

(63)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA NO.767/93

Date of Decision: 16th Feb 1997

BETWEEN:

M. Eswara Vara Prasad .. Applicant

AND

1. Union of India,
represented by its Secretary,
Ministry of Defence (Production),
New Delhi.
2. The Director General of
Ordnance Factory Board,
Calcutta.
3. The General Manager,
Ordnance Factory,
Yeddumailaram,
Medak District.
4. G. Ravindra Kumar
Fitter (G)

Counsel for the Applicant: Mr. P. Venugopal

Counsel for the Respondents: Mr. V. Rajeswara Rao

The Hon'ble Sri R. Rangarajan: Member (Admn.)

The Hon'ble Sri B.S. Jai Parameshwar: Member (Judl.)

JUDGEMENT

(Per oral order of Hon'ble Sri B.S. Jai Parameshwar: Member (J))

On 13.12.96 the learned counsel for the parties submitted their arguements and was adjourned to 30.12.96.

This OA was taken up for hearing on 30.12.1996.

On that day none appeared for the applicant. Applicant also remained absent. Heard Shri V. Rajeshwar Rao, the learned counsel for the respondents. The learned counsel also produced the records relating to the appointment of the applicant as fitter (Auto).

The case of the applicant is that between 1979-86 he worked as a vehicle mechanic (Armoured Fighting Vehicles) in the EME core and was boarded out by the Indian Army on medical grounds. Thus he claims to be an ex-service man.

The EME Re-settlement Cell, Secunderabad, sponsored the applicant's name for consideration for appointment as Fitter-III under Respondent No.3. On 1.7.86 the respondent No.3 called the applicant for written and Vivavoce tests. The applicant appeared for the tests and was issued the attestation forms. The respondents sought Police ~~Report~~ to consider the antecedents and suitability of the applicant for the post.

Since there was no requirement of ex-service men under R-3 the applicant was not given the letter of appointment till 26.5.90.

..... applicant submitted a written representation. Considering the written representation the applicant was again directed to appear for interview through letter Dt.30.5.90 (Page 14 of the OA). The applicant appeared for the fresh interview. On 14.9.90 vide order No.09209/Adm./OFP/90 the respondents appointed the applicant as Fitter (General). It is submitted that even though he was offered the post of Fitter (Genl.)

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he was given posting of Fitter (Auto). On completion of probation for a period of 2 years he was promoted to the post of skilled fitter.

On 5.11.92 the applicant submitted his representation for fixation of his seniority on the basis of his first call for interview Dt.23.6.1986.

On 31.5.1993 the respondents rejected his representation Dt. 12.5.93.

It is the case of the applicant that though he was selected in the year 1986 the respondents failed to give him the letter of appointment and that, therefore, the respondents failed to fix his seniority that between 1986 and 1990 3 persons, namely, S.C. Rai, Achari and Ravindra Kumar were appointed against Ex-servicemen quota during the year 1987 that he lost his seniority because the respondents failed to give him letter of appointment on the basis of the interview and written test held during 1986.

The applicant has in this OA prayed this Tribunal to declare the inaction on the part of the respondents in not fixing his seniority from the year 1986 is violative of constitutional rights; (b) to set aside the order Dt.31.5.93 (Page 24); and (c) to direct the respondents to fix seniority from the year 1986 with consequential benefits.

The respondents have filed their counter affidavit stating that the applicant himself through his representation Dt.26.5.90 requested them for considering his case for the appointment to the post of fitter 'C' on 1.7.86 that since there was a gap of nearly

4 years from the date of interview they felt it necessary to assess the suitability of the applicant before his actual appointment that accordingly they directed him to appear for interview on 11.6.70 that after assessing the suitability of applicant on 11.6.90 he was appointed to the post of fitter (auto) that if the applicant was very particular about his selection on the basis of interview held on 1.7.86 he should not have appeared for the interview on 11.6.90 that even though he was interviewed for the post of fitter (general) on 11.6.90 on verification of the testimonials and certificates produced by the applicant, it is disclosed that he was qualifying ^{for} to the post of Fitter (Auto) and not to the post of Fitter (Genl.) that, accordingly, he was offered this post of Fitter (Auto/SS) that the applicant reported for the duties in the said post on 25.5.90 that at that time the applicant expressed his willingness to accept the post of Fitter (Auth) that since the applicant voluntarily accepted the post of Fitter (Auto.) his claim for assigning seniority in the grade of Fitter (Gen.) on the basis of the interview held on 1.7.86 cannot be justified that at no time the applicant held the post of Fitter (Gen.) and that the OA be dismissed with costs.

