

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH AT
HYDERABAD.

O.A.No.1777 of 1997.

DATE OF ORDER: 31-12-1998.

BETWEEN :

Mohd. Abdul Ayub,
S/o Mohd. Abdul Qayum,
aged 23 years, Occ: Employee,
Cheriyal (Village)
Sangareddy (Mandal)
Medak District.

.. APPLICANT

A N D

1. The General Manager, OFP,
Ministry of Defence,
Government of India,
Ordnance Factory Project,
P.O. Yeddumailaram,
Medak District.

2. The Revenue Divisional Officer,
Sangareddy, Medak District. .. RESPONDENTS.

Counsel for Applicant : Mr. T.V.V.S.Murthy

Counsel for Respondents: Mr. V. Bhimanna, ACGSC

Mr. P. Naveen Kumar, Sr. Asst. Secy.

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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O R D E R.

(Per Hon'ble Mr. Justice D.H. Nasir, Vice-Chairman)

1. This O.A. could straight away be disposed of with the direction which the applicant has sought for in view of the fact that the respondents have failed to substantiate the objection advanced by them that one person had already been awarded a job in the Ordnance Factory Project at Yeddumailaram, Medak District under the Land Displaced Persons' ('LDP' for short) quota. Except a lone reference made in the statement against the claim advanced by the present applicant for awarding a job to him under the LDP quota, that, one Mohd. Abbas Ali had already been

provided a job under LDP quota to which Mohd. Saheb Hussain, father of Mohd. Abbas Ali and maternal grandfather of the applicant was entitled, nothing else has come on record to show that Mohd. Abbas Ali was provided with a job under LDP Scheme.

2. The facts, in short, are that for establishment of Ordnance Factory at Yeddumailaram, Medak District, Government of India had acquired land to an extent of 9 acres 11 guntas in Survey Nos. 228, 229 and 230 of Cheriyaala village, Sangareddy Mandal, Medak District. Two separate notices for awarding compensation under Section 10 of the Land Acquisition Act dated 15.11.1985 were issued - one in the name of Saheb Hussain, son of Mohd. Vazeer Saheb and the other in the name of Yerrala Kasailaiah in respect of 4 acres 38 guntas in Survey Nos. 228, 229 and 230. It is further the case of the applicant that Mohd. Saheb Hussain, son of Mohd. Vazeer filed an affidavit before the Land Acquisition Officer stating that he had none to look after him in his old age and that his daughter Smt. Abeda Begum and her children only were taking care of him. Further according to him, his grandson Mohd. Abdul Ayyub, son of Mohd. Abdul Qayyum who had completed Intermediate Examination was undergoing the ITI Course at Medchal and that he had requested the Revenue Divisional Officer to issue an LDP certificate in favour of ^{his} ~~his~~ grandson Mohd. Abdul Ayyub to enable him to seek suitable post in the Ordnance Factory and the Mandal Revenue Officer, Sangareddy issued proceedings No.E/444/95 dated 26.5.1997 for inclusion of the name of the applicant (Mohd. Abdul Ayyub) in the LDP list. Further according to the learned counsel for the applicant, on the basis of the affidavit filed by Mohd. Saheb Hussain and the

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recommendations made by the Mandal Revenue Officer, the Revenue Divisional Officer issued Proceedings No.B3/2567/97 dated 28.8.1997 addressing the first respondent to include the name of the applicant in LDP list at Sl.No.1 in place of Mohd. Saheb Hussain. A copy of the same was sent to the District Employment Officer, Medak and to the applicant. In pursuance of the said proceedings, the District Employment Officer, Sangareddy sponsored the name of the applicant for consideration to the post of labourer (unskilled) against the recruitment contemplated by the first respondent. Further, according to the learned counsel for the applicant, by letter dated 6.10.1997 the first respondent disputed the claim advanced by the applicant under LDP quota and directed him to produce proof in support of his claim. The applicant, therefore, appeared before the first respondent on 15.10.1997 with all relevant documents and was waiting for a call from the first respondent for interview for the post of labourer (unskilled) under LDP quota. However, to his great shock and surprise according to the applicant, the person who had advanced two claims under LDP quota subsequent to the applicant were called for interview which was scheduled to be held on 25.11.1997, but the applicant was not favoured with such a call for interview. Therefore, it became necessary for him to file the present O.A.

