

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1094/94

Pronounced this the 17th day of JULY 2000.

Coram: Hon'ble Shri A.V.Haridasan, Vice Chairman,
Hon'ble Shri Govindan S.Tampi, Member (A).

1. S.M.Patil, President,
All India Association of Employees
of the Department of Stores and
Purchase of Atomic Energy(Bombay)
Region, CSU, BARC, Bombay.
2. O.P.Giri, General Secretary,
All India Association of Employees
of the Department of Stores and
Purchase of Atomic Energy(Bombay)
Region, CSU, BARC, Bombay.
3. R.J.Jumrani,Secretary,
All India Association of Employees
of the Department of Stores and
Purchase of Atomic Energy(Bombay)
Region, CSU, BARC, Bombay.Applicants

(By Advocate Shri K.Sivaramkrishnan

vs.

1. Union of India, through the
Secretary & Chairman, Dept. of
Atomic Energy, Chhatrapati Shivaji Maharaj Marg,
Bombay 400 003.
2. Director(OPS) , Department of
Atomic Energy, Vikram Sarabhai
Bhavan, 1st floor, Anushakti
Nagar, Bombay 400 094. Respondents

(By Advocates Mr.R.R.Shetty & R.K.Shetty)

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN: The applicants 1 to 3
are President, General Secretary and Secretary respectively of
All India Association of Employees of the Department of Stores
and Purchase of Atomic Energy, Bombay Region. They initially filed
the Original Application for the following reliefs:

(a) for a permanent order and direction directing
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the Respondents viz. DAE not to hold any departmental examination pending decision of the Expert Committee appointed on or about 31.3.1994 pursuant to the directives issued by the Madras Bench of this Tribunal in Original Application No.1682 of 1992 and others:

(b) for a declaration that deputationists who had gone on deputation to NPC from the DAE are not entitled to come back to the DAE and get any posts except on the basis of their seniority in the list published on 31.3.1993 which was the relevant seniority list at the time when they had gone on deputation to NPC.

(c) pending the hearing and final disposal the Respondents be ordered and directed by an injunction of this Honourable Court from holding the departmental examination as stated in circular No. DPS/2/1(66)93-Adm/4309 dated 9.8.94 Exhibit G herein;

(d) for an order and injunction pending the hearing and final disposal of this application restraining the Respondents viz. DAE from permitting the deputationists to the NPC to appear for the departmental examination proposed to be conducted on 12th November,1994;

(e) for such further order and direction this Honourable Court may deem fit and proper:"

Subsequently, by an amendment, the prayers at b1 and b2 were also incorporated. They are as follows:

(b1) "Order and direct the Respondents to conduct a fresh examination after holding Refresher courses as per the usual practice.

(b2) pending the holding of such examination the Result of the examination scheduled on 12th November, 1994 be ordered and directed to be withheld:"

2. Leaving out the details which are not essential for a proper understanding of the issue involved in this case, the facts can be stated as follows.

3. In the year 1987 , the Government of India established the Nuclear Power Corporation of India Limited under the Department

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of Atomic Energy and all power projects of the Department of Atomic Energy were brought under the said Corporation. The existing staff of the Purchase and Stores cadre working in the Directorate of Purchase and Stores of the Department of Atomic Energy were drafted to be on deputation under the Nuclear Power Corporation of India(NPCIL for short) pending their final absorption on acceptance of option within 12 months at that time. It was stipulated that the process of absorption of deputationists would be completed within a period of 12 months, but the process of absorption came into being only by issuance of memorandum dated 26.5.1994 by the first respondent laying down terms and conditions of absorption of deputationists from the Department of Atomic Energy to NPCIL. As per the said notification(Annexure B), the deputationists are to exercise option before 26th September,1994. The applicants are the office bearers of the All India Association of Employees of the Department of Stores and Purchase of Atomic Energy, Bombay Region. They represent the employees of the Department of Stores and Purchase of Atomic Energy who were not on deputation to the NPCIL. Their grievance is that while the deputationists to NPCIL are given promotion on ad hoc basis in the Corporation, they are also simultaneously being considered for promotion in the Department of Stores and Purchase of Atomic Energy with the result that while the deputationists are getting two channel of promotion, those who are retained in the department are considered only in the Department for promotion. This, according to the applicants, amounts to hostile discrimination. Persons who are junior to the members of the applicant-Association holding the posts of Stores Clerk, Junior Store Keeper and Store

