

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 744 of 1995.

Dated this Wednesday the 12th day of September, 2001.

Prashant Krishna Salvi, Applicant.

Shri R. C. Kotiankar, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri B. Ranganathan for Advocate for
Shri J. P. Deodhar, Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

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

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ? No

(iii) Library. No

(B. N. BAHADUR)
MEMBER (A).

OS*

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Prashant Krishna Salvi,
Worli, B.D.D. Chawl,
46, Room No. 26,
Dr. G. M. Bhosle Marg,
Bombay - 400 018.

Applicant.

(By Advocate Shri R. C. Kotiankar)

VERSUS

1. Union of India through
Government of India,
Department of Atomic Energy.
2. Dr. R. Chidambaram,
Secretary to the Government
of India, Dept. of Atomic Energy.
3. Additional Secretary,
Department of Atomic Energy.

Respondent No. 1, 2 and 3
Anushakti-Bhuvan, Chhatrapati Shivaji
Maharaj Marg, Bombay - 400 039.

4. Shri C. G. Sukumaran,
Head, Personnel Division,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Bombay - 400 085.
5. Shri Alvares Marvin Ivor,
Lower Division Clerk,
B.A.R.C.
6. Kum. Sujita Prabhakaran,
Lower Division Clerk, B.A.R.C.

B.N.B.

Respondent No. 5 and 6
Recruitment - IV Section,
Central Complex, B.A.R.C.,
Trombay, Bombay - 400 085.

Respondents.

(By Advocate - Shri B. Ranganathan
for Shri J. P. Deodhar).

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, has come up to the Tribunal seeking the relief, in substance, through a direction to Respondents that they are required to fill up the posts of Lower Division Clerks in the Department of Atomic Energy (D.A.E. for short), and its constituent units from within the list of candidates sponsored by the Employment Exchanges only. On this principle, he wants it to be held by the Tribunal that written examination, typing tests, etc. for the post of L.D.Cs. originally scheduled in January, 1994, be reconducted. Consequential reliefs are sought, as detailed in para 8 of the O.A.

The facts of the case, in brief, are that the Applicant who was registered in the Employment Exchange at Mumbai, was asked to appear at a selection process for the post of L.D.C. by the Bhabha Atomic Research Centre (B.A.R.C.) in Mumbai. Dates of 15th to 17th January, 1994 for written examination, typing test, etc. were indicated. However, a few days before these dates, he received a circular to the effect that the examination process,

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had been postponed, and that a fresh communication for new dates would be indicated. Nothing was heard further. However, the Applicant states that the Respondents later approached the Staff Selection Commission (S.S.C.) and an advertisement in Employment News was made, as detailed out by him in para 4 (i) at page 6 of the O.A. Certain other grounds are also taken in the O.A. which was argued on his behalf by his Learned Counsel subsequently before us. With such a grievance, the Applicant is before us seeking the relief as mentioned above.

3. A lengthy affidavit has been filed in reply, on behalf of Respondent Nos. 1 to 4, where the entire details of the selection process have been described at great length, and parawise replies given. Further, it would only be necessary to cull out the factual position from the Written Statement, especially the reasons for the change in the mode of recruitment of L.D.Cs. undertaken by the Respondents. It seems from the description that changes in the modality of direct recruitment i.e. Employment Exchange or Open Advertisement or both, went on till in 1990 when D.A.E. issued revised instructions to the effect that any Group 'C' or 'D' recruitment will be made through Employment Exchange if the number of posts is less than 20. If vacancies exceed that number, the selection will be through the process of Open Advertisement PLUS calling of candidates through Employment Exchanges. It was in this context the request was also made to the Employment Exchange for provision of list before 23.04.1993. It is averred that since no list was received by due date, an advertisement was published in Employment News on

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29.05.1993. Subsequently, the Employment Exchange sent a list of names on 14.06.1993. A large number of candidates were thus available from both sources and it was decided to hold a Limited Departmental Examination from 17.01.1994. The reason why changes took place are again described and it is stated in para 11 that "due to various reasons the DAE did not decide the matter immediately." Finally it was decided to refer the matter for recruitment to Subordinate Service Commission, now called Staff Selection Commission (S.S.C. for short) to the extent of 50% of the vacancies in hand. It is then indicated in the Written Statement why this method is justifiable and cannot be questioned.

