

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 22.10.02

OA 136/97

Ganpat Singh Gaur, Peon O/o Garrison Engineer, MES, Alwar.

... Applicant

Versus

1. Union of India through Secretary, Min. of Defence, New Delhi.
2. Engineer-in-Chief, Army HQs, Kashmeer House, New Delhi.
3. Chief Engineer, Southern Command, HQs, Pune.
4. Chief Engineer, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur.
5. Commander Works Engineer, MES, Power House Road, Bani Park, Jaipur.
6. Shri Om Prakash, Meter Reader O/o Garrison Engineer, Alwar.

... Respondents

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

For the Applicant

... Mr. P.P. Mathur

For Respondents No. 1 to 5

... Mr. Arun Chaturvedi

For Respondent No. 6

... Mr. Hemant Gupta, proxy counsel  
for Mr. M. Rafiq

O R D E R

PER MR. A.P. NAGRATH

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, prayer of the applicant is that respondents be directed to appoint him on the post of Meter Reader with effect from the date the other persons such as S/Shri Vidyadhar and Ram Phool were appointed on the aforesaid post and that he be granted all consequential benefits.

2. Facts of the case, as per the applicant, are that he was recommended for promotion on the post of Meter Reader by the Board which met for this purpose on 28.9.87. Another Board was also convened on 14.9.87 for the same purpose. On the basis of the selections made, respondent No. 6, Shri Om Prakash, has been appointed, whereas applicant's case has been ignored even though he was more meritorious. According to the applicant, as per the board's proceedings of 28.9.87, he was placed at S.No. 1. By combining the proceedings of the two boards, which were convened on 28.9.87 and 14.9.87, his name comes at second position. It



is stated that he had secured 62 marks as against 59 obtained by Shri Om Prakash. He has taken a plea that Shri Om Prakash was not even eligible to be considered as he was already occupying a Class-III post of Carpenter in the scale of Rs.950-1500. The pay scale of Meter Reader is also the same. As a result of this selection three candidates, S/Shri Vidyadhar, Om Prakash & Ganpat Singh, got appointed in February, 1998, whereas the applicant was left out. He submitted his representation and finally by letter dated 30.8.96 (Ann.A/3) the Chief Engineer, Jaipur Zone, wrote to the Chief Engineer, Southern Command, giving all the details of this case and it was admitted that the applicant was entitled to be appointed on the post of Meter Reader. After correspondence between various agencies finally a letter was written on 4.1.97 by CWE Jaipur to Chief Engineer Jaipur indicating therein that name of the applicant had been duly approved in the board proceedings for being appointed as a Meter Reader. A request was made to the Chief Engineer, Jaipur Zone, to issue the letter of appointment at the earliest. Since the appointment has not been offered, the applicant has prayed for directions to the respondents to give him appointment.

3. Reply to this application has been filed by the official respondents and also by respondent No.6. The respondents have raised a preliminary objection on the point of limitation for the reason that the promotion orders, consequent to the selection under reference, were passed on 25.2.98, whereas this OA has been filed in the year 1997. The learned counsel for the applicant, Shri P.P.Mathur, has countered this plea of limitation taken by the respondents by stating that the matter of appointment of the applicant has continued to remain under consideration of the respondents. In fact, there has been no communication sent to him rejecting his case. On the other hand, CWE, Jaipur, by his letter dated 4.1.97 has brought out the facts clearly and has unhesitatingly stated that the applicant has wrongfully been denied his appointment. The applicant was all along hopeful of getting that appointment but since no final decision is being taken, he has filed this OA seeking redressal from this Tribunal.

4. We have considered this plea of the respondents regarding limitation and the arguments of the learned counsel for the applicant. There is no doubt that the other selected candidates were appointed wayback in February, 1998. It is also true that case of the applicant



has continued to remain under consideration of the departmental authorities. The applicant has been working as a Peon in the same department and it appears that he had been hoping all along that he would get the appointment as the concerned officers have themselves recommended that he had been wrongfully ignored. From the letter dated 4.1.97 (Ann.A/2) we find the case had remained under active consideration till the date this OA has been filed in March, 1997. In the facts and circumstances of this case, we find that the provisions of Section-21 of the Administrative Tribunals Act, 1985 are not attracted so as to put this case beyond the period of limitation.

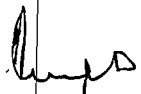
5. On merits, there is no dispute on the part of the respondents that there were two separate boards which met on 28.9.87 and 14.9.87 and they made separate recommendations. It is admitted by the respondents that the candidates whose recommendations were received from the first board got appointed and by the time recommendations in favour of the applicant, Shri Ganpat Singh Gaur, were received, no vacancy was left. The respondents have chosen to justify their stand by declaring that it is open to the government to deny promotion to a person who has passed the test. They have further attempted to buttress their stand by taking a plea that Shri Om Prakash was a more eminently suitable candidate as he was already holding the post in the higher grade.


6. Having heard the learned counsel for the parties and having perused the records, there is no doubt in our mind that in the written reply the respondents have tried to defend the indefensible. If for the purpose of convenience they have decided to set up two boards for filling up vacancies of Meter Readers in respect of the same unit, it was required of them to interpolate the results of the two boards and then pick up the candidates according to their merits. Annexure A/2 clearly reveals that he was the first person in the merit list of the board proceedings in respect of GE Udaipur. However, without caring for this result, the persons recommended by the board in respect of GE Alwar were given appointment. Annexures A/1, A/2, A/3 & A/4 bring out in unmistakable terms that the respondents in fact committed a mistake by not appointing the applicant. Unfortunately, despite having come to this conclusion they have not considered it appropriate to actually appoint the applicant. The respondents have now come up with a plea, as stated by the learned counsel on their behalf, that there is presently no vacancy. We do not find this stand acceptable. Our attention has been drawn to the notice dated 21.2.2002 by the learned counsel for the applicant, by



which it has been proposed to hold DPC for promotion of eligible males to the post of Meter Reader under the jurisdiction of various Chief Engineers including the Chief Engineer, Jaipur Zone. Denial of appointment to the applicant on the ground that there is no vacancy, is totally unjustified. In fact, when the respondents realised that a mistake had been made, they were well advised to take a remedial corrective action of their own, which they have chosen to ignore. Their indifference is indeed appalling. On the facts of this case, this OA deserves to be allowed but the relief has to be restricted in view of the fact that the applicant chose to wait for a number of years for the departmental authorities to act in his favour.

7. We, therefore, allow this OA and direct the respondents to consider the case of the applicant for appointment as Meter Reader within a period of one month from the date of receipt of a certified copy of this order. The applicant shall be entitled to reckon seniority in the cadre of Meter Reader according to the merit position he achieved in the combined board proceedings held in February, 1987. However, he shall be entitled to the pay and the scale of Meter Reader only from the date of his appointment. We also consider it a fit case where the cost should be imposed on the respondents and quantify the same as Rs.5000/- (Rs.five thousand only) to be paid to the applicant within a month from the date of receipt of a certified copy of this order.

  
(A.P.NAGRATH)  
MEMBER (A)

  
(G.L.GUPTA)  
VICE CHAIRMAN