3. Further according to the learned counsel for the applicant, by virtue of an interim direction given by the Tribunal, the applicant was interviewed on 25.11.1997 along with other candidates but the name of the applicant did not find place in the Select list and by proceedings dated 9.12.1997 the first respondent General Manager

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stated that the name of the applicant was not available in the LDP record either as Patta holder or as dependent of the Patta holder and that the name of the applicant was subsequently included as dependent of Patta holder Sri Mohd. Saheb Hussain of Cheriya village vide RDO Sangareddy's letter No.B3/2567/97 dated 28.8.1997. However, according to the learned counsel for the applicant, it was not correct to say so and in fact the name of the grand father of the applicant Mohd. Saheb Hussain was included in the LDP list at Sl.No.1. Subsequently the RDO, Sangareddy in the proceedings referred to earlier, informed the General Manager, Ordnance Factory to include the name of Mohd.Abdul Ayyub, the applicant, in the LDP list at Sl.No.1 in the place of Shri Mohd. Saheb Hussain, but nowhere, according to the learned counsel, the name of the applicant was included as the dependent of the Patta holder Shri Mohd. Saheb Hussain in the LDP list and therefore, it was necessary that the applicant's name should be so included as LDP candidate, and on this ground, according to the learned counsel for the applicant, the selection proceedings of the General Manager selecting the lesser qualifying candidates as unskilled labourers was illegal and void and deserved to be quashed and set aside.

4. Learned counsel for the applicant further argued that in the impugned proceedings of the General Manager, it was stated that in accordance with the policy of the Central Government, one dependent of the Patta holder Sri Mohd. Abbas Ali, s/o Saheb Hussain had been provided employment in the Project as unskilled labourer with effect from 25.2.1986 under LDP quota. However, according to Mr. Murthy, counsel for the applicant, this

was not correct. Shri Mohd. Abbas Ali was interviewed and selected as a general candidate on his own merits and not as a candidate under LDP quota. Further according to the learned counsel, when the RDO, Sangareddy who was the competent authority, issued the proceedings to include the name of the applicant in the LDP list, it was a conclusive proof of the fact that Mohd. Abdul Ayub only was entitled to be appointed under LDP quota and that the Patta holder had not availed the opportunity of appointment under LDP quota earlier.

5. In the reply affidavit, the respondents while refuting the claim advanced by the applicant stated that the name of the present applicant was not available in the list of LDP persons of Cheriyal village forwarded by the RDO, Sangareddy and that the applicant's name was included as dependent of Patta holder by the proceedings dated 28.8.1997. It is further pointed out by the respondents in the reply affidavit that the names of three other dependents of the Patta holder were already available in the LDP list received in 1983 which were as follows :

1. Mohd. Saheb Hussain, S/o Mohd Vazir
2. Mohd. Jahangir, S/o Mohd. Vazir
3. Khaleel Saheb, S/o Mohd Vazir

6. It is further contended by the respondents that on 15.10.1987 when the applicant was called to produce the supporting documents, number of other candidates sponsored by the District Employment Exchange against the requisition placed on them for sponsoring the LDP candidates were called for verification of their LDP status and it was at that time only that the applicant produced the copy of the RDO, Sangareddy's letter

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No.B3/2567/97 dated 28.8.1997 for inclusion of his name as the dependent of the Patta holder Shri Mohd.Saheb Hussain and on verification of the LDP list on the basis of the RDO, Sangareddy's letter dated 28.8.1997 it was seen that already one family member, namely, Sri Mohd. Abbas Ali, son of Mohd Saheb Hussain (who was the patta holder) was provided employment in the respondents' factory under LDP quota on 25.2.1986 and therefore, according to the learned counsel for the respondents, the applicant was not entitled to claim any employment under LDP quota, as according to the respondents, the agreement between the Central and State Governments was to give priority in the matter of providing employment to LDP on the basis of "one patta one job".

7. Further according to the respondents, the applicant was not found suitable for the post by duly constituted Selection Board. It is further pointed out by the respondents in their reply affidavit that the applicant was one among the three candidates who had appeared at the interview for the post of labourer (unskilled) on 25.11.1997 and the candidates were allocated manual work for about 2 hours to assess their aptitude and physical stamina to perform manual work which was to be performed by the incumbents if appointed as unskilled labourers. Only 12 out of 30 were found fit for the post by the Selection Board and therefore, according to the respondents, on this ground also the applicant was not eligible for appointment for the post in question.

