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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.191 of 1992

DATE OF JUDGMENT: 30/10/1992

BETWEEN:

Mr. S.Satyanarayana .. Applicant

AND

1. The Chief Engineer,  
Dry Dock & Vizag Zone,  
9 I&SD Area,  
Visakhapatnam.
2. CWE (P), Dry Dock,  
Naval Base Post,  
Visakhapatnam-14.
3. The Chief Engineer,  
Southern Command,  
Pune.

.. Respondents

COUNSEL FOR THE APPLICANT: Mr. V.Venkata Ramana

COUNSEL FOR THE RESPONDENTS: Mr. M.Jagan Mohan Reddy, Addl.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE  
SHRI C.J. ROY, MEMBER(JUDL.)

This application was filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant herein claiming a relief to declare the action of the respondents in not appointing/promoting him as Tracer pursuant to the written test and interview held on 24.6.1985 as arbitrary and illegal and direct the respondents to promote him as Tracer with all consequential benefits, from the date of selection of the applicant.

2. The brief facts giving rise to this application are as follows:-

The applicant was appointed as Peon in CWE(P), Dry Dock, Naval Base Post, Visakhapatnam on 6.6.1980. He had applied for promotion to the post of Tracer and was declared selected but no order of promotion was given to him. The representation dated 4.3.1986 made by the applicant was replied stating that, since the category of Tracer is decided to be wasted out, the existing post of Tracers should not be filledup by promotion till further orders. The applicant filed O.A.No.745/87 before this Tribunal questioning his non-appointment. The said O.A. was dismissed on the ground that the applicant had no cause of action as the relevant posts were decided to

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be wasted out. However, the Tribunal allowed it open to the applicant to approach the Court if the department seeks to fill up the post.

3. The applicant states that as per the U.O.No.20(2)/83/D(A)(PPTS), dated 4.4.1983, if a candidate is selected for a post, the panel of the selected candidates shall be made use of and only after all the selected candidates are appointed, others can be considered for the remaining posts. Hence, the applicant states that he is entitled to be appointed/promoted as Tracer in the existing vacancies.

4. The earlier stand of the respondents that the post of Tracer is decided to be wasted out is not correct in view of the fact that the post of Tracer is shown to be existing in the establishment in Notification SRO.77 dated 21.3.1990.

5. The applicant contends that the existing posts are now sought to be filled up ignoring the earlier selection of the applicant. Therefore, he submitted a representation dated 12.12.1990 seeking promotion as Tracer ~~xx~~ which was not yet replied. Hence, this application.

6. The respondents filed a counter affidavit stating that the applicant who is a Peon is not eligible for promotion as Tracer in the line of promotion. But he is eligible for the post of Tracer on direct recruitment, if recruitment is made. Since recruitment for the post of Tracer is ~~xx~~ not made, his application cannot be considered.

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7. The applicant had been empanelled at Sl.No.4 amongst the five members selected for the post of Tracer against a "Local Recruitment Sanction" released by the CESC vide letter dated 31.3.1985. CESC Pune also communicated vide their letter dated 28.1.1986 that the post of Tracer is to be wasted out and the "LRS" was also withdrawn. The applicant was informed of the same. The representation made by the applicant was returned by CESC vide their letter dated 18.3.87 in view of the decision given by the higher authorities that, "the Tracer is a dying category in MES and unutilised panels are lapsed".

8. Against the above decision, the applicant filed O.A. 745/87 and the same was dismissed with an observation that "the applicant may have cause of action if the department fills the posts of Tracers by some one else".

9. The contention of the applicant that, since SRO 77/90 has been published giving the recruitment rules for Tracer, vacancies exist in the Department, is not acceptable as the Department has already taken a decision to waste out the post of Tracer and stopped the recruitment of Tracers. In the respondents state that view of the above, /the application is liable to be dismissed.

