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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.1695/97

Dated, the 29th June, '99

BETWEEN :

P. Vidyasagar

.... Applicant

A N D

The General Manager,
Ordnance Factory Project,
Ministry of Defence,
Govt. of India, Yeddu-mailaram,
Dist. Medak (A.P.)

... Respondent

COUNSELS :

For the Applicant : Mr. P. Kishore Rao

For the Respondent : Mr. V. Rajeswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDGE)



O.A.1695/97

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. P. Kishore Rao, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.
2. This is an application filed under Section 19 of the Administrative Tribunals Act.
3. The application was filed on 8.12.97.
4. The applicant claims to belong to SC Community. He states to have passed ITI Certificate in Electronics Trade. He states that the land situated at Kyasaram Village belonging to his family was acquired by the Govt. of A.P. for setting up of Ordnance Factory at Yeddu-mailaram. He submits that he was identified for providing a job in the respondent's Factory against Land Displaced Persons' quota.
5. The applicant submitted a representation dt. 18.7.96 for consideration of his case for the post of Fitter (Electronics) against LDP quota.
6. As there was no response, the applicant approached this Tribunal in O.A.76311/97. On 16.10.97 the O.A. was disposed of observing as under :

"Under the circumstances, it is directed that the candidature of the applicant shall be duly considered along with other applicants, whether or not sponsored by the employment exchange, when the next selection for any post, ^{to} ~~so~~ which he is technically qualified is taken up. In order to facilitate a proper examination of the case, the applicant may make a comprehensive representation, supported by necessary documents, and specifying the post or posts for which he is a candidate, so that his name may be considered as indicated at an appropriate time.".

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with

7. In compliance ~~to~~ the above said directions, the applicant was directed to appear for a Test/Interview as per (Annexure-A-II page 13 of the O.A.) letter dt. nil for considering his case for the post of Fireman Gr.II (NIE Group 'D') in the scale of pay of Rs.775-1150. He appeared for Interview on 31.10.97. The applicant submits that there were 12 posts of Fireman Gr.II (SC-2, ST-1 and OC-7).

8. The respondent published a select list dt. 3.11.97 in which 6 OBC, 1-SC, 2-ST and 1-OC candidates' names figured.

9. The applicant was not successful in the Interview.

10. The applicant ^{has} filed this O.A. for the following reliefs :

"to declare the action of the respondent excluding the applicant from empanelment for appointment to the post of Fireman Gr.II consequent to selection held on 31.10.97 as arbitrary, discriminatory and unconstitutional and consequently direct the respondent to appoint the applicant as Fireman Gr.II as per his eligibility and qualification, as LDP candidate with all consequential benefits

11. The respondent submits that there were 12 vacancies of Fireman Gr.II. The 12 posts represented category-wise as under :

UR-4, SC-2, ST-1 & OBC-5

that they approached the Employment Exchange to sponsor the and eligible candidates to fill up the said posts; that the Employment Exchange sponsored 235 candidates. Among them 170 candidates attended the interview. Besides 12 candidates who had approached the HC/CAT and obtained orders were allowed to appear for the Interview. Thus 182 candidates were interviewed that the selection Board selected the following candidates viz.

OBC-6, SC-1, ST-2 and UR-1 = 10 (Total)

12. That on the basis of the physical standards of the candidates vis-a-vis parameters laid down in the job specifications for the post/ the applicant had secured 38

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marks. The Board considered those candidates only who had secured 45 marks and above out of 100 marks; that out of 182 candidates only 16 candidates had secured 45 marks; and thus the applicant was not recommended by the Selection Board.

13. As regards the contention of the applicant that the respondent had reserved 2 posts for SC category but none was appointed for the post, they submit that 2 candidates belonging to SC were already available in the waiting list prepared on the basis of the Interview held in August, 1995; that those candidates, who were in the waiting list were appointed against the reserved vacancies & thus they justified the action taken by them was in accordance with the OM on the subject and that the same is in order.

14. As the respondents version regarding filling up of the posts reserved against S.C. quota was little bit confusing, on 23.3.99, we directed the Additional General Manager of the Ordnance Factory to be present on 1.4.99 to explain the actual position. What transpired on 1.4.99 is reproduced herein below:

"It is stated that the cadre strength of the Fireman on the date of the issue of the filling up of the vacancies was 23. 15 posts were filled against the vacancies of 23. There are 8 posts still vacant. We enquired from his the number of SC employees in the cadre. He said there are 5 SC employee. That means the strength of SC is more than 15½% as per cadre strength. If that be the case the officer present could not explain as to why the reservation was made for SC candidates. The Supreme Court had said that the reservation is applicable only if the required percentage is not available in the total cadre strength. That was directed way back in 1995. We do not accept the submission that they came to know of it only after the issue of the notification by the IOFS Board. The submission to us appears to be an escape loop to throw away the responsibility

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We informed to the learned counsel for the respondents that we are utterly dissatisfied with the explanation given and hence GM should be present to explain the case and also necessary action should be initiated to ensure that error committed is rectified. The learned counsel for the respondents submits that the Bench should restrict only to the impugned orders. This would mean that the Bench has got no powers to review the orders of the executives to rectify the mistake committed by the department when it comes to our notice. This view in our opinion is unwarranted and absolutely incorrect. We reject this view of the respondents counsel.

However, the General Manager, Ordnance Factory, himself should file an additional affidavit in this connection signed by him explaining the position. Even then we reserve the option of calling him if we are not satisfied by the General Manager, Ordnance Factory."

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15. Accordingly, the General Manager of the Factory has submitted an additional affidavit on 20.4.99. In the Additional Affidavit, the respondent submits that the cadre strength of Fireman Gr.II, Group 'D' is 23 in the Non-Industrial Establishment; that those sanctioned posts were being filled up from 1989 onwards that they had also followed the reservation quota prescribed for those categories; that in accordance with the decision of the Hon'ble Supreme Court in the case of RK Sabharwal Vs. State of Punjab, the vacancy based reservation was replaced by post-based reservation system. However, ^{the} Govt. orders containing the manner and method of implementation of the ~~new~~ directions of the Hon'ble Supreme Court were issued by the DOPT on 2.7.97 vide DOPT OM No.36012/2/96.Estt(Res)



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dt. 2.7.97, which was ~~xx~~ later received by the respondent factory through Ministry of Defence and Ordnance Factory Board, Calcutta and the on 8.12.97 (Annexure-R2); that therefore, till receipt of the Govt. orders on post-based reservation points, the respondent factory followed the vacancy-based reservations which was prevailing earlier. It was further submitted that taking into consideration the date as 10.2.98 as the cut off date for switching over from vacancy-based to post-based reservation points, the respondent factory ought to have 3 SC candidates and 1 ST candidate in the Grade of Fireman Gr.II with a cadre strength of 23 (SC reservation points 7, 15 & 20 and ST reservation point 17); that as against this due to/delayed receipt of the OM dt. 2.7.97, the total number of SC candidates appointed was 7 and ST candidates was 2. Out of the 7 SC candidates one candidate viz. G. Dayanad (Sl. No. 30) (Annex.R-1) was appointed on his own merit. Thus 3 SC and 1 ST candidates have been appointed in excess of the prescribed ~~1/4~~ quota. Further, they rely upon the OM dt. 2.7.97 that -

"Excess, if any, would be adjusted through future adjustments and the existing appointments would not be disturbed".

16. Thus, they contend that they were unaware of the decision of the Hon'ble Supreme Court in the case of RK Sabharwal Vs. State of Punjab and they followed the vacancy-based reservation system which was prevailing earlier and only on receipt of the DOPT OM dt. 2.7.97 they came to know that reservations have to be followed/based on ~~xxx~~ posts available in a cadre and accordingly, there is an excess of 3 SC candidates and 1 ST candidate in the cadre of Fireman Gr.II and that the same was to be adjusted ^{against} the future vacancies.

(J)

17. The Hon'ble Supreme Court rendered the judgment on 10.2.95. Even subsequently also the Supreme Court reiterated the decision in the said case. We are astonished to note that the respondent Factory an important Defence Production Factory is not in touch with the latest Supreme Court decisions as regards the reservation and filling up of the posts. We ^{expect} reasonably ^ the respondent Factory to follow the latest decisions of the Apex Court. We hope and trust that the respondent factory will avoid such lapses in future and provide equal opportunities to the deserving candidates.

18. Coming to the case of the applicant, the respondent has clearly stated that the applicant had not fared well and that he scored only 38 marks in the test, that the Selection Board took into consideration only 16 candidates, who had secured 45 marks and above out of 100 marks. When that is the actual position, the applicant cannot have any grievance. He has not filed any rejoinder rebutting the same. The applicant belongs to SC community. Besides he is claiming a job in the respondent Factory as a person belonging to LDP. This aspect has not been denied by the respondent.

19. Therefore, the respondent shall maintain a live Register of LDPs and shall consider the cases of those persons whenever vacancies arise in future. The respondent shall also consider the case of the applicant to any of the post depending on his educational qualifications against the LDP quota. He is entitled to have his case considered under the relaxed standards as he belongs to SC community.

20. We reiterate the direction given by this Tribunal in O.A.311/97 dt. 16.10.97.

21. In view of what is stated above, we find no merits in

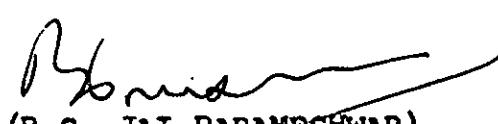
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this O.A. The applicant is not entitled to any reliefs.

The O.A. is disposed off with the above observations.

No costs.


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


(R RANGARAJAN)
MEMBER (A)

Dated, the 29th June, '99.

*Dated:
29/6/99*

CS

1ST AND 2ND COURT

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

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

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR. B.S. JAI PARAMESWAR :
MEMBER (J)

ORDER: 29/6/99

ORDER & JUDGEMENT

MA. / 2A / CP. NO.

in
DAY NO. 1695/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED / REJECTED.

NO ORDER AS केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
SRR ब्रेस्ट / DESPATCH

9 JUL 1999

हैदराबाद आवार्ड
HYDERABAD BENCH

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