

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.1602/95.

Dt.of Decision : 22-7-98

Akkimalli Nagur Mastan Rao

.. Applicant.

Vs

1. The Govt. of India, rep. by Additional Secretary, Dept. of Atomic Energy, Anushakthi Bhavan, CSM Marg, Bombay-39.
2. The Govt. of India, rep. by Dy. Secretary & Liaison Officer for SC/ST, Dept. of Atomic Energy, Anushakthi Bhavan, CSM Marg, Bombay-39.
3. The Chief Executive & Chairman, Heavy Water Board, Dept. of Atomic Energy, Vikram Sarabhai Bhavan, 4th Floor, Anushakthi Nagar, Bombay-94.
4. The Chief Admn. Officer & Liaison Officer for SC/ST, Heavy Water Board, Dept. of Atomic Energy, Vikram Sarabhai Bhavan, 4th Floor, Anushakthi Nagar, Bombay-94.
5. The Director (Operation-K), Heavy Water Board, Dept. of Atomic Energy, Vikram Sarabhai Bhavan, 4th Floor, Anushakthi Nagar, Bombay-94.
6. The Dy. Chief Security Officer, Dept. of Atomic Energy, Anushakthi Bhavan, CSM Marg, Bombay-39.
7. The General Manager, Heavy Water Plant (M), Dept. of Atomic Energy, Khammam Dist-507 116.
8. The Chief Admn. & Accounts Officer, Heavy Water Plant, Munuguru, Dept. of Atomic Energy, Khammam Dist-507 116,
9. The Admn. Officer & Chairman, Local SC/ST Committee, Heavy Water Plant, Munuguru, Dept. of Atomic Energy, Khammam District-507 116,
10. The Admn. Officer, Heavy Water Board, Vikram Sarabhai Bhavan, IVth Floor, Anushakthinagar, Bombay-400 094.
11. The Director, National Fire Service College, Min. of Home Affairs, Govt. of India, Nagpur-1.
12. Sri. R.S. Agrahari, I.C.No.887. .. Respondents.

COUNSEL FOR OTHE APPLICANT : Mr.K.K.CHAKRAVARTHY

COUNSEL FOR THE RESPONDENTS : Mr.N.R.DEVARAJ, Sr.CGSC.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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JUDGEMENT

ORAL ORDER (PER HON'BLE Mr. R.RANGARAJAN : MEMBER(ADMN.))

Heard Mr.K.K.Chakravarthy, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents. Notice on R-12 served. Called absent.

2. The applicant in this OA was initially appointed as Grade-I Driver in the Heavy Water Plant, Manuguru under R-7 to R-9 in the year 1988. He was promoted as Driver-cum-Operator-A in Fire Service in the same plant. On First September, 1992 he was given adhoc promotion as Sub-Officer-(A) in the scale of pay of Rs.425-700/-. He was sent for training for Sub-officer course at National Fire Service College, Nagpur by R-1 to 10. On his successful completion of the said training the applicant was given regular appointment as Sub-Officer-(A) from 18th Feb. 1994 against internal advertisement since the above post was reserved for SC candidate from 1986 and the applicant ^{was} ~~is~~ the only candidate having all qualifications for that post. For promotion to the post of Station Officer-(A) in the scale of pay of Rs.650-1200/2000-3500/- an employee should pass the Certificate of Station Officers and Instructors course. An employee to qualify to be sent for that course he should have put in 3 years of service as Sub-Officer. The applicant herein was eligible for sending for the course of Station Officers and Instructors course only on 25-6-96.

3. A post of Station Officer-(A) became vacant and a notification was issued for filling up that post vide Advertisement No.1/93 (Annexure-4 to the OA). In that notification it was reserved for SC. The R-12 in this OA was appointed against that post. The applicant filed OA.692/95 praying for a direction to quash the order dated 24-11-94 whereby R-10 in that OA i.e., R-12 in this OA was appointed as Station officer-(A) by holding it as illegal, void and against the rules and regulations issued by Govt.