No doubt the applicant was called for interview on 1.7.86. He could not be issued letter of appointment till 1990. It is stated that at that time there was no requirement of fitter (Gen.) in the establishment of the Respondent-3. Admittedly, the applicant himself reported for duty on 25.5.90 in the post of Fitter (Auth). It is further stated that the applicant himself expressed his

willingness to accept the post of Fitter (Auto). The Respondents have produced the letter Dt.25.9.90 (Annexure R-8) wherein the applicant expressed his willingness to join in the post of fitter (Auto).

The delay caused in between interview and appointment cannot enure to the benefit of the applicant. In the case of K. Subrahmanyam Vs Union of India reported in 1990 (3) SLJ (CAT) All.) Page. 469 the tribunal has distinguished the difference between recruitment and appointment. The tribunal observed that a person might be subjected to recruitment process by empanelling his name by making order of appointment, etc. but actual appointment takes place when the appointment order is issued. Therefore in our humble view the applicant cannot claim seniority on the basis of the interview held on 1.7.86.

The applicant has been appointed to the post of Fitter (Augo) against Ex-servicemen quota. It is the case of the applicant that between 1986-90 the respondents appointed 3 persons against Ex-servicemen quota and that therefore his seniority must be fixed on the basis of interview held on 1.7.86 since the respondents themselves failed to issue ^{the} letter of appointment. In para-5 of the counter affidavit the respondents submit that between 85-90 only 3 Ex-servicemen candidates were appointed to the post of Fitter (Auto) Semi-skilled that the applicant was appointed in the grade of Fitter (semi-skilled) on 25.9.90 and was promoted to the next higher grade Fitter (Auto) -skilled, effective from 26.11.92. Further they stated that in accordance with the procedure followed in the Indian ~~Ordinance~~ Service the selected candidate is appointed only after ~~police~~ verification as to the character and antecedents through

Police authorities. As per Annexure R-7 the name of the applicant appears at Sl. No.22.

If the respondents felt that the posts of fitter (Genl.) was not required during 1986, they need not have requested EME Resettlement Cell, Secunderabad, to sponsor his name. In that we humbly feel that the respondents unnecessarily caused anxiety on the mind of the applicant about his future career prospects. Further at least when they themselves admit that between 1985 & 1990, 3 persons against Ex-servicemen quota were appointed. There also we feel that the respondents should have given preference to the case of the applicant for appointment as he had been subjected to tests and police verification reports. We express our surprise at the inaction on the part of the respondents which virtually placed the applicant in a disadvantageous position.

The applicant was appointed during the year 1990. On the basis of the fresh interview conducted on 11.6.90. He did not raise his little finger till 1992. In the meanwhile he was promoted to the post of Fitter (skilled). It is only in May 1993 the applicant claimed his seniority on the basis of the interview held on 1.7.86, that means, after a lapse of three years. The plea of limitation is also against the applicant.

On perusal of the records submitted by the learned counsel for the respondents it is disclosed that for appointing the applicant to the post of Fitter (General) was then not available. Then the respondents offered him

the post ~~post~~ of Fitter (Auto). However, it is stated that though the applicant was interviewed during the year 1986 the police verification report was also cleared and he could not be offered appointment as the services of Ex-servicemen were not required then.

Under these circumstances we feel that the applicant cannot claim seniority solely on the basis of interview/tests held on 1.7.86 even though he was not appointed, to the post, immediately thereafter.

The applicant is not entitled to any of the reliefs claimed in this OA.

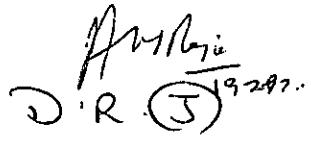
Hence this OA is dismissed. No order ^{as} to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

Date: 14/11/97

KSM


D.R. (J) 19-11-97

11/3/97
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE SHRI R.RANGRAJAN: M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR:
M(J)

DATED: 14/2/97

R.P/T.C.P/M.A.NO.

in
O.A.NO. 767193

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
DISMISSED FOR DEFAULT
ORDERED/REJECTED
NO ORDER AS TO COSTS.

II COURT

YLKR

