

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.

323/94

199

T.A. No.

DATE OF DECISION 7.5.1996

Arvind Kumar Sharma

Petitioner

Mr. Virendra Lodha

Advocate for the Petitioner (s)

Versus

Union of India and another

Respondent

Mr. S.S. Hasan, for respondent No.1
Mr. M. Rafiq, for respondent No.2

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K.Verma, Member (Administrative)

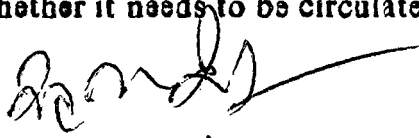
The Hon'ble Mr. Ratan Prakash, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ?

✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?


(RATAN PRAKASH)
MEMBER (J)

(N.K.VERMA)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

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CA No.323/94

Date of order: 7.8.96

Arvind Kumar Sharma : Applicant

Versus

1. The Union of India through the
Regional Director, Northern Zone,
Staff Selection Commission, Block
No.12, CGO Complex, New Delhi.
2. The regional Director,
National Savings (Govt. of India),
Rajasthan Region, Santosh Niket,
Ashok Marg, Jaipur - 302 001.

: Respondents

Mr. Virendra Lodha, counsel for the applicant
Mr. S.S.Hassan, counsel for respondent No.1
Mr. M. Rafiq, counsel for respondent No.2

CORAM:

HON'BLE SHRI N.E.VERMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI PATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI PATTAN PRAKASH, MEMBER(J))

1. The applicant herein Shri Arvind Kumar Sharma has approached this Tribunal under Section 19 of the Administrative Tribunals Act seeking a direction against the respondents to give him an appointment to the post of L.D.C. in pursuance to the Clerks Examination, 1989 held by the Staff Selection Commission (for short, S.S.C.) wherein his name appears in 'Y' Grade at Jaipur Centre, Jaipur with his merit at No.70 and also to extend him all the consequential benefits.
2. Facts which are not in dispute are that the applicant appeared in the Staff Selection Examination

conducted by the Staff Selection Commission for recruitment to the post of L.D.C. in the year 1989 (Roll No.1719003) in the Clerks Grade Examination, 1989. He was declared successful in the written test and also qualified in the typing test and he was also shown to have stood at serial No.70 in order of merit i.e. Y Group/Grade. It is the case of the applicant that he eagerly waited for his posting/appointment order but did not receive any. He approached the respondents several times but no authentic response was given to him. However, he received one communication from the office of the Regional Director, National Savings (respondent No. 2) dated 29.5.1992 (Annex.A-4). It is through this communication that he was informed that his dossier received from S.S.C. New Delhi has been returned to them on 6.7.1991 as there is no vacancy in their office. It is also the case of the applicant that apart from this the applicant also learnt from reliable sources that one Shri Mahesh Dham who also appeared in the aforesaid Clerks Examination, 1989 and was placed in Y Group from Jaipur Centre and stood at serial No.88 in the order of merit has been given appointment in the office of All India Radio Jaipur on the post of L.D.C. This also borne out by the letter dated 14.5.1991 (Annex.A-6) addressed to Shri Mahesh Dham whereupon Shri Dham was given appointment as L.D.C. Gr.II at Nagaur in the year 1990. He also wrote letter to the Regional Director, Northern Zone S.S.C.New Delhi vide Annexure A-1 dated 29.3.1994. When nothing materialised he also gave a legal notice for demand of justice dated 23.4.1994 (Annex.A-2) to the

respondents. Having received no response, he has been constrained to file this application to claim the aforesaid relief.

3. Both the respondents have contested this application by filing separate replies. The stand of respondent No.2, the Regional Director, National Savings (Government of India) Rajasthan Region, Jaipur has been that since two posts of L.D.Cs were vacant in their office as on 31.5.89; the Staff Selection Commission i.e. respondent No.1 was requested to select candidates by office letter dated 31.5.1989 (Annex.R-1). This was followed by another letter dated 28.6.1989 (Annexure R-2) requesting the SSC to select two candidates one belonging to the Schedule Tribe and other for the physically handicapped person category. It is also averred by this respondent that SSC proposed one Shri Hazari Lal Saini for appointment as L.D.C. vide their letter dated 4.12.1989 (Annex.R-3) whereupon Shri Saini was appointed on 22.12.1989. It is further averred by this respondent that as the post of L.D.C. to be filled against the Schedule Tribe category remained vacant, the S.S.C. was again requested to propose suitable candidate for appointment vide letter dated 9.7.1990 (Annex.R-4) and that in pursuance of this, the S.S.C. proposed appointment on the said post of one Shri Ramesh Chand Meena vide their letter dated 17.10.1990 (Annexure A-5). Shri Ramesh Chand Meena was accordingly posted on the post of L.D.C. on 16.11.1990. It is further stated by this respondent that the S.S.C. subsequently sent nomination dossiers of Shri Arvind Kumar Sharma (applicant) and Shri J.N.Meena