8. Therefore, the main issues which arise for our consideration in this O.A. are :

- (1) Whether the applicant could be considered to be eligible for appointment under LDP quota ?

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(2) Whether a direction could be given to the respondents to appoint the applicant, if found eligible, even if the applicant is not found suitable for appointment by the Selection Board?

9. There could be no constraint on recording a proposition that no candidate could be imposed on an employer if he is not found suitable for appointment at the interview unless, of course, the selection is alleged to be maligned with the vices ^{like} pre-determination of mind or prejudice or bias against the candidate not selected. In the instant case, no such allegation is made against the members of the Selection Board. Ordinarily, therefore, no direction could be given on that ground to the respondents to give employment to the applicant even if he is found to be eligible for appointment under LDP quota. However, we believe that since the post in question is that of unskilled labourer, the candidature of the applicant could be reconsidered sympathetically as his claim under the LDP quota is not found to be devoid of merits.

10. Reverting now to the applicant's claim for his appointment under LDP quota, we are at a loss to agree with the contentions raised by the respondents in their counter affidavit and the submissions made by the learned Standing Counsel for the respondents during the course of oral arguments that Mohd. Abbas Ali was appointed under the LDP quota. As already stated earlier, except a bald statement against the name of the present applicant that Mohd. Abbas Ali was already appointed under the LDP quota, there is no material whatsoever on record of the respondents, which was placed at our disposal for

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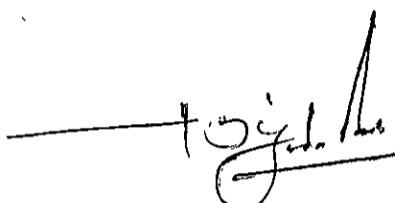
scrutiny, to come to the conclusion that Mohd. Abbas Ali was at all appointed under LDP quota. There is nothing to show that his name was sponsored by the Employment Exchange for appointment under LDP quota. Neither in his interview call letter nor in his appointment order it is stated that Mohd. Abbas Ali is appointed under LDP quota. It is also not disputed that he was in fact called for interview for the post of Wireman but eventually, he was appointed as an unskilled workman in view of the fact that he was not found suitable for the post of Wireman. Whether the Wireman's post or the Workman's post was reserved for LDP quota is also not explained anywhere either in the reply affidavit or during the oral submissions made by the learned Standing Counsel. We have carefully examined the files placed before us for finding out whether there was any material available on the record of the respondents to come to a conclusion whether Mohd. Abbas Ali was appointed under the LDP quota to which Mohd. Saheb Hussain was entitled. But we regret to observe that we did not find even a semblance of evidence to satisfy ourselves that he was either interviewed or appointed under the LDP quota.

11. Under the above circumstances, we would not have hesitated to give a direction to the respondents to straight away appoint the applicant under the LDP quota but for the fact that it is contended by the respondents that the Selection Board did not find the applicant suitable for appointment. Nothing is urged before us whether the employment under the LDP quota ^{is} would be made effective ipso facto on the ground that the claim was to be considered under that quota irrespective of the suitability or merit of the person claiming employment

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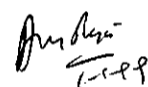
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under that quota and therefore, it would not be in order for us to go to the extent of giving direction under the 'ipso facto' theory to provide employment to the applicant and, therefore, we believe that the interests of justice would be served if a direction is given to the respondents to reconsider the claim advanced by the applicant for employment as unskilled labourer with an assumption that at least as far as the eligibility under the LDP is concerned, the applicant's right has stood vindicated. The O.A. is disposed of. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)
31 Dec 98


(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 31st DECEMBER, 1998.


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COMPARED BY

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APPROVED BY

copy to:-

1) H D H N J

2) T. R. (A)

3) spae

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.: AT HYDERABAD

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M (ADMT)

DATED: 31-12-1998

ORDER/JUDGMENT

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

in

O.A. No.

1777/97

T.A. No.

(w.p.)

Admitted and interim directions issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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