange notifying 27 vacancies with a request to sponsor suitable candidates and at the same time it was intimated to the 'surplus deficiency cell' for sponsoring suitable candidates as per special Army Order

SAO 8/S/76. The local Employment Exchange sponsored 181 candidates and accordingly they were called and directed to report to the Board of Officers appointed for Trade Test of Fire Brigade personnel, Commander, The Board conducted trade/interview and sent a list of candidates qualified. Thereafter, the Board proceedings were put up for approval of ASD. The Board proceedings were not approved by ASD due to the existing ban and only agreed to recruit two SC/ST candidates to fill up backlog vacancies. They have further contended that the direction given by the Fire Officer vide dated 27-6-1991 to contact the 'undersigned' for appointment is not the competent authority to appoint the Fireman Grade II officials and he has no locus standi to issue such letters. All personnel matters from recruitment to retirement are dealt by the Personnel Department and such letter issued by the Fire Officer is non-est in the eye of law. In so far as the filling up of SC/ST candidates, as per the Government directives, all backlog vacancies are required to be filled as special recruitment drive was in force. Accordingly, vacancies were identified for SC/ST and a requisition was placed on the Employment Exchange. Since there was recruitment ban, the general candidates, though they were selected, could not be appointed. Though the Board recommended their names, the higher authorities did not approve the list. Even before the High Court, the Respondents have taken a stand that appointments to the post of Fireman Grade II are made by the Personnel Department

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and not by the Fire Officer and therefore the letter written by the Fire Officer has no legal validity since he has no legal authority to issue letter concerning appointment. Since the Respondents have intimated the Employment Exchange stating that the applicants are not selected, the reasons for their deletion is not known to them.

3. Heard the arguments of the counsel for both the parties - Shri P.M. Pradhan for the applicants and Shri V.S. Masurkar for the Respondents. The short question for consideration is whether the applicants have right to be appointed by virtue of their selection in the facts and circumstances of the case. The Supreme Court in Shankarsan Dash v/s Union of India 1991 SCC (L&S) 800 has held that "the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons." In the light of the above, ^{in my view,} the ratio laid down in the aforesaid case ~~is~~ ^{itself} squarely applies to this case. From the materials

produced before the Court, it was fully established that there has not been any arbitrariness whatsoever on the part of the respondents in not appointing the applicants in question. A decision in this regard has been taken by ASD, Personnel Department and the appointment order requires to be issued by the Personnel Department, not by any one else. Due to the ban on recruitment, they could not approve the candidates approved by the Board, thereby the applicants will not get any indefeasible right to be appointed to the post of Fireman Grade II. As per the policy taken by the Government, only two SC/ST candidates were taken to fill up the backlog vacancies and none is appointed to the post of Fireman Grade II. In the aforesaid decision, it is also observed that adoption of different policy with respect to filling up of the reserved vacancies is not arbitrary in view of the special instructions mentioned in the respondents' reply.

4. Since there is no appointment letter issued by the Respondents to any of the applicants and during the course of hearing we have been told that out of 17 candidates, 3 were selected and appointed to the aforesaid post on 1-8-1995 on re-selection notified by the Respondents. In that process of recruitment, all the candidates have appeared and except 3, all others were declared unfit; therefore, they cannot have the grievance that they were not appointed pursuant to the earlier selection. For the sake of repetition, *that*

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no appointment letter was issued to them; therefore, the question of their acquiring right to be appointed does not arise.

5. In the result, we do not see any merit in the O.A. and the same is dismissed with no order as to costs.



(P.P. Srivastava)
Member (A)



(B.S. Hegde)
Member (J)

ssp.