for appointment in their office vide their letter dated 14.12.1990 although there was no requisition made in this behalf by respondent No.2. It has accordingly been stated by the respondent that the nomination dossiers of Shri Arvind Kumar Sharma and Shri J.N. Meen having been sent by respondent No.1 mistakenly and erroneously they were returned to the S.S.C. vide their registered letter dated 6.7.1991 (Annex R-6). The applicant having corresponded with respondent No.1 on 28.5.1992 he was accordingly informed by respondent No.2 vide their letter dated 29.5.1992 (Annexure R-7) that his nomination dossier has been returned to the S.S.C as no post of L.D.C was available in their office. It has, therefore, been averred that since there was no post with their office they could not have extended appointment to the applicant, nor were empowered to do so and it was for respondent No.1 who could have conveniently forwarded these nominations to other departments where vacancies were available. This respondent has, therefore, urged that the applicant is not entitled to claim any relief qua them.

4. Respondent No.1 by filing a separate written reply has taken a stand that it is on the basis of actual vacancies and firm number of vacancies reported by the user offices, ^{that} this Commission conducts the examinations for recruitment to the post within their purview. The post of L.D.C. (Group 'C') also are filled on the basis of competitive examination held by S.S.C. every year. It has been admitted by respondent

No.1 that the applicant was declared qualified in the Clerks Grade Examination, 1989 for appointment against Y Group post and was allotted Roll No.1719003 and his rank No. was SLY/0070. The respondent No.2, the Regional Director, National Savings, Government of India, Rajasthan having requisitioned two candidates one for the SC Category and one for the Ex-serviceman category for the post of L.D.C. vide Annexure R-1, the applicant being a general category candidate was accordingly nominated vide Staff Selection Commission's letter dated 3.12.1990 (Annexure R-2) for appointment as L.D.C. against the vacancy of Ex-Serviceman which is permissible under DPGAR's U.O.No.39016/10/SC-Estt (C) dated 15.5.1980 (Annex.R-3). It has further been averred by this respondent that although respondent No.2 the Regional Director, National Savings Jaipur in their letter dated 6.2.1990 has clearly requisitioned one Ex-Serviceman candidate, yet they returned the dossier of the applicant after a lapse of seven months from nomination stating that there was no vacancy in that office. It has accordingly been averred that since there was a time gap and there was no communication from the applicant for his nomination and de-nomination, his candidature was cancelled. Another stand which has been taken by this respondent is that as per Para 2A of the Commission's nomination letter "officer of appointment to the candidates nominated through this letter" should be issued within two months from the date of receipt of this letter failing which the dossier(s) should be returned to this office forthwith stating the reasons for not sending the offer of appointment to the candidate(s). It has, therefore, been

averred that it is the fault of the National Savings Jaipur who did not issue the offer of appointment to the applicant in terms of the nomination made by S.S.C. and that they cannot be held at fault for not issuing appointment letter/nomination to the applicant. It has also been stated that respondent No.1 is only a recruiting authority and not the appointing authority which in this case is respondent No.2 and this answering respondent is not at fault. It has also been urged that the applicant having failed to approach within limitation, this application is also time barred.

5. We heard the learned counsel for the applicant as also for both the respondents. Respondent No.2 vide order dated 23.2.1996 was further directed to file a complete list of 14 employees working on the post of L.D.C. in the office of respondent No.2 with their date of appointment and source of recruitment. In compliance whereof the respondent No.2 has filed an additional affidavit alongwith a number of documents.

6. We have given anxious thought to the arguments of the learned counsels and have carefully gone through all the documents placed by the applicant as also by both the respondents.

7. At the outset, we are constrained to observe that this is a case which exhibits that there is no coordination between an important statutory body viz.

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the Subordinate Service Commission and one of its User Department viz., Regional Director, National Savings (Government of India) Rajasthan Region, Jaipur. Each one of the respondent has tried to shift his responsibility to the other respondent. Be that as it may, the only point for determination in this CA is whether after the applicant has been declared successful in the Clerks Grade Examination, 1989 and has been placed at merit No.70 in 'Y' Grade of L.D.C. whether he is entitled to seek appointment by respondent No.2 more so when there has been a definite requisition to the S.S.C. respondent No.1 for the nomination of two candidates (one from Ex-serviceman and another from Schedule Tribe Category) for the post of L.D.C vide their letter dated 31.5.1989 ?

8. Before taking up above issue, what needs to be observed and has been discerned after perusal of the documents filed by respondent No.1 and respondent No.2 is that in the office of Regional Director, Regional National Savings, Rajasthan Region, Jaipur, there is complete confusion about the requisition sent to the SSC for nominating the candidate for the post of LDC in their office. Vide their letter dated 31.5.1989 (Annexure R-1) respondent No.2 makes a requisition for nominating two candidates one from Ex-serviceman and another from Scheduled Tribe Category for the post of L.D.C. By another letter dated 28.6.89 which again seeks nomination of two candidates for the post of L.D.C. one belonging to Schedule Tribe and another for the handicapped person and vide letter dated 6.2.90 (Annexure R-1) to the reply of respondent No.1 this office



seeks nomination of two candidates for the post of L.D.C. one belonging to scheduled tribe and other for Ex-serviceman. This is not the end. Vide letter dated 15.6.1989 annexed with the Additional affidavit filed by respondent No.2 in compliance of the directions of the Tribunal, the Regional Director, National Savings Jaipur is seeking the nomination of three candidates (one from Scheduled Tribe, second from Ex-serviceman and third from handicapped person) for the post of L.D.C. About this letter dated 15.6.1989, it has been averred by the deponent Shri A.K.Chouhan, Regional Director, National Saving Organisation, Rajasthan, Jaipur that in the reply of respondent No.1 reference to the letter dated 15.5.1990 has been a mistake on part of the office of the Regional Director, National Saving Organisation, Rajasthan, Jaipur in not correcting its date from the month of May to June 1989. Regarding the issuance of the letter dated 6.2.1990 referred to by the S.S.C with their reply, it has been averred by this deponent that this letter was erroneously issued as on the date on which this requisition was sent there was only one vacant post of L.D.C. and not two, therefore, in subsequent correspondence a request was made to S.S.C. to the effect that only one candidate for Schedule Tribe be nominated. The explanation given is that one Shri P.D.Bunkar who was removed from service on 9.5.1985 on being convicted by a criminal court was reinstated vide order dated 15.9.1989 and thus there has been a mistake again in not communicating to the S.S.C. to treat the earlier requisition with respect to one post of Ex-serviceman as cancelled and that it is owing

to the mistake that a confusion has come to be created with respect to the availability of vacant number of posts in the office of Regional Director, National Saving Organisation, Jaipur and hence this clarificatory affidavit." (emphasis supplied). The above deposition made by the Regional Director, National Saving, Jaipur indicates the extent of confusion and mismanagement in the office of respondent No.2 at Jaipur. When once the respondent No.2 had made requisition for nomination of two candidates to the post of L.D.C. one for the category of Scheduled Tribe and another for the category of Ex-serviceman, they should have adhered to it and if there had been any change in the vacancy position they should have immediately been in correspondence with respondent No.1. Their failure to take appropriate action at the relevant time has resulted in causing uncalled for anxiety and uncertainty in the mind of the applicant who although not required to run from one respondent to the other; had tried to find out the reality. It is settled law that although no candidate who has been declared successful can as of right ask for appointment to a particular post but it is also true and settled that once a person has gone through a channel of selection process and has been declared successful and has been communicated the merit, he has also a vested and legitimate right to be communicated the ultimate result about his appointment. In the present CA neither respondent No.1 has communicated to the applicant that his candidature has been cancelled, nor respondent No.2 has communicated to this effect. The plea raised on behalf of respondent No.1 that although

the applicant came to know about the return of his dossiers by respondent No.2 to respondent No.1 in May 1992 yet he kept silent and did not agitate the matter before 1994 when a notice to demand for justice was said to have been given^{to} (which this respondent has given an evasive reply of its non receipt in their office) goes to show that all is not well in the respondent No.1's organisation as well. Our conclusion in this regard is further borne out on a perusal of Annexure R-3 filed alongwith the reply of respondent No.2 which is a nomination dated 4.12.1989 sent by S.S.C. to respondent No.2 with reference to their letter dated 28.6.1989 (Annexure R-2) wherein a nomination has been made of a physically handicapped candidate Shri Hajari Lal Saini who appears to have cleared the Clerks Grade Examination, 1987. It is necessary to mention at this stage that when requisition dated 31.5.1989 (Annx.R-1) sent by respondent No.2 to nominate two candidates one from Ex-serviceman and another from S.T.Category was already with them- how could on the basis of a subsequent requisition dated 28.6.1989 (Annexure R-2) which was made for one S.T.candidate and one handicapped person was given preference. If they wanted to nominate a handicapped person respondent No.1 should have sought clarification about their earlier requisition letter sent on 31.5.1989 (Annx.R-1) by respondent No.2. This is not the end. The S.S.C. has vide their nomination dated 19.10.1990 (Annexure R-5) has nominated one Shri Ramesh Chand Meena under the category of S.T.candidate to the office of respondent No.2 with reference to their letter dated 3.8.1990 a copy of which has been


arguments

placed before the Tribunal during/ by the respondents. Moreover in the enclosure Annexure-1 to the nomination dated 9.10.1990 (Annexure R-5) there are no particulars as to from which particular year of Clerks Grade Examination this candidate Shri Ramesh Chand Meena has been nominated. The confusion in the office of respondent No.2 is further high lighted on perusal of requisition sent by the Regional Director, National Saving Organisation Jaipur on 6.2.1989 to the respondent No.1 wherein in the annexure to this letter they have indicated under the column of number of vacancies to be filled in for the post of L.D.C; one candidate from Ex-serviceman category and one from physically handicapped person, - on the other hand in their requisition sent on 31.5.1989 ^{have sought to} to nominate two candidates; one from Ex-serviceman and another from Scheduled Tribe category. In the annexure enclosed to it they have given out the vacancy position to the post of L.D.C. between 1.3.1989 to 29.2.1990 as only two. It appears that respondent No.2 has tried to hide the truth about the actual position of vacant posts of L.D.Cs in his office and have further gone to the extent of issuing a third letter which is dated 15.5.1989 (now deposed to be issued in June 1989) for seeking nomination of three candidates one from ST; second from Ex-serviceman and third from handicapped persons for the post of L.D.C in their office. Delay on part of respondent No.2 in returning the dossiers of two nominated candidates one Shri Arvind Kumar Sharma (applicant) and another Shri Jagdish Narain Meena vide letter dated 6.7.1990 (Annexure R-4) and having been not made within two months from the date of its receipt from the SSC, has also resulted in creating the

present State of affairs in this matter.

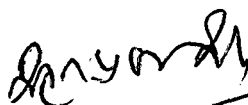
9. In view of what has been discussed and said above, we find that not only respondent No.2 alone but respondent No.1 as well are responsible for creating a situation which has brought the success achieved by the applicant Shri Arvind Kumar Sharma for the post of L.D.C. in the Clerks Grade Examination, 1989 at Jaipur Centre to a nullity. Accordingly, we are of the firm view that respondent No.2 having failed to keep respondent No.1 informed about the latest vacancy position for the post of L.D.C. in his office before the issuance of the nominations in favour of the applicant vide their nomination dated 3.12.1990 (Annex R-2), they have faulted in returning the dossiers in respect of the applicant and another individual Shri Jagdish Narain Meena to the S.S.C vide their letter dated 6.7.1990 (Annexure R-4). Respondent No.1 being only the recruiting agency it is the liability and responsibility of the User Department i.e. respondent No.2 in this case to have extended appointment letter to the applicant after sorting out the matter at their own end. Having failed to issue an appointment letter to the applicant in pursuance of the nomination of the applicant by the SSC and further not communicating to the SSC within a period of two months about the fate of nominations received in their office, it is the bounden duty of respondent No.2 to consider issuance of the appointment letter in favour of the applicant in the background of observations made in this OA. The delay, if any, in bringing this OA; in our view is also inconsequential.

10. Therefore, while answering the issue raised in this O.A. in the affirmative and allowing this O.A., the respondent no.1 is directed to issue a fresh nomination in favour of the applicant Shri Arvind Kumar Sharma on the basis of his qualifying in the Clerks Grade Exam., 1989 and forward it to respondent no.2 within a period of one month, on receipt whereof respondent no.2 would take necessary steps to issue an appointment order in favour of applicant if he otherwise fulfills all other conditions, within one month for the post of L.D.C. treating him to be a candidate qualified at Jaipur Centre, Jaipur. If there are no vacancies at the Jaipur Centre, respondent no2, who is the Regional Director of National Savings, Rajasthan Region, Jaipur, will make all efforts to have the appointment of the applicant at any other office of the National Savings Organisation in the neighbouring regions ~~with~~ stipulation that as and when a vacancy is available at Jaipur, the applicant shall be repatriated to Jaipur without loss of seniority. The applicant shall also be given a notional seniority from the date his appointment became due as per the recommendation of the Staff Selection Commission. The applicant may accordingly be extended the necessary relaxation ⁽¹⁾ in his age if on account of this proceeding he has crossed the age of recruitment in Government service.

 11. Before parting, it is needless to impress that the concerned authorities would look into the working pattern of the SSC as also the functioning in the office of the Regional Director, N.S.O., Rajasthan, Jaipur, so

that such a situation do not recur.

12. The O.A. is disposed of accordingly with no order as to costs.


(RATTAN PRAKASH) 2.5.96.
MEMBER (J)


(N. K. VERMA)
MEMBER (A)