

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 21st September, 2001

OA No. 70/2000

Lokendra Nath Sharma s/o Shri Jagannath Prasad working as
Clerk (Traffic) Ammunition Depot, Bharatpur.

..Applicant

Versus

1. Union of India through the Secretary, Ministry
of Defence, Govt. of India, New Delhi.
3. Army Ordinance Core Reocrd Officer,
Secundrabad.
3. Administrative Officer, Ammunition Depot,
Bharatpur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. Arun Chaturvedi, counsel for the respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member


The applicant was appointed as Mazadoor in the Ammunition Depot, Bharatpur in April, 1981. He appeared in a selection for the post of Clerk in 1985 and was declared successful vide letter dated 17th May, 1985 (Ann.A1). He was not appointed to the post of Clerk for the ostensible reason that a ban has been imposed for filling up the vacancies and at that point of time no vacancy could be realised for accommodating the applicant. A notification was issued on 02.2.2000 for filling up 2 posts of LDCs and both were shown as reserved for OBC category. The



applicant has filed this OA with the prayer that the respondents be directed not to proceed with filling up the vacancies as notified without first appointing him to one of the posts of LDCs as he had already qualified in the selection held in 1985.

2. The applicant alleges that after lifting of ban a similar selection was held in 1994 in which one Shri Manoj Kumar Verma, an SC candidate was selected afresh. He submits that since he was senior to the said Manoj Kumar and he had passed the selection much earlier, he should have been appointed as LDC in preference to Manoj Kumar. It has further been stated that the vacancies are still available and not appointing him first, the department is going ahead with the process of filling up two vacancies as amongst the OBC candidates.


3. In reply, the respondents have admitted that 3 vacancies have been released for being filled up, but they are all for reserved categories. Out of these 3 posts, one SC candidate was to be adjusted and ^{two} OBC candidates were to be selected. The applicant does not belong to any of the reserved category and, therefore, cannot claim to be appointed against the vacancies realised. The notification is for two vacancies, which are reserved for OBCs and vacancies for SC candidate has been filled up from the panel of 1989 to 1993. It has been submitted that the applicant was selected in the year 1985, but he could not be appointed due to the ban imposed vide Army Headquarters letter dated 7th May, 1985. Their plea is that, even now, no general category vacancy has been released. While



releasing 3 vacancies, the Army Headquarters vide letter dated 6.7.99 have given the guidelines that these have to be filled up strictly on the basis of Post Based Roster issued by the DOPT vide letter dated 2.7.1997. The claim of the applicant has been denied on the ground that no vacancy in general category has been declared and thus applicant's grievance is baseless.

4. We have heard the learned counsel for the parties. The learned counsel for the applicant referred to the reply of the respondents to state that the fact that 3 vacancies have been released has been admitted by the respondents. In the notification dated 02.2.2000 the number of vacancies advertised are only two and both have been shown reserved for OBC. The learned counsel contends that by inference it is clear that the third vacancy is meant for general candidate. Since the applicant had qualified the selection in the year 1985 and could not be appointed because of the ban, the learned counsel submitted that the applicant had the first right to be appointed against the third vacancy. He also argued that at the time when the applicant was selected in 1985 there was no vacancy earmarked for OBC and at that time the reservation policy did not provide for reserving any post for OBC category. As soon as the vacancies were released, the applicant should have been appointed to the post and it was only later the reserved vacancies could be considered for being filled up.


5. The learned counsel for the respondents submitted that all the 3 vacancies released were only for



reserved candidates. He referred to the letter dated 17.12.99 (Ann.R1) to show that from the past panels only the panel of SC/ST candidates was allowed to remain valid. Thus the learned counsel contended that in respect of general candidates past panels were no more valid and the applicant has thus lost the right to be considered.

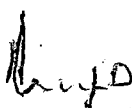
6. We have considered the rival contentions and also documents on record. It is not disputed that the applicant was selected in the year 1985 but could not be appointed because of a ban. However, on careful perusal of the records, we find that the Army Headquarters have released only 3 vacancies one of which is reserved for SC and two for OBC categories. Since no vacancy has been released for general community candidate, no occasion can arise in favour of the applicant for being appointed, notwithstanding, the fact whether the panel of the year 1985 still remained valid. It lies within the domain of the department as to how many vacancies are required to be filled up.

7. The learned counsel for the applicant while referring to the rejoinder filed by the applicant stated that there are 23 posts of LDCs as per the sanctioned strength and only 17 persons are on roll and 6 vacancies are still available. As we have mentioned above, it is for the department to decide whether they want to fill up any vacancy and no direction can be given by the Tribunal that all vacancies must necessarily be filled up. The department has decided to fill up 3 vacancies falling to the share of reserved candidates. It is not the case of

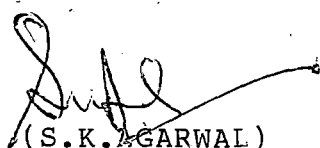


the applicant that any of the general community candidate has been appointed or is being appointed. The applicant has failed to make out any case in his favour and this application is liable to be dismissed as without any merit.

8. We, therefore, dismiss this application, but with no order as to costs.


(A.P. NAGRATH)

Adm. Member


(S.K. GARWAL)

Judl. Member