

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 497/90.

Dt. of Order: 15-11-93.

1. M. Venkataramana
2. P. Gurunadham
3. Y. Raju
4. P. Nooka Raju
5. K. S. N. Prasad

....Applicants

Vs.

1. Union of India, rep. by the Secretary, Ministry of Defence, New Delhi-1.
2. Engineer-in-Chief, Army Head Quarters DHQ P.O., New Delhi.
3. Chief Engineer, Southern Command, Pune.
4. Chief Engineer, Dry Dock & Visakhapatnam Zone, IRSD Area, Visakhapatnam-8.
5. Commander Works Engineers, Station Road - Waltair RS, Visakhapatnam - 530004.

....Respondents

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Counsel for the Applicants : Shri T.V.N.S. Murthy & M
Shri T. Jayant

Counsel for the Respondents : Shri N.R. Devraj, Sr. CGSC

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN)

THE HON'BLE SHRI T. CHANDRASEKHAR REDDY : MEMBER (J)

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O.A. 497/90

Date of Decision: 15-11-93.

JUDGEMENT

As per Hon'ble Shri T. Chandrashekara Reddy, Member(J))

This is an application filed under Section 19 of the Administrative Tribunal Act by the applicants herein to direct the respondents to appoint them as Meter Readers against the existing vacancies as per the impugned order No. 15031/827/EINB dated 20.8.85 and as per the ~~selected~~ Panel list attached there to in terms of OM dated 8.2.1982 of the Ministry of Home Affairs.

2. Facts giving rise to this OA in brief, are as follows:

3. Applicants 1 to 5 in this OA are working as Chowkidars/Peons under the Commander Works Engineers, Visakhapatnam, the 5th respondent herein. The applicants are permanent employees. While so, action was initiated by the respondents for filling up the posts of Meter Readers. Initially, there were 7 vacancies that were given sanction for filling up vide Engineer-in-Chief's letter dated 19.3.85. A requisition was sent to Employment Exchange for sponsoring eligible candidates for the said posts of Meter Readers. Simultaenously, a request was made to the Garrison Engineers also to sponsor eligible departmental candidates who are desirous to appear for the said examination for the posts of Meter Readers.

4. Employment Exchange sponsored 20 Scheduled Caste candidates, 20 Scheduled Tribe Candidates and 100 general candidates. 39 candidates were sponsored by the department. A written test was conducted on 19.8.85 followed with ~~an~~ moral interview on 23.8.85 and all the

applicants herein were selected and placed at Sr.No. 8,5,13,11 and 15, in the select list for the said post of Meter Readers.

5. Out of the 18 candidates who were selected Sr. Nos. 1,2,3,4,16,17 & 18 were appointed to the said 7 vacancies of Meter Readers ~~notified~~ ^{vide} respondent's letter dated 19.3.85. Among the appointed candidates, Sr. Nos. 1,2,3,4 are general candidates and Sr. Nos.16,17 & 18 are candidates belonging to reserved categories. According to the applicant, in the year 1988, 4 more vacancies had risen on account of retirement, etc. According to the applicants they have got a right to be appointed ~~to~~ ^{for} the said vacancies. According to the applicants, the said vacancies should not be filled by any other candidates whose names are not appearing in the select panel/ list that was prepared in the year 1985. So, the present OA is filed by the applicants herein for the relief as already indicated,

6. Respondents have filed counter opposing this O.A.

7. In the counter filed by the respondents, it is maintained that actually, there were 7 vacancies for the post of Meter Readers in the year 1985 and so a requisition was sent to the Employment Exchange, Visakhapatnam notifying the said vacancies and sponsor suitable candidates for recruitment to the said vacancies. A requisition was also sent to Garrison Engineers requesting to furnish the eligible departmental candidates desirous to appear for recruitment to the post of Meter- Reader along with the candidates sponsored by the Employment Exchange. 39 departmental candidates gave their willingness to appear for the test to be conducted to fill up the post of Meter Readers.

The applicants herein were among the 39 departmental candidates sponsored by the Department for the said post. It is maintained in the counter that even though 7 vacancies were available as per the notification of the respondents dated 19.3.85, action was initiated by the respondents to obtain additional local recruitment sanction for 7 more posts. A regular departmental/general examination was conducted on 19.8.85. Out of the 140 candidates sponsored by the local employment exchange 11 candidates and out of the 39 departmental candidates, 20 candidates overall 31 candidates qualified in the written examination, and were subjected to oral interview on 23.8.85. Out of the 31 candidates, only 18 were found suitable on the basis of merit. So, the panel was drawn on 4.9.85 separately for general, SC and ST candidates. Page 2 of Appendix 'A' to the OA is the list of selected candidates for the said post of meter readers. In the said list, the applicants 1 to 5 figure at Sr. No. 8, 5, 13, 11, & 15 respectively. So, the panel of 18 candidates were drawn in anticipation of 14 vacancies. While so, instructions were received as per letter dated 25.4.85 that there was a ban on recruitment upto 31.3.85 and recruitment can only be done on lifting of ban. But by the time, the intimation was received, the existing ban was extended further for indefinite period. However, the CWE, Vizag constituted a Board of officers for interview/selection of candidates sponsored through Employment Exchange and reviewing of eligible departmental candidates for the post of Meter Readers. It is under those circumstances that the