47. We have considered all the papers in the case and have also heard the Learned Counsel on both sides. The Learned Counsel for the Applicant, Shri R. C. Kotiankar, has submitted written arguments. He was also present throughout the oral arguments to assist us in the matter. The stand taken in arguments on behalf of the Applicants in brief, is as follows :

(a) It is mandatory for a Central Government Department to notify the vacancies in Group 'C' and 'D' posts to local Employment Exchanges and to fill up posts from among candidates sponsored by them only.

(b) Candidates have full locus-standi in the matter and contention of the Respondents in this regard is wrong in view of

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decision of the Madras Bench in the case of S. Durai Arasan V/s. Union of India & Another reported at 1991 (17) ATC 46.

(c) The decision taken for the Recruitment finally was under the pressure of the Union. Examples are given in terms of judgements of various Benches to the effect that D.A.E. is not totally independent in terms of administrative powers and policy decision of Ministry of Personnel are binding on them also. Their powers cannot be absolute.

5. Learned Counsel, Shri Kotiankar, also cited the case law in the matter of Union of India & Others V/s. N. Hargopal & Others and also drew our attention to the O.M. issued by the Ministry of Home Affairs, copy of which are available at page 31 of the Paper Book. It was strenuously reiterated that all appointments in the present case could be only from those candidates who had been sponsored by the Employment Exchange.

6. The Learned Counsel for the Respondents argued his case at some length, and first made the point that a perusal of Section 3(2) of the Employment Exchanges (Compulsory Notification of Vacancy) Act, 1959, vindicates the stand taken by the Respondents, in that, it states that the Act will not apply in relation to vacancies proposed to be filled in through an


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examination held by or on the recommendation of an independent agency such as U.P.S.C. and the like. It was indicated that the words "such as" and the phrase "and the like" vindicates the Respondents stand. The Learned Counsel then went over the facts of the case in detail to indicate how changes in the mode of recruitment were made and why they were necessitated, as indicated in detail in their Written Statement. He denied that the decisions were taken under any Union pressure. On all other counts he depended heavily on the Written Statement.

7. We have carefully seen the sequence of events, as detailed out both by the Applicant and the Respondents. It is explained why the examination had to be postponed. There is no dispute on the basic facts/events as such. The main question by the Applicant is to the justifiability and legality of the change made in a manner that recruitment through Employment Exchange are now not been resorted to ..

8. In the first place, we must comment that it is unfortunate that changes had to be made, as described from time to time, and the matter referred to Government entailing long periods of delay. Such things admittedly do create frustration in the minds of those who have been taken to the stage of being called for written examination/interview, etc. and dates given accordingly (January, 1993 in this case). The point, however, is as to whether this will create a right for the Applicant in a

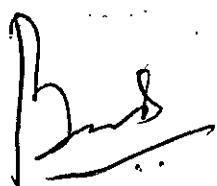
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manner that entitles him for the relief as being sought. In our view, and in settled law, it does not. Merely because there is inefficiency or delay, this would not create a right for reliefs, as asked for; through judicial determination.

9. Now in regard to the legality of the changes made in the decision process, the main ground here is that the Respondent is bound to make recruitment only from those candidates who are sponsored from the Employment Exchange. In this connection, the Act of 1959 has been cited in defence. We have gone through this Act alongwith the case law cited by the Applicant and the Respondents both, namely - the matter decided by the Hon'ble Supreme Court (Union of India & Others V/s. N. Hargopal & Others which is reported at 1987 SCC (L&S) 227). In the first place, there is no doubt that Section 3(2) helps the case of the Respondents rather than the Applicants. The expressed "such as", "and the like", would certainly include bodies like the Staff Selection Commission. Section 3 (2) of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, reads as under :

"(2) Unless the Central Government otherwise directs by notification in the official Gazette in this behalf, this Act shall not also apply in relation to -"

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department or the same establishment or on the result or any examination conducted or interview held by, or on the recommendation of, any independent agency, such as, the Union or a State Public Service Commission and the like;"



The reading of this, in the first place, clearly shows that the Respondents' argument carries weight. Now, in the case of *N. Hargopal (supra)* it has been held *inter alia* as follows :

"6. It is, therefore, clear that the object of the Act is not to restrict but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges."

It is, therefore, clear that the Act does not oblige any employer to employ only those persons who have been sponsored by the Employment Exchange.

10. In view of the above position, we do not find that we could question the legality of the action taken by the Respondents. In the consequence, this O.A. is hereby dismissed with no order as to costs.

S. L. JAIN
(S. L. JAIN)
MEMBER (J).

B. N. BAHADUR
(B. N. BAHADUR)
MEMBER (A).

OS*