

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.352/1995.

Wednesday, this the 10th day of January, 2000.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

M.Mallikarjunappa,
Checker, T.No.7581,
Traffic Branch,
Central Ordnance Depot,
Dehu Road,
Pune - 412 101.
(By Advocate Shri A.Jadhav)

... Applicant.

Vs.

1. Union of India through
Secretary to Govt. of India,
Ministry of Defence,
New Delhi - 110 001.
2. Director General of
Ordnance Services,
MGO's Branch, Army Hqs.,
New Delhi - 110 001.
3. The Commandant,
Central Ordnance Depot,
Dehu Road,
Pune - 412101.
4. Officer-in-Charge,
Army Ordnance Corps Records,
Trimulgherry Post,
Secunderabad - 500 015.
5. Shri Vikram,
Store-Keeper,
Central Ordnance Depot,
Agra Cantt.
6. Shri Ravindra R.Samudre,
Store-Keeper,
Central Ordnance Deptt.,
Dehu Road,
Pune - 412 101.

(By Advocate Shri R.K.Shetty)

... Respondents.

: O R D E R (ORAL) :

{Per Shri B.N.Bahadur, Member (A)}

This is an application made by Shri M.Mallikarjunappa seeking the relief that the applicant be declared as deemed to have been appointed to the post of Store Keeper w.e.f. 16.3.1994

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with all consequential benefits. The case of the Applicant is that the Respondents had notified the selection process for direct recruitment to the post of Store Keeper, at which Group 'D' employees like him were also entitled to appear, he being fully qualified. At the selection process, was declared successful and was asked to undergo medical examination. He was not appointed for a few years, when again, in 1989 he was asked to undergo medical examination. However, he has not been appointed till date and the selection process has been abandoned.

2. At a subsequent selection process undertaken only to fill up the backlog for candidates belonging to the SCs/STs, the Applicant could have been appointed ^{Ans} having been selected in an earlier panel. It is with this grievance that the applicant comes up before the Tribunal.

3. The Respondents have filed written statement, where the main defence taken ~~out~~ is that the selection process referred to, which was indeed undertaken in the year 1985, had been abandoned as there was a ban operating and no relaxation was allowed by the Union Government to fill up posts. While this is the main defence on the merits of the case taken by the Respondents, they also take the point regarding limitation, delay and laches stating that full knowledge had been provided of these facts to the applicant vide letter dt. 15.6.1990 (copy of which is available at Ex. - 'J' of the paper book at page 25). The fact that the applicant had waited for four years to even represent the matter or that he waited for five years before approaching this Tribunal clearly shows according to Respondents that the case is badly hit by limitation, delay and laches.

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4. Learned Counsel for the Applicant made the point that the applicant having been selected and placed in a panel, certainly could have been appointed being from SC himself, when the process of filling up of vacancies against backlog was undertaken. In this argument, Learned Counsel seeks support from the decision in the matter of Premprakash Vs. Union of India & Ors. (AIR 1984 SC 1831). Learned Counsel also argued that it was true that he could have appeared for the 10% selection, but did not do so. He took the defence that he had no reason to do so when he was properly selected at an earlier selection process. It was also argued that there was no ban on Recruitment when the vacancy was notified and no effort was made by the Respondents to secure relaxation etc.

5. Learned Counsel Shri R.R.Shetty for Shri R.K.Shetty argued the case for the Respondents, and stated that, in the first place, they had notified vacancy as they were hopeful to secure relaxation. Indeed this matter was considered, but Government did not provide the relaxation as can be seen clearly from para 2 of the document (annexed at Ex. 'R-4' page 53 of the paper book). Learned Counsel, also took support from the decision of the Hon'ble Supreme Court in the matter of M.Roy Chaudhury Vs. Union of India (1999 SCC (L&S) 797). It was argued on this basis that no right accrues to the applicant.

6. Shri Shetty also urged that the matter deserves to be dismissed on the point limitation alone as mentioned above in para 3.

7. In the first place, we find that while it is true that in the matter of Premprakash it has been held that panels once declared ~~may~~ ^{should} be used for subsequent selections upto the point of

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availability of candidates thereon. It has to be seen here that the selection process that was subsequently undertaken was a special selection process taken with a view to inducting persons from the reserved categories into the stream of government in order to fulfill the backlog. We do find weight in the argument of the Respondents to the effect that in such a case, it was not envisaged that persons from reserved categories (SCs/STs) who were already in service could be recruited by provision of promotion. The whole aim of the exercise was one of induction of fresh candidates from these groups from the market. We cannot agree with the argument of the Applicant that he acquired a right in these circumstances. The stand taken by the Respondents, therefore, cannot be termed as arbitrary; it is seen to be reasonable.

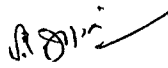
8. In regard to the point taken by the Learned Counsel for Applicant regarding the ban on recruitment, it is seen that the Respondents had indeed started the selection process in the hope of securing relaxation. It is true that some kind of inefficiency is evident on the part of Respondents in the entire selection process. The matter seems to have dragged on for few years. The manner in which they lingered on and the hope created by sending the candidate for medical examination etc. is something which can be termed as unfortunate. We cannot, however, hold that because of such inefficiency, the right to be appointed can be claimed by the applicant, through judicial determination. We have seen the letter dt. 11.9.1984; we find that the ban was extended after consideration at level of Government and it is not as if that some local authority has taken the decision.




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9. We have also carefully considered the matter relating to limitation. It is obvious from the facts of the case that the application is also hit by limitation. Since the case fails on merits also, we are not going into details in regard to limitation, delay and laches.

10. In the consequence, this application is hereby dismissed with no orders as to costs.


(S.L.JAIN)
MEMBER (J)

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(B.N.BAHADUR)
MEMBER (A)