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selection panel in which the names of the applicants were appearing had been prepared. While the matters stood like that Government sanction to fill up vacancies in relaxation of ban was received on 17.3.87 for only two posts with the following instructions:-

- i) To promote all eligible trade test qualified personnel in lower grade in ^{the} line of promotion.
- ii) Casual personnel who have become eligible for regularisation to be given preference.
- iii) Panel be got approved by Chief Engineer Zone.

As regard trade test qualified personnel, no one was available and no casual personnel to be regularised was available. Hence, select panel already available was sent to Chief Engineer for approval. Zonal Chief Engineer, approved first two candidates in the panel and accordingly they were appointed. These two candidates belong to general category. Again sanction had been received on 16.6.87 for filling up of 5 more Meter readers with the same conditions mentioned above. Again the same panel was submitted to Zonal Chief Engineer for approval who approved 3 general candidates, 2 SC candidates and one ST candidate. Those approved in the panel were Sr.Nos. 3,4,5,16,17 & 18. Sr.Nos. 3,4,5, belong to general category where as, Sr. Nos. 16,17 belong to SC and Sr.No. 18 belongs to ST category. On receipt of approval, appointment offers have been given to Sr.No. 3,4,16,17 & 18. So, as could be seen out of 7 vacancies of meter readers, approval was given for filling up only 7 vacancies. As declared number of vacancies were only 7 and out of the 7, all 7 vacancies were cleared for filling up by the competent authority and as the same had been filled up, according to the respondents, the existing panel stood cancelled, and none of the applicants had a right to be considered for future vacancies that may arise especially for the anticipated vacancies that were not sanctioned by the

anticipated vacancies that were not sanctioned by the competent authority. So, according to the respondents the approved panel stands cancelled as recruitment cannot be done in the absence of release of vacancies for direct recruitment by the Government and the applicants cannot be considered for appointment at all to the post of meter readers. So, it is the contention of the respondents that this OA is liable to be dismissed.

8. We have heard Mr DVS Sastry for Mr T. Jayant counsel for the applicant and Mr NR Devaraj, Standing Counsel for the respondents.

9. The post of meter reader in the department is not a direct recruitment post. It is a promotional post from among the category of MATE. The eligibility for promotion of Mate to the Post of Meter reader is 5 years experience in Mate with educational qualification of Matric or equivalent and passing of trade test as per recruitment rules. In the year 1985 as there was no trade test qualified 'Mates' available in the department, direct recruitment was resorted and chance was ~~resorted and chance~~ was also given to departmental eligible candidates from among other categories. Accordingly, the applicants were given a chance to appear for direct recruitment test along with directly sponsored candidates. It is under those circumstances that a recruitment test was ~~conducted in the year 1985. As already~~ pointed out, sanction was received in the year 1987 subject to following conditions:

- a) to first promote all eligible trade test qualified personnel in lower grade in line of promotion.
- b) casual personnel who have become eligible for regularisation to be given preference.

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10. Direct recruitment could be resorted only after exhausting the above conditions. So, as no qualified MATEs were available for promotion, candidates out of the select panel were considered for appointment to the post of meter readers.

11. It is not in dispute that the instructions have been received in Chief Engineer, Southern Command, Pune vide their Lr.No.132505/4/EIB(S) dt. 28-7-89 that the select panels drawn in excess of the notified number of vacancies shall not be considered for appointment. The declared number of vacancies was only 7 and therefore the existing panel stood cancelled in terms of the said letter dt. 28-7-89. As already pointed out, as there were only 7 vacancies available at the time of notification, candidates were called only for the notified 7 vacancies of meter reader posts. As the department anticipated sanction of 7 more posts, from among the candidates that were called for from Employment Exchange and the departmental candidates a panel of 18 candidates had been drawn for the already existing 7 vacancies and the anticipated 7 vacancies. It is not in dispute that the 7 vacancies that were notified, had been filled up by Sr.Nos.1 to 4 who belong to General Category and 16, 17, & 18 who belong to reserved category, as per the 100 point SC/ST Roster. Admittedly, the Sr. Nos. of the applicants 1 to 5 herein appear as ^{Sen. No. 1} 8, 5, 13, 11 and 15 respectively in the select list. Admittedly, applicants 1, 3, 4 & 5 ^{ed} _{my} belong to General category did have the required seniority to be appointed for the post of Meter Readers, out of the notified 7 vacancies, as they ranked quite lower in the select list and as their names had not been approved for appointment to the notified 7 vacancies. They did

not have any right at all to be considered for the said 4 vacancies in the general category out of the notified 7 vacancies. In view of this position, the application of the applicants 1, 3, 4, & 5 is liable to be dismissed.

