

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.923 & 924/ 1997

Date of Decision: 30.06.2002

Shri K.S. Pillai.

Applicant(s)

Shri K. R. Yelwe.

Advocate for applicants

Versus

Union of India & others

Respondents

Shri R.R. Shetty.

Advocate for Respondents

CURAM: HON'BLE SMT. SHANIA SHASIRY. .. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

- (1) To be referred to the Reporter or not? ✓
(2) Whether it needs to be circulated to other Benches of the Tribunal? ✓
(3) Library ✓

Shania
(SMT. SHANIA SHASIRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 923/ & 924/ 1997

THIS THE 20 TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANIA SHASTRY . MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

O.A. 923/1997

K.S. Pillai,
Assistant Security Officer,
BARC, aged about 52 years,
residing at 31, Bhagirathi,
Anushakti Nagar,
Mumbai-400 094.

.. Applicant

By Advocate Shri K.R. Yelwe

versus

1. Union of India,
through Secretary,
Department of Atomic Energy,
C.S. Marg, Mumbai-400 001.
2. Controller, BARC,
Central Complex, Trombay,
Mumbai-400 085.
3. Shri P. Venugopalan,
De. Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSG Maarg, Bombay-1.

.. Respondents

By Advocate Shri K.R. Shetty.

O.A. 924/1997

Y.S. Pujari,
Assistant Security officer,
BARC, aged about 53 years,
residing at BARC Colony,
Type-E, 11, BARC Quarters, Postal Colony
Road, Chembur, Mumbai-400 071.

.. Applicant

By Advocate Shri K.R. Yelwe.

versus

1. Union of India,
through Secretary,
Department of Atomic Energy,
C.S. Marg, Mumbai-400 001.

...2.

2. Controller, BARC,
Central Complex, Trombay,
Mumbai-400 085.
3. Shri P. Venugopalan,
De. Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSG Maarg, Bombay-1.

.. Respondents

By Advocate Shri R.R. Shetty.

ORDER

Hon'ble Smt. Shanta Shastri. Member (A)

Both these UAs involve a common issue and the facts are similar except for the serial number at which they have been placed in the select panel. By mutual consent both the UAs were heard together and are being disposed of by a common order. For the sake of convenience the facts in UA No.923/91 are give below.

U.A. NO. ⁹ 923/1991

2. The applicant joined the Department of Atomic Energy as Assistant Security Officer after being selected on All India basis with effect from 31.7.1980. Prior to that, the applicant had served in the Indian Air Force for 15 years.

3. Some colleagues of the applicant had filed UA No.123/91 challenging the selection result and the panel prepared on 09.01.1991 for the post of Security Officer. 26 employees were empanelled. This UA was finally decided on 12.01.1995 by the Tribunal. The Tribunal

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quashed the selection result in panel dated 09.01.1991 and directed the respondents to hold a fresh selection again in accordance with the rules as the selection was found to be vitiated. A review petition No.51/95 was filed by the respondents, the same was rejected. Thereafter, the respondents convened a review DPC meeting on 23.5.1996 to review the panel for the post of Security Officer as drawn by the DPC in its meeting held on 06.12.1990, 07.12.1990 and 07.02.1991, and the review ~~review~~ DPC recommended a fresh panel on 28.6.1996 consisting of 26 persons, the applicant was placed at Sl. No.21 in this panel. However, according to the applicant, the respondents did not take any further action to promote the applicant even after more than one year had passed. The applicant made continuous enquiry and gave his representation, but he was informed to wait for some time. The life of the panel was extended by six months.

4. According to the applicant, there are seven clear vacant posts of Security Officer as on the date of filing of the UA due to resignation and promotion from November, 1994 till August, 1996. Apart from that some officers were working on adhoc basis, who were either junior to the applicant or though senior did not find place in the select panel of 28.6.1996. The applicant has provided the details of the juniors who are working on adhoc basis though they are not supposed to continue in the said post.