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of India and for a consequential direction to R-1 to R-9 in that OA to appoint the applicant herein to the post of Station Officer-(A), H.W.P., Manuguru. That OA was disposed of by order dated 5-12-95 directing the respondents to depute the applicant for Station officer and Instructors Course as he was eligible as and when his turn arises for that course leaving the question of promotion of R-10 as Station Officer-(A) open for future consideration as and when it arises. The applicant became eligible for sending for the course of Station Officer and Instructors course only on 25-6-96 after having completed for 3 years as a Sub-Officer. His application for the Station officers and Instructors course in the prescribed form was stated to be received only on 6-1-96 after passing of the orders in the MA.1/96 in OA.692/95. His application was reported to have been forwarded to the National Fire Service College, Nagpur for consideration of his candidature. But his case was rejected for allowing him to undergo the said training as the course at that time had already started w.e.f., 8-1-96. However, the applicant was sent for the course in 1997 and he is reported to have been completed that course.

4. This OA is filed on 22-12-95 earlier to his completion of the Station Officer and Instructors course. The applicant submits that he is repeatedly filing representations to promote him as Station Officer-(A) on the ground that he is an SC candidate, the post is reserved for SC candidate and hence posting of R-12 is irregular and that he should be posted vice him. It is stated that no reply has been received in this connection.

5. Aggrieved by the above, he has filed this OA praying for a direction to the respondents to set aside the posting of R-12 in the post of Station Officer-(A) at

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6. The applicant was not admitted for the course which started on 8-1-96 i.e., January, 1996 as it is stated that his application was received late. It is now stated that the applicant had already been trained in that course in Jan. 1997. Hence, no order need be given in regard to the relief of sending him for the course in Jan. 1996 as it is a belated one and also due to the fact that he had already been trained in that course in 1997.

8. The main contention of the applicant is that the notification No.1/93 clearly states that the post of Station officer-(A) is reserved for SC and R-12 is not an SC whereas the applicant is an SC. The R-12 was already working at Mysore in that post and hence bringing him to Manuguru is not called for. Even while promoting him as Sub-officer-(A) in 1992 on adhoc basis relaxation was given for his posting. Hence such relaxation ~~could have been~~ ^{could have been} extended to him for posting him as Station Officer-(A) against the Advertisement No.1/93. Bringing R-12 from out side is unwarranted and is a violation of rules as the post is filled by a non-SC candidate. His further pleadings is that he is fully qualified for that post. The non-undergoing of the Station-Officers and Instructors course is not because of him but

due to the inaction on the part of the respondents. Hence, that should not stand in his way of posting him as Station Officer-(A) instead of R-12.

9. The OA has been worded in such a way that it is somewhat difficult to make out the real issue involved. If it has been properly worded bringing out the details fully it may be possible that the OA could have been disposed of earlier. In any case after hearing both the sides, the OA is disposed of as below;

10. The respondents have filed a reply. The main contention of the respondents are as follows:-

(i) The post of Station Officer-(A) in Heavy Water Plant, Munuguru is a single isolated post and as such the Government of India reservation orders are not applicable to it as per the Judgement of the Supreme Court in the case of Dr.Chakradhar Paswan's case.

(ii) The Heavy Water Plant, Munuguru is a large chemical plant dealing with a hazardous gas and hence keeping the post of Station Officer-(A) ^{vacant} for a long time is detrimental to the safety. Right from 1990 onwards repeated advertisements were made. The select panel prepared by any one of the constituent units of the Department of Atomic Energy can be operated by any of its other units. Hence, the appointment of R-12 who fulfilled the recruitment norms for the post of Station Officer-(A) and empanelled for the post by adhering to the regular recruitment procedure of the department has been appointed and hence there is no violation of the orders issued by Govt. of India. Besides this, R-12 was already officiating as Station Officer-(A) on adhoc basis at that time in Rare Materials Plant (RMP), Mysore having qualified in the Station Officers' & Instructors course and hence he was posted regularly at



Munuguru.