12. So far applicant 2 in this OA, Mr. P. Gurunadham is concerned, he is one of the selected candidates figuring at Sl.No.5 in the ~~selection~~ list. From the annexure to the counter, we find that the name of Sri P. Gurunadham (Sl.No.5 in the select list) is also approved. Even though Sr.No.5 out of the select list had been approved, out of 7 vacancies, the second applicant who stood at Sr.No.5 in the select list had no vacancy for his appointment out of the 7 vacancies. As already indicated, out of the 7 vacancies, 4 have gone to general candidates, 3 have gone to reserved candidates. So, the 2nd applicant herein was not left with any vacancy out of the 7 vacancies notified. So, for want of vacancy, the applicant No.2 herein could not be considered for appointment to the post of Meter reader and so there is no other alternative except to dismiss this O.A. ~~so far~~ the 2nd applicant herein also is concerned.

13. It is strongly contended as the applicants names are found in the select list, that, they have got a right to be considered for appointment against future vacancies and that a direction is liable to be given to the respondents to appoint the applicants in the existing vacancies if any and also in future vacancies of the posts of Meter readers. It is also the contention on behalf of the applicants that no recruitment can be made to the post of Meter readers for the vacancies that are existing and arise in future without exhausting the existing panel. In

view of the contention raised on behalf of the applicants we may refer to a decision reported in AIR 1991 SC 1612 Shankarsan Das V/s Union of India where it is held as follows:

"It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the state has no legal duty to fill up all or any of the vacancies
.....
The process of final selection has to be closed at some stage and when a decision in this regard is accordingly taken and the process for further allotment to any vacancy arising later is closed, it is not material if in pursuance of a decision, already taken before closing the process of final selection, the formal appointments are concluded later. What is relevant to see as to when the process of final selection is closed. Mere completing the formalities later cannot furnish any ground to the candidate who is not selected to claim discrimination."

14. We have already indicated that instructions were received from Chief Engineer, Pune Southern Command, Pune as per his letter dt.28-7-89, that the selected panels drawn in excess of the notified number of vacancies shall not be considered for appointment. The declared number of vacancies was only 7 and therefore the existing panel stood cancelled as soon as notified seven vacancies were filled up. We have further made it clear that sanction was received in the year 1987 subject to the conditions of promoting all eligible trade test qualified personnel in lower grade

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in the line of promotion and giving preference to casual personnel who have become eligible for regularisation. As per the instructions, vacancies that arose subsequently to the filling up of the notified vacancies are to be first filled up with eligible trade test qualified personnel in lower grade in line of promotion. The panel in this case got lapsed as soon as the notified 7 vacancies got filled up. So, the contention raised on behalf of the applicants cannot be accepted as the above cited Supreme Court decision is a complete answer to the contention as the Applicants and there is no need for us to elaborate further on this aspect.

15. The learned counsel for the applicant relied on the following decisions:

- a) ATR 1987 (1) CAT 502
- b) AIR 1984 SC 1831
- c) 1989(1) SLR P.325
- d) AIR 1989 (2) CAT 153
- e) 1984(1) SLJ 696
- f) 1990 ATJ (Vol.1) P.571
- g) 1975 SLR 171
- h) 1987(3) SLJ 459
- i) 1989 (2) SLJ P.228

and had taken by through the said decisions while arguing the O.A.

16. None of the above decisions cited by the learned counsel for the applicant are applicable to the facts of this case. As already pointed out, the Supreme Court decision cited supra (AIR 1991 SC 1612) applies on all force to the facts of this case. The above case in the Supreme Court which was earlier heard by a Division Bench had been referred to a Constitution Bench for examining the question whether a candidate whose name appears in the merit list on the basis of a competitive examination acquires indefeasible right of appointment as a Government servant if a vacancy exists. We have already extracted

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the Law laid down of the Constitution Bench in AIR 1991 SC 1612 which already pointed out, is applicable to the facts of this case.

17. We see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

T. Chandrasekhara Reddy
(T. Chandrasekhara Reddy)
Member (Judl.)

transcrpts
(A.B. Gorthi)
Member (Admn.)

Dt: 15-11-1993
(By circulation)

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kmv

823/11/93
Deputy Registrar (Judl.)

Copy to:-

1. Secretary, Ministry of Defence, Union of India, New Delhi-1.
2. Engineer-in-Chief, Army Head Quarters DHQ P.O., New Delhi.
3. Chief Engineer, Southern Command, Pune.
4. Chief Engineer, Dry Dock & Visakhapatnam Zone, IRSD Area, Visakhapatnam-8.
5. Commander works Engineer, Station road-Waltare RS, Visakhapatnam-530004.
6. One copy to Sri. T.Jayant, advocate, CAT, Hyd.
7. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
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O.A.497/90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 15/11/1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in
O.A.No. 497/90

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for defalcation.

Rejected/Ordered.

No order as to costs.