Keeper are occupying higher position in the NPCIL and the applicants are aggrieved by that. In an application filed by the DPS Stores Staff Association, Southern Region before the Central Administrative Tribunal, Madras Bench inter alia claiming a declaration that the Stores Clerk, Junior Stores Clerk or Stores Keeper working in the Department of Stores of the Department of Atomic Energy are technical workmen and are entitled to the benefit of time bound promotion and other benefits, the Tribunal vide its order dated 25.1.1994 directed the respondents to appoint an Expert Committee and in obedience to the above direction, the respondents appointed a Committee, the report of which was still awaited. While so, the first respondent issued a circular dated 9th August 1994(Annexure G) proposing to conduct a departmental examination for promotion to the posts of Assistant Purchase Officer and Assistant Stores Officer. The applicants felt that the proposal to hold an examination notified by the circular dated 9.8.94 was an attempt to circumvent the directions contained in the judgment of the Madras Bench of the Tribunal as holding of such an examination would be a futile exercise while the Report of the Expert Committee was awaited. The method of holding the examination proposed in the impugned notification (Annexure G) was also defective and irregular, according to the applicants, as the practice of holding a refresher course before the departmental promotion examination for a minimum period of one month was not being observed and as there was no provision for revaluation etc. The applicants were further aggrieved because those who were deputationists to NPCIL were also being allowed to participate in the examination. Therefore the applicants have filed this application for the reliefs referred to in para 1 supra.

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4. The respondents contend that the application without impleading the employees of the DPS who are on deputation to NPCIL is not maintainable, that the deputationists who hold lien on the posts in DPS cannot be denied opportunity to return, or placement in the seniority list, that they are also entitled to participate in the promotional examination till they are regularly absorbed in NPCIL, that there is no merit in the contention that the examination is being held irregularly, that holding of refresher course before the examination has been dispensed with since 1991 finding that it did not serve any purpose and was found to be not viable, that question and answer session which is more advantageous has been enforced and that as there is no merit in the application, the same may be dismissed.

5. We have perused all the materials on record and heard the arguments of the learned counsel on either side.

6. The argument of the learned counsel of the applicant that the erstwhile employees of the Purchase and Stores Department who are on deputation to the NPCIL cannot be permitted to appear in the Departmental Promotion Examination, has absolutely no merit or basis. So long as they remain on deputation, they retain their lien in their respective posts in the Department of Purchase and Stores and therefore the respondents cannot keep them out of the channel of promotion in the Department. Those who are placed in the panel for promotion would be given notional promotion and would be allowed to continue on deputation. This does not in any way impair the promotional prospects of the members of the applicant-Association and does not in any way violate the provisions of Article 14 and 16 of the Constitution. We do not therefore find any legitimate grievance of the

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applicants when the deputationists who hold a lien on the post, are also allowed to participate in the Departmental Promotion Examination. If such an opportunity is not given to them, that would offend the provisions of Articles 14 and 16 of the Constitution. The prayer for a declaration that the individuals who had gone on deputation to NPC from the DAE are not entitled to come back to the DAE and get any posts except on the basis of their seniority in the list published on 31.3.1993, cannot be granted because they continue to be employees of DPS. Further without bringing those deputationists in the array of parties, the applicant cannot claim a relief which would be detrimental and prejudicial to their rights. The applicants prayer for a permanent order directing the respondents not to hold any departmental examination pending decision of the Expert Committee appointed on or about 31.3.1994 pursuant to the directives issued by the Madras Bench of the Tribunal in O.A.No.1682/1992 also cannot be granted because when there is a need to fill up the vacancies existing, the Department cannot wait till the Committee appointed to consider the grievance of a set of employees files its report and finally a decision is taken on the report. The contention of the applicants that without conducting a refresher course for a minimum period of one month, the examination cannot be held also is not tenable because the norms for holding the examination are to be fixed by the competent authority in the Department and the Government has in its wisdom decided to hold a question and answer session before the Departmental Promotion Examination, which according to them, is more effective. We do

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not find any justifiable ground to interfere in that. Learned counsel of the applicant lastly argued that while according to the existing norms, Junior Store Keepers are not entitled to be considered for promotion as Assistant Stores Officer, the respondents have permitted the Assistant Store Keepers with 8 years service also to participate in the examination. Learned counsel of the respondents invited our attention to a statement filed in reply to a Miscellaneous Application wherein the respondents have clarified that the norms have been altered and as per latest norms, the Store Keepers with 5 years service and Junior Store Keepers with 8 years service are eligible to be called for the selection. In view of change in the norms, there is no basis for the contention of the applicants that allowing the Junior Store Keepers with 8 years service to participate in the examination is against the recruitment rules. Further such a case was not put forth in the Original Application and therefore, cannot be heard now.

7. In the conspectus of facts and circumstances, we do not find any merit in the application which is dismissed, leaving the parties to bear their own costs.

(Govindan S.Tampi)
Member (A)

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(A.V.Haridasan)
Vice Chairman