(iii) The applicant's appointment to the post of Driver-cum-Operator-(A) on 18-2-88 and Sub-Officer-(A) on 1-9-92 on adhoc basis ^{was} ~~were~~ not solely based on his faithfulness and efficiency as claimed by him, but were made against SC quota in relaxation of the norms prescribed for the said posts. While arguing this case on Friday i.e., 17-07-98 it was stated that the applicant ^{was} ~~is~~ not in the line of promotion for the post of Sub-Officer-(A). However, he was brought as Sub-Officer-(A) to fill up the SC quota by giving relaxation.

(iv) Even though in ^{the} earlier Advertisement No.4/90 the number of vacancies were indicated as 3 and anticipated vacancies as 10 for Heavy Water Plants the advertisement included other categories of posts for the Bhabha Atomic Research Centre. That error of number of posts for the Station Officer-(A) was corrected in the subsequent advertisement as only one post. In fact, the post of Station Officer-(A) is a single one available only in the H.W.P., Munuguru and not in any other Heavy Water Plants under the Heavy Water Board, a constituent unit of the department of Atomic Energy.

(v) The applicant has to put in 3 years of service after undergoing Sub-Officers course to become eligible for Station Officers and Instructors course. That he became eligible only on 25-6-96 and immediately he was sponsored for that course on the basis of his representation received on 6-1-96 after the disposal of the MA.1/96 in OA.692/95. Since that course in the National Fire Service College, Nagpur had already started from 8-1-96 he could not be admitted for that course. However, he underwent the training in 1997. He had also undergone the Breathing Apparatus Course.

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11. In view of what is stated above, the respondents submit that the applicant cannot challenge the posting of R-12 against the post of Station Officer-(A) which was filled way back in 1994.

12. The first point that arises for consideration in this OA is whether the reservation will apply for the post of Station Officer-(A) at Munuguru.

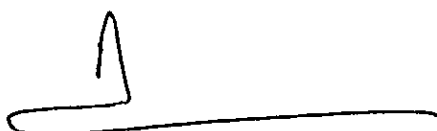
13. The respondents submit that it is a single post and hence reservation is not applicable. But the applicant in his rejoinder has refuted that contention stating that it is not an isolated single post. Even in the notification No.4/90 the department had shown 10 posts as such available and hence the submission of the respondents now that it is a single isolated post is incorrect and hence reservation is applicable.

14. Normally, the cadre controlling authority has to say in regard to the number of posts available in a cadre. The cadre strength is determined on the basis of the sanctioned number of posts in that cadre. The applicant has no means to check the sanctioned cadre of Station Officer-(A) in the H.W.P., Munuguru. He submits that there are 10 posts basing on the earlier advertisement issued in 1990. If he submits so he should be able to produce the records whereby 10 posts were sanctioned. But in the reply there is no such details ^{are} available. Hence, the applicant's statement that there were 10 posts in the cadre of Station Officer-(A) at Munuguru cannot be taken at the face value. The applicant submits in the rejoinder that in Advertisement No.4/90, 10 posts of Station Officer-(A) were notified for filling up. The respondents in their reply had stated that the notification No.4/90 ^{of} had been issued erroneously taking into account the other categories where the posts were

vacant in the Bhabha Atomic Research Centre. They confirmed that this was corrected in the subsequent advertisement and the advertisement was issued for only one post. The post of Station Officer-(A) is a single post available only in H.W.P., Munuguru and not in any other Heavy Water Plants under the Heavy Water Board a constituent unit of the Department of Atomic Energy. When such an assertion is made, we do not think that such an assertion was made without proper records. Hence, it has to be believed that the post of Station Officer-(A) is a single isolated post in the H.W.P., Munuguru. If it is a single post then no reservation is applicable as directed by the Supreme Court in the reported cases reported in 1998 SCC (L&S) 961 (Post Graduate Institute of Medical Education and Research Vs. Faculty Association) and in 1998 SCC (L&S) 980 (UOI Vs. R.Ayyappan). But in the Advertisement No.1/93 the post is reserved for SC. The respondents in their reply submit that it is a mistake and they have misunderstood the reservation rule incorrectly and that was corrected subsequently. Dr.Chakradhar Paswan's case is the correct rule to be followed and hence the reservation of SC for the single post of Station Officer-(A) in H.W.P., Munuguru is not required.