5. The applicant has also pointed that one more UA 1/3/97 was filed by one P.L.Naveikar & 4 others vs. Union of India & Urs. and in the reply filed by the respondents in that UA on 21.8.1997 in para 4 the respondents had stated that they have issued promotion orders of the officers in the panel dated 28.8.1996 by the end of that month i.e. September, 1997, but nothing had been done by the respondents so far. The applicant further submits that not only they had not promoted the applicant or had given any reason for not promoting him, but the respondents have issued another notification on 08.8.1996 for filling the post of Security Officer on All India competition basis. This action of the respondents is in violation of law because the panel which has been notified on 28.6.1996 in pursuance of this Tribunal's ^{direction} has to be exhausted before any action on the notification dated 08.8.1996 is taken. The fresh notification issued on 08.8.1996 has indicated the fact that there are vacant posts. The applicant has therefore prayed for a direction to the respondents to implement the panel dated 28.6.1996 and to promote the applicant to the post of Security Officer in the pay scale of Rs.2000 -3200 with effect from the date his juniors were promoted on adhoc basis with all consequential benefits including the arrears of pay fixation and seniority. The applicant has also prayed for a direction to revert the adhoc promotees who are not borne on the panel of 28.6.1996 with immediate

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effect as well as the adhoc promotees who are lower in rank than the applicant in the select list of 28.6.1996. The applicant had also prayed for interim relief, the same was not granted.

6. The respondents submit that it is true that a review DPC was held and a revised panel was issued on 28.6.1996 and the applicant figured in the select list. The respondents submit there were only 20 vacancies that had arisen between December, 1990 and June, 1992 during the validity of the panel. Out of the 20 vacancies 16 were to be filled by general candidates, three by SC and one by ST. The applicant was at S.No.21. Since only 16 vacancies of general candidates ^{could} be filled, persons senior to the applicant in the select list upto Sl. No.18 were promoted. The candidate at Sl. No.08 and 17 in the panel, though selected, refused to move on promotion. Therefore, the respondents promoted upto Sl. No.18 as against 16 vacancies for general candidates. Therefore, despite being selected by the review DPC, the applicant could not actually be promoted. The life of the panel which is normally of one year, was extended by six months. Since, however, all the vacancies had been filled the life of the panel expired at the end of 1 1/2 years. The respondents averred and made a categorical statement that no person belonging to the general category in the post of Assistant Security Officer who

is junior to the applicant has been promoted in supersession of the applicant in the review DPC for 1991 and 1993. The respondents have further explained that the promotion of those officers who were not entitled for promotion on the basis of the revised panel was cancelled vide order dated 16.10.1997 except for ^{that of the} those SC and SI candidates who were promoted against vacancies reserved for SC/SI. Also S/Shri A.V. Chougule, A.K. Chakravarty and M.S. Grewal are holding posts on regular basis and not on adhoc basis as alleged by the applicant. The applicant's claim was restricted to the revised panel only.

7. The respondents have not denied that a fresh selection was notified on 08.8.1995 for promotion to the post of Security Officer. A written examination was held in January, 1997 and the select panel was drawn on 07.10.1997. The applicant had chosen not to appear in the aforesaid selection. The selection related to vacancies which arose after centralisation of the Security Cadre in July, 1995.

8. The applicant's case will be considered in future subject to his eligibility at the appropriate time for promotion against the seniority quota of 20% on seniority cum fitness basis or he can be promoted upon his passing the examination and interview as per existing recruitment norms.

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9. The learned counsel for the applicant raised a point that the notification issued for selection for promotion to the post of Security Officer did not indicate the number of vacancies nor their break up. It was therefore, to be assumed that all the vacancies were for general candidates. The respondents however, stated that it was not the practice to indicate the vacancy position in the notification. In any case, reservation has to be provided for, according to roster points. Moreover, the applicant had not taken this point either in the UA or in any rejoinder and therefore, cannot take the plea now.

10. We have given our careful consideration to the rival pleadings. We have also perused the relevant record. There is no denying that the applicant figured in the revised panel of 28.6.1996. The applicant could not be promoted for want of vacancy. The applicant's claim was only confined to this revised panel which was for the vacancies of 1991 to 1992. It could not go beyond the life of the panel. It having expired before a vacancy could be found for the applicant, he could not be promoted. In view of the detailed position explained in the written statement of the respondents, we have to hold that the applicant has no case. As rightly pointed out by the respondents the applicant did not raise any plea about reservation for SC/ST. It is seen from the record that the respondents did not indicate the vacancy

position or its break up category-wise in the notification. But we find that all along for the selection held from time to time the respondents have followed the same practice. Moreover, the applicant too did not challenge the notification for selection when issued. Therefore, the contention of the applicant is not tenable.

O.A. NO. 924/91

11. The facts are similar to the facts in OA 923/91 except that in the revised select panel, the applicant's name figured at Sl. No.19. Both the counsel adopted the same arguments in this case also.

12. In the light of the discussion recorded above, the OAs fail and are dismissed. Parties to bear their own costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shania Shastri

(SMT. SHANIA SHASTRI)
MEMBER (A)

Gajan