

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 746/ 1995.

Thursday, this the 18 day of Sep 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

M.G.Nagarkar,
Type-B-22-2,
TAPS Colony, Post
T.A.P.P. Taluka
Palghar, Dist Thane
Pin - 401 504.

... Applicant.

(By Advocate Mrs.N.V.Masurkar)

V/s.

1. Managing Director,
Nuclear Power Corporation Ltd,
16th Floor, WTC,
Bombay - 400 005.
2. The Union of India
through Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
Chhatrapati Shivaji Maharaj Marg,
Government of India,
Bombay - 400 039.
3. Director (Station),
Tarapore Atomic Power Station,
Tarapore, Thane.
4. Senior Maintenance Engineer (E),
Nuclear Power Corporation Ltd.,
TAPS, Thane - 401 504. ... Respondents.

(By Advocate Shri R.N.Pandya for
Shri M.I.Sethna).

Q R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant has challenged the action of the respondents in not passing the applicant in the Re-Qualification interview for level IV on 22.3.1995 under the scheme of Qualification Incentive Scheme 1984 as a result of which the applicant has been put to a loss

of Rs.200/- p.m. Although the applicant has not specifically challenged results of the subsequent interview, in the light of additional pleadings it has to be presumed that the applicant also challenges the action of the respondents in not passing the applicant in the Re-Qualification interview held on second occasion viz. on 19.9.1995.

2. The contention of the applicant is that the Selection Committee has wrongly failed the applicant in the Re-Qualification interview and that the action of the Selection Committee was influenced by the prejudice borne by Senior Maintenance Engineer(E) against whom the applicant had made a written complaint on 22.11.1994 to the Commissioner of SC/ST (Annexure A-6). According to the applicant there is also discrimination vis-a-vis A.D.Save who did not fare well in the interview held on 22.3.1995, but was re-interviewed on 24.3.1995. In his Rejoinder, the applicant has also taken a further contention that he had applied for the Re-Qualification Interview for the third time scheduled for 16.3.1996 and although he would/have been able to attend the interview in any case because of death of his father ~~and~~ he ought to have called for interview on the third occasion as was done in the case of N.D.Acharya.

3. The applicant has further contended that as per the requirement of law, the SC/ST candidates ought to have been

called for interview separately and an SC Member ought to have been associated in the Selection Committee. The Respondents have failed to comply with this requirement and therefore the interviewsshould be held to be-~~illegal~~.

4. The respondents have opposed the O.A. According to the respondents the Qualification Incentive Scheme (Q.I.S.) was introduced in the year 1984. The petitioner had cleared the test in 1989. He was required to re-qualify in the year 1995 and was to attend the interview on 22.3.1995 and in the interview the petitioner was not able to make the required standard and due to his poor performance, the committee found him unfit. Such an official can avail of another chance after a lapse of six months and accordingly the applicant was given another opportunity on 19.9.1995, but once again the committee found that the performance of the applicant was not up to the expected standard and ultimately the committee found him unfit. By Office Order dt. 31.3.1991, it has been clarified that a candidate who fails in second attempt, ~~he~~ shall not be interviewed unless he passes all written examinations and walkthrough as applicable to a fresh candidate for his position and therefore, the applicant was not entitled to take the third opportunity on 16.3.1996, but by mistake a proposal in this regard was sent, ~~but~~ after scrutiny it was found that he could not be called for third time. So far as the case of A.D,Save is concerned,

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it is stated that A.D.Save was interviewed once on 24.3.1995 and he had cleared it and there is no question of discrimination as between A.D.Save and the applicant. So far as N.D.Acharya is concerned, it is stated that N.D.Acharya failed on 22.3.1995 on level IV qualification, but cleared the test on 20.9.1995, therefore there is no question of allowing N.D.Acharya a third opportunity as alleged by the applicant.

5. The contentions of the applicant that there ought to have been a separate interview for the SC candidates and there ought to have been an SC Member of the Selection Committee are not borne out by the basic circular governing the Q.I.S. 1984 dt. 26.3.1984 (Ex. R-1) to the written statement. The applicant has not challenged this in the O.A. nor is it open to him to challenge it at this stage, because the applicant has benefitted from the Scheme in 1989 and in 1992. Having availed of the benefit of the scheme in its present form the applicant cannot now turn round and challenge the scheme on the ground that a separate interview is required to be taken or that an SC Member is required to be associated with the Selection Committee, nor has the applicant pointed out any law or rule having the force of law under which the applicant can claim incorporation of these special provisions in the Q.I.S. implemented by the Department of Atomic Energy.

6. So far as the allegation of discrimination is concerned, I observe that the same is not borne out by record. The applicant has not been able to show that there has been any discrimination in favour of other candidates like A.D.Save or N.D.Acharya.

7. Lastly, so far as the contention of the applicant regarding Selection Committee being prejudiced is concerned, it has been pointed out by the respondents that the Selection Committee comprises of 8 to 9 Scientific Officers/Engineers drawn from different divisions of the Power Station and from R & D Organisation viz. B.A.R.C. It is seen from the record that SME Maintenance was not a Member of the Committee which interviewed the applicant on 22.3.1995, he was, however, Member of the Committee which interviewed the applicant on 19.9.1995. First of all, the applicant ^{only} has ~~any~~ alleged mala fides/against SME, but has not been able to make out any overtact of the Officer concerned showing mala fides. Secondly, it is difficult to accept even assuming that SME (R-4) was prejudiced, that the whole Selection Committee was persuaded by him to fail the applicant. I am therefore, of the view that allegations of prejudice or malice are not borne out by record, as well as, by circumstances. The applicant has pointed out certain lapses on the part of the respondents ~~one~~ e.g. one of the Members of the Selection Committee has while signing the Minutes written an earlier date viz. 21.3.1995. There is a typographical error in the date of interview of S.D.Save

viz. 24.3.1995 which is the correct date as against 23.4.1995 which is mentioned in the first affidavit dt. 12.1.1996. The affidavits have also been filed by different Officers viz. by Mr.M.L.Maloo, Chief Administrative Officer who has filed the first affidavit and Mr. T.K.Rajappan, Manager(APM) who has filed the subsequent affidavits dt. 20.2.1997 and that 25.6.1997 etc. I also note although the applicant has averred that he belongs to SC and although the connotation of SC is quite different the respondents in para 9 have stated that he belongs to minority community. In my view, the respondents ought to have been more careful while filing their written statements. However, these lapses do not detract from the essential facts of the case.

8. I am therefore, of the view that the O.A. has no merit and the same is therefore dismissed with no orders as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

B.