15. From the above analysis and the direction of the Supreme Court in the reported case referred to above, there is no ambiguity in regard to the reservation for the post of Station Officer-(A) in the H.W.P., Munuguru. The post is a single post and hence no reservation is applicable. The applicant cannot demand ^{for} posting him in that post on the basis of reservation.


16. The next contention of the applicant is that R-12 was working elsewhere at Mysore and posting him as Station Officers-(A) in Munuguru is irrelevant and he should have



been promoted in that post in the place of R-12 relaxing the rules even if he had not fully qualified as per ^{the} rules for posting as Station Officer-(A). As relaxation was given already when he was posted as Sub-officer-(A) considering his status as SC and his other attendant qualities, his case to post him atleast on adhoc basis as Station Officer-(A), Munuguru relaxing the rules ^{was} ~~is~~ permissible. The respondents deprived him of the promotion vindictively and posted R-12 against that post.

17. The whole trouble arose because of the unwanted relaxation given to the applicant while posting him as Sub-Officer-(A) relaxing the qualifications. It is categorically stated by the learned counsel for the respondents on 17-07-98 that the applicant was not at all eligible for posting as Sub-Officer-(A) even on adhoc basis in 1992. He was not in the feeder category for posting as Sub-Officer (A). But a sympathetic consideration was taken as he was an SC candidate and hence he was posted as Sub-Officer-(A) on adhoc basis in 1992 relaxing the rules. Had he continued in his parent cadre he would have reached the post equivalent to Sub-Officer in his cadre only few years after the birth of the 21st century. Hence, the applicant had been given a favourable treatment and he cannot demand the same treatment when he was not eligible for consideration for the post of Station Officer-(A).

18. It is not understood why the applicant who was not in the feeder category for promotion as Sub-Officer was considered even if he belongs ^{ed} ~~to~~ to SC candidate. Such irregular appointment only causes problems subsequently. That irregular posting as Sub-Officer-(A) denied opportunities for the employees in the feeder category for getting promotion. The respondents acted without exercising



adequate responsibility in promoting the applicant even on adhoc basis as Sub-Officer-(A). When we questioned the learned counsel for the respondents the authority by whom such a relaxation was given for promotion of the applicant as Sub-Officer-(A), the learned counsel for the respondents did not reveal any details. That shows somebody who may not be an appropriate authority had ordered such promotion. We strongly advise the respondents to desist from such action in future so as to avoid unnecessary controversy^{-ies} later.

19. R-12 was appointed as he was already working as Station Officer-(A) in Rare Materials Plant at Mysore on adhoc basis. He was earlier working as Sub-officer-(A) in the Munuguru Plant. When there was no suitable candidate available for posting as Station Officer-(A) in Munuguru R-12 was brought in here and posted. When R-12 was posted the applicant was not eligible for consideration for the post on the basis of the recruitment rules. It is stated that the post of Station Officer-(A) in the large Chemical plant at Munuguru cannot be kept vacant as non-operation of that post may cause severe repercussions. Though repeated attempts were made to post somebody in that post right from 1990 no tangible results could be achieved. Those posted earlier were either left the post or could not be promoted but retained only as an incharge basis. Hence the respondents submit that for valid reasons R-12 was posted as Station Officer-(A) at Munuguru.

20. The submission of the respondents that a large chemical plant cannot be left unattended has to be taken in the right prespective. The Bhopal tragedy in the recent past is an eye opener for manning safety posts effectively in a chemical plant. Hence, we do not see any reason to set

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aside the posting of R-12 against that post as none other candidate including the applicant had fulfilled the conditions for posting. The earlier posting of incumbents to the post earlier to R-12 is not of any material consideration in this OA as it had happened long past and it is not necessary to discuss those cases now, especially so when the applicant had challenged only the posting of R-12 as Station officer-(A) at Munuguru.