10. Heard the learned counsel for the applicant, Mr. V. Venkataramana and the learned Addl. Standing Counsel for the Respondents, Mr. M.Jagan Mohan Reddy.

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11. The main contention of the learned counsel for the applicant is that, as per SRO 77/90, dated 21.3.1990, the post of Tracer is shown to be existing in the establishment and hence the earlier stand of the respondents that the post of Tracer is decided to be wasted out, is not correct.

12. We have perused the Notification SRO 77/90, dated 21.3.1990. This notification is with regard to the rules regulating the method of recruitment of certain Group 'C' posts in the Military Engineering Services. It was mentioned in the Column 2 to the Schedule annexed to the said notification, that 314 posts of Tracer were existing as of 1989. However, the respondents in their counter state that the contention of the applicant that since SRO 77/90 has been published giving the recruitment rules for Tracers showing the number of ~~xxxxx~~ Posts of Tracer as 314 as of 1989 and it goes to show that the vacancies exist in the Department, is not acceptable as the Department has already taken a decision to waste out the post of Tracer and stopped the ~~the~~ recruitment of Tracers.

13. The short point to be decided is whether the respondents are taking steps to fill up the posts of Tracers, if according to the applicant, there are posts existing in the Department.

14. The respondents have categorically stated in their counter that the post of Tracer is to be wasted out and the

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Local Recruitment Sanction was also withdrawn. They also stated that the applicant had been empanelled at Sl.No.4 amongst the five members selected for the post of Tracer against a Local Recruitment Sanction released by CESC vide their Signal No.7623 dated 31.3.1985 but the Local Recruitment Sanction was withdrawn in view of the fact that the post of Tracer is to be wasted out. This is a policy decision taken by the Department to waste out the post of Tracer and the Tribunal or the Court ~~not to~~ <sup>cannot</sup> interfere and dictate the avenues of promotion in view of the decision of the Hon'ble Supreme Court reported in JT 1992(3) SC 309 "Union of India Vs. Syed Mohd Raza Kazmi". It is for the Department to decide on policies of promotion consistence with the interests of employees.

15. Besides, the O.A.No.745/87 filed by the applicant herein has been dismissed on 3.12.1987 stating that-, "it is clear that the department had decided to waste out the post and not to fill them at all till further orders. The applicants will have no cause for grievance till action is taken to fill these posts and they cannot compel the Department to fill these posts even if there is no requirement. We, therefore, see no reason to interfere or admit this application. The applicant may have cause of action if the Department fills the posts of Tracers by some one else." It is clear from the above that the applicant will have cause of action only when the Department fills the posts of Tracers by some one else. Hence, the

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applicant has not made out a case for our interference. Moreover, he was empanelled at Sl.No.4 amongst the five members selected for the post of Tracer. The cause of action to the applicant arises only when the three members selected for the post of Tracer were appointed since they were empanelled above the applicant. The application is liable to be dismissed.

16. According to us we dismiss the application with no order as to costs.

R.Balasubramanian  
(R.BALASUBRAMANIAN)

urshy  
(C.J.ROY)  
Member (Judl.)

Dated: 30<sup>th</sup> October, 1992. Dy. Registrar (Judl.)

Copy to:-

1. The Chief Engineer, Dry Dock & Vizag Zone, 9 IRSD Area, Visakhapatnam.
2. CWE (P), Dry Dock, Naval Base Post, Visakhapatnam-14.
3. The Chief Engineer, Southern Command, Pune.
4. One copy to Sri. V.Venkata Ramana, advocate, 62/2RT, Saidabad colony, Hyd.
5. One copy to Sri. M.Jagan Mohan Reddy, Addl. CGSC, CAT, Hyd.
6. One spare copy.

vsn

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copy

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O.A. 191192

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :  
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 30/11/1992

ORDER/JUDGMENT:

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

O.A. No.

in  
191192

T.A. No.

(wp. No.)

Admitted and interim directions  
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

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