21. The respondents submit that the applicant had not fulfilled the qualifications for posting as Station Officer-(A) at Munuguru in response to the Advertisement No.1/93. We asked the learned counsel for the respondents to produce the exact recruitment rule in this connection so as to satisfy ourselves that the applicant was not possessing the qualification as per recruitment rule to be posted against that post in response to the notification No.1/93.

22. The respondents produced the recruitment rule notification for the post of Station Officer-(A) in the scale of pay of Rs.650-1200/ 2000-3500/-. The recruitment norms for that post reads as below:-

"S.S.C. or equivalent with Science subject and Station Officer's Course of the National Fire Service College, Nagpur or Graduate of the Institute of Fire Engineers, London/India.

Five years experience as Sub-Officer in a well established Fire Service Organisation. Should possess a valid Heavy Vehicle Driving Licence and be fully conversant with the operation and maintenance of Fire Engine, Fire pumps and other fire fighting equipment.

Candidate who have passed B.E., Fire Engineering and having valid Heavy Vehicle Driving licence are also eligible to apply, and in their case experience is not essential."


23. Normally, the posts are filled by Direct recruitment. The departmental candidates also are eligible to apply if they fulfil the conditions. The main qualification required is ^apass in SSC or equivalent with

Science subject and Station Officer's course of the National Fire Service College, Nagpur or Graduate of the Institute of Fire Engineers, London/India. The applicant cannot be held to be suitable for the post advertised in advertisement No.1/93 as he was not possessing the certificate of Station Officer's course of the National Fire Service College, Nagpur at that relevant time. For undergoing the Station officers and Instructors course one should have qualified in the Sub-Officers course and will be completing 3 years after undergoing Sub-Officer course. That qualification he attained only on 25-6-96. Hence it has to be held that the applicant did not possess the qualification for that post to apply in response to the notification No.1/93. When the applicant was ineligible he cannot demand for posting as Station Officer in place of R-12 as a matter of right on any count.

24. The applicant submits that relaxation can be given in his case as was given earlier. Relaxation is a discretionary power. Such discretionary power cannot be demanded by anybody. It is left to the authorities concerned to check whether the relaxation is necessary to exercise their discretionary powers for reasons to be recorded. Hence when no relaxation was given for his qualification the applicant cannot ask for relaxation based on the ~~precedence~~ ^{precedence} in his case when he was promoted as Sub-Officer-(A).

25. The applicant had completed the Station Officers and Instructors course in 1997 and he may be eligible for consideration for ^{the} post of Station Officer-(A) in future as and when vacancies ~~arise~~ ^{arises}. If such a vacancy arises in future the case of the applicant should also be considered along with others if he applies for the same in accordance with rules.

26. In view of the foregoing the OA is liable only to be dismissed and accordingly it is dismissed subject to the observations made in para-2¹/₂ supra. No costs.



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

22/7/98

Dated : The 22nd July, 1998.

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(R. RANGARAJAN)
MEMBER (ADMN.)


D.R. 23.7.98
/

DA.1602/95

1. The Additional Secretary, Dept. of Atomic Energy, Anushakthi Bhavan, CSM Marg, Bombay.
2. The Dy. Secretary & Liaison Officer for SC/ST, Dept. of Atomic Energy, Anushakthi Bhavan, CSM Marg, Bombay.
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10. The Admn. Officer, Heavy Water Board, Vikram Sarabhai Bhavan, IVth Floor, Anushakthinagar, Bombay.
11. The Director, National Fire Service College, Min. of Home Affairs, Govt. of India, Nagpur-1.
12. One copy to Mr. K.K. Chakravarthy, Advocate, CAT., Hyd.
13. One copy to Mr. N.R. Devaraj, Sr. CGSC., CAT., Hyd.
14. One copy to D.R.(A), CAT., Hyd.
15. One duplicate copy.

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30/7/98
II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 22/7/98

~~ORDER/JUDGMENT~~

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

in

C.A. NO. 1602/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal
प्रेषण / DESPATCH

27 JUL 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH