

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 14th day of February, 2005

ORIGINAL APPLICATION No.72/2002

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

Lokendra Nath Sharma,
S/o Shri Jagannath Prasad,
r/o Mohalla Gopal Garh,
Near Suraj Pole Gate, Bharatpur,
now a days working as Clerk (Traffic)
Ammunition Depot, Bharatpur.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India through
the Secretary to the Government of India
Ministry of Defence,
Government of India,
New Delhi.
2. Army Ordnance Corps, Record Officer,
Secunderabad.
3. Administrative Officer, Ammunition Depot,
Bharatpur.


.. Respondents

(By Advocate: Shri V.K.Jain, proxy counsel to Mr.
Gaurav Jain.

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ORDER**Per M.L.Chauhan, Member (J)**

The respondents decided to fill up certain posts of Clerk in the year 1985 and for that purpose selection was held. The applicant also appeared in the said selection and was declared successful vide letter dated 17th May, 1985 (Ann.A2) and the applicant was directed to report to the office of Ammunition Depot, Bharatpur in any working day for completion of documents etc. However, he was not appointed to the post of Clerk for the ostensible reason that a ban was imposed on filling up the vacancy. Subsequently, the respondents issued notification on 2.3.2000 for filling up 2 posts of LDC and both these posts were shown as reserved for OBC category. The applicant filed OA No. 70/2000 in this Tribunal with the prayer that the respondents be directed not to proceed with filling up of vacancies as notified without first appointing the applicant to one of the posts of LDC as he has already qualified in the selection held in the year 1985. It was also brought to the notice of the Tribunal in that OA that after lifting of ban a similar selection was held in the year 1994 in which one Shri Manoj Kumar Verma, an Sc candidate, was selected afresh. Since according to the applicant he was senior to Shri Manoj Kumar and has also passed the selection much earlier to him, he has preferential



right for appointment as LDC as compared to Shri Manoj Kumar. It ~~was~~ further stated that vacancies are still available and not appointing the applicant, the Department ~~was~~ going ahead with filling up of two vacancies amongst OBC candidates. It ~~was~~ further alleged that 23 posts of LDC was the sanctioned strength, and only 17 persons are on roll and 6 vacancies are still available. This Tribunal after taking into consideration the stand taken by the respondents in the reply dismissed the OA and in the operative operation it was held that '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.' Thereafter vide notification dated 20th November, 2001 (Ann.A1) the respondents advertised 5 posts of LDC out of which 3 posts were required to be filled from unreserved category. Since vacancy for unreserved candidates were advertised vide notification dated 20th November, 2001, the applicant has again filed OA thereby stating ^{that is} the vacancy of LDC is available against general quota, as

such he has preferential right to be appointed against one of the said vacancy. In relief clause, he has prayed that appropriate order or direction be issued to the respondents not to give appointment to other persons against the advertised 3 posts of LDC vide Ann.A1 notification dated 20.11.2001 till previously selected candidates are absorbed and adjusted and the respondents be directed that the name of the applicant with all necessary papers be sent to respondent No.2 for ordering appointment against general quota in accordance with the Board Proceedings of 1985 forthwith.

2. Notice of this application was given to the respondents. The respondents have filed reply. By way of preliminary objections, it has been stated that the present application is barred by Section 11 of the Civil Procedure Code, principle of 'res-judicata' because the same has been preferred on the same grounds and with the same prayer as contemplated in original application No.70/2000 decided by the Central Administrative Tribunal, Jaipur Bench on 21.9.2001 in which the applicant has made similar prayer. On merit, it has been stated that the applicant could not be appointed due to the ban imposed vide Army Headquarter letter dated 7th May, 1985. It is further stated that 3 vacancies for the post of LDC were released vide Army Headquarter letter dated 6th July, 1999. The AOC record

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office intimated vide letter dated 17.12.99 that SC/ST candidates selected in the SRD panel 1989-1993 only are to be considered against these vacancies. As per the post based roster maintained by this depot vacancies were to be released only for OBC candidate whereas the present applicant was an unreserved candidate. Therefore, the case for recruitment of the applicant could not be considered by the board. It is further stated that the panel of 84-88 was declared invalid by the Army Headquarter vide letter dated 29th April, 1999 (Ann.R1). The fact that the respondents have issued a notification dated 20.11.2001 wherein 3 vacancies for unreserved candidates have been shown, has been admitted. It is further sated that one vacancy of LDC was also released to this depot for direct recruitment from the Army Headquarter by respondent No.3 vide letter dated 7th April, 2001. Before filling up this vacancy a clarification was sought from Army Headquarter by respondent No.3 vide letter dated 7.4.2001 to clarify whether the present applicant Sh. Lokendra Nath Sharma can be considered as LDC against the vacancy. But the Army Headquarter replied the same in negative vide its letter dated 20th April, 2001 with the observation that panels made during the year 1984-88 has already been declared invalid vide letter dated 24.9.1999 and consideration for appointment in respect of present applicant is not feasible. Copy of the letter dated 7th April, 2001 and

letter dated 20th April, 2001 are annexed with the reply as Ann.R2 and R3. Thus, according to the respondents, the applicant is not entitled for appointment against vacancy for unreserved candidates which was available/notified in the year 2001.

3. The applicant has filed rejoinder. In the rejoinder, it has been stated that in the earlier OA the relief prayed by the applicant was that no selection be held for the post of LDC against 3 vacancies which were notified for reserved category vide notification dated 2.3.2000 whereas in the present OA the relief prayed by the applicant is that the respondents be ordered not to give appointment to the persons against the subsequent advertisement of 3 posts of LDCs vide Ann.A1 dated 20.11.2001 till previously selected candidates are absorbed. It is further stated that the relief regarding notification dated 20.11.2001 could not be the subject matter of the dispute in the earlier OA of 2000 as on that date of filing the OA the notification was not issued and the applicant could not have been known that such a notification will be issued by the Government. Therefore, the question of res-judicate does not arise. On merits, the applicant has reiterated the submissions made in the OA.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicant brought to our notice judgment rendered by the Allahabad High Court in the case of State of U.P. vs. Rakesh Kumar, 2004 (2) ATJ 664 to contend that the matter is squarely covered by the said judgment and thus the applicant is entitled to the relief as prayed by him.

4.2 Before we proceed with the matter, it will be useful to deal with the question of res-judicata as raised by the respondents in the reply. As can be seen from the judgment dated 21st September, 2001 passed in OA No.70/2000 (Ann.A3) it is evident that the applicant has filed that OA with the prayer that the respondents be directed not to proceed with filling up of vacancies as notified vide notification dated 2.3.2000 whereby two posts of LDC from OBC category were intended to be filled in without first appointing the applicant to one of the posts of LDC as according to the applicant, he has already qualified the selection held in 1985. This Tribunal after noticing the contentions raised by the applicant and taking into consideration the reply filed by the respondents, in para 5 to 7 has observed as under:-

"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

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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 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 candidates. Since 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."

Thus, from the portion as quoted above, it is clear that the earlier OA of the applicant was rejected on the ground that the department has decided to fill up 3 vacancies falling to the share of reserved candidates and it is not the case of the applicant that any of the general candidate has been appointed or is being appointed. Thus, the applicant has failed to make out any case in his favour. In para 6 of the judgment, relevant portion of which has been quoted above, it has been categorically observed that


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since no vacancy has been released for general community candidates, no occasion can arise in favour of the applicant for being appointed notwithstanding the fact whether the panel of the year 1985 shall remain valid. It was further observed that it lies within the domain of the department as to how many vacancies are required to be filled up. So far as the present OA is concerned, the grievance of the applicant in this OA is that now the respondents have notified 3 posts of LDC to be filled in from unreserved category vide notification dated 20.11.2001, as such he can be appointed against one of the posts pursuant to his selection on the basis of panel prepared in the year 1985. Thus, we fail to understand how the principle of res-judicata is involved in this case. It may also be relevant to state here that this Tribunal in earlier OA has not given finding that panel of the year 1985 stood already cancelled vide order dated 17.12.99 and as such the same is not valid. Since no finding on this point has been given by the Tribunal in the earlier OA it is not legally permissible for the respondents to raise the plea of res-judicata so as to defeat the claim of the applicant as raised in this OA.

4.2 Now the question which requires our consideration is whether it was legally permissible for the respondents to decline appointment to the applicant

who admittedly could not be appointed on account of ban imposed by the respondents on recruitment. When subsequently the ban was lifted by the department, the post became available to be filled in from the general candidates against which category the applicant was selected. According to us, it was not permissible for the respondents to deny appointment to the applicant solely on the ground that the past panel stood already cancelled vide letter dated 17.12.99 and it was made operative only in respect of SC/ST candidates and in fact one of the SC candidate was also given appointment on the basis of panel of 1989-93 in the year 1999. It is admitted case between the parties that the applicant was selected as LDC against general category on the basis of panel prepared in the year 1985 and in fact he was declared successful vide letter dated 17th May, 1985. It is also not in dispute that during the validity of the panel the vacancies were available but the applicant could not be given appointment since the respondents have imposed the ban for filling up the vacancy. It is also not in dispute that thereafter vacancy became available in the year 1999 and in fact the respondents took steps for filling up 3 post of LDC on the basis of post based roster since these 3 posts were meant for reserved category viz. one for SC candidate and 2 for OBC candidates, as such the applicant could not be adjusted against these posts and ultimately the

earlier OA of the applicant was also dismissed on that account. However, from the material placed on record it is clear that one vacancy of LDC was released vide letter dated 5th March, 2001 but the applicant was not given appointment on the ground that the panel during the year 1984-88 has already been declared invalid vide letter dated 31.4.99. It is further borne out from the record that 3 posts of unreserved category were also notified vide notification dated 20th November, 2001 and the applicant was not given appointment for the same reason. Thus, it is for the first time in the year 2001 that right accrued in favour of the applicant for appointment as the vacancy for general category became available only in the year 2001 after the ban was lifted. Thus, according to us when the respondents could operate the panel of 1989 to 1993 and resort to give appointment to the reserved candidates vide letter dated 17.12.99, as can be seen from the findings recorded in para 5 of the earlier OA which has been reproduced in the earlier part of this order, it was highly unjustified on the part of the respondents not to extend similar benefits to the general category candidate like the applicant who could not be given appointment despite being selected by the duly constituted selection committee and there being vacancy at the relevant time when such selection was held. It was only on account of the ban imposed by the Government that the appointment order could not be



issued in favour of the applicant. Thus, the applicant cannot be allowed to suffer on account of inaction on the part of the respondents and at least he was entitled for appointment as soon as the ban was lifted by the respondents and post became available for unreserved category.

4.3 The matter in controversy is no longer res integra and the same stood settled by the decision rendered by the Allahabad High Court in the case of State of UP vs. Rakesh Kumar (supra) whereby in para 8 of the judgment the Hon'ble High Court after relying the judgment of the Apex Court in the case of S.Govindaraju vs. Karnataka, SRTC, 1986 (2) SCC 273, Bhim Singh vs. State of Haryana, (1981) 2 SCC 673 and Pradeep Kumar Mishra vs. U.P. State Road Transport Corporation, Lucknow, (1991) 2 UPLBEC 796 has given the following findings:-

"8. Having heard learned counsel for the parties we find that it is not in dispute that the name of the respondent-writ petitioner was included at serial No.4 in the select list for the post of Machine Assistant. There already existed three vacancies which were filled up by the persons whose names stood at serial Nos. 1,2 and 3. One post of Machine Assistant was to fall vacant in the year 1989 as Nasir Ahmed was due for promotion and that is why select list of four persons was prepared by the authorities. Nasir Ahmed was, in fact, promoted on 29th August, 1989 and he joined the promotional post on 3rd November, 1989. when the respondent-writ petitioner approached the authorities for giving appointment he was informed in writing that on account of a ban imposed by the State Government on direct recruitment he cannot be given appointment but as soon as the ban is lifted he

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shall be given an appointment. The ban was lifted in the year 1993. The respondent-writ petitioner waited for more than four years in the hope of getting appointment pursuant to the promise made by the authorities as contained in the letter dated 21st December, 1989. The question is, as to whether, after the ban was lifted the respondent-writ petitioner is entitled for being appointed on the post of Machine Assistant or not. The Hon'ble Supreme Court in the case of S.Govindaraju (supra) has held that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations he gets a right to be considered for appointment as and when vacancy arises. Thus, the respondent writ petitioner gets a right to be considered for appointment on the post of Machine assistant since his name was placed in the select list. It is not disputed that the authorities vide letter dated 21st December, 1989 had assured the respondent writ petitioner that he shall be given an appointment immediately on the lifting of the ban by the State Government. He waited for more than four years. As held by the Supreme Court in the case of Bhim Singh (supra) the respondent writ petitioner had bona fide believed the representation made by the State and having acted thereon cannot now be defeated of his hope to get appointment which has converted into his right on account of the application of the doctrine of promissory estoppel. Thus, the respondent writ petitioner is entitled for appointment on the post of Machine Assistant as soon as the State Government lifts the ban. It may, however, be mentioned here that this Court in the case of Pradeep Kumar Mishra (supra) has held that the selected candidates for a particular trade are entitled to be appointed against the vacancies which occurred during the period for which the select list/waiting list is stipulated to remain valid. The vacancy on the post of Machine Assistant occurred on 3rd November, 1989 i.e. within one year of preparation of the select list which was prepared on 24th January, 1989. The select list was valid and was in force during that period. Thus, the respondent writ petitioner was entitled for appointment on the said post. The submission of the learned standing counsel that the person whose name has been placed in the select list has no right to claim the post cannot be accepted in view of the authoritative pronouncement in the case of S.Govindaraju (supra) which has been followed by this Court in the case of Pradeep Kumar Misra (supra). So far


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as the decision of Hon'ble Supreme Court in the case of Sri Kant Tripathi (supra) is concerned, Hon'ble Supreme Court while interpreting the phrase "the vacancies likely to occur in the next two years" in rule 8(1) of the U.P. Higher Judicial Service Rules, 1975 has held that nobody can anticipate as to how many people would die or how many would compulsorily be retired or removed or dismissed or even would be elevated to the higher post. The expression "vacancies, likely to occurs in the next two years" would obviously mean the vacancies, which in all probability, would occur. In other words, it can only refer to the cases when people would superannuate within the next two years. In view of the principle laid down by the Supreme Court in the aforesaid decision, we find that the vacancy on account of promotion of Nasir Ahmad from the post of Machine Assistant to Rotary Machine Operator was due in the year 2989 and, therefore, the authorities have rightly anticipated the said vacancy. Thus the authorities were perfectly justified in preparing the select list for fourth vacancy which was likely to occur in that year. So far as the question that the fourth post of Machine Assistant fell (sic) was to be filled up from amongst the reserved category candidate is concerned, suffice it to mention that the learned standing counsel has not brought on record any material to show that the said post was to be filled up from the reserved category candidate. Thus, the plea taken by the learned standing counsel can not be sustained."

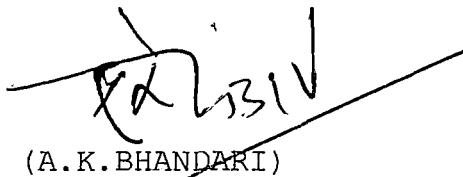
Thus from the portion as quoted above, it is clear that the present case is squarely covered by the decision rendered by the Allahabad High Court in the case of Rakesh Kumar (supra). In that case also the respondent, Rakesh Kumar was selected against the anticipated vacancy. However, subsequently, when the vacancy fell vacant during the validity of the panel he was not given appointment on account of ban on recruitment. The ban was lifted in 1993. Appointment to the applicant was denied solely on the ground that

validity of the select list has already expired. The Hon'ble High Court held that plea taken on behalf of the department is not sustainable. In the instant case also, post was available but appointment could not be given to the applicant on account of ban. When the ban was lifted and vacancies became available, the respondents decided to operate the panel in respect of SC/ST candidates vide letter dated 17.12.99 but it was held no more valid in respect of general candidates. Pursuant to such decision, one of the SC candidate was selected in the year 1999-2000 from the panel of 1989-93 after a lapse of considerable period. However, such benefit was denied to the applicant once the post became available for general category in the year 2001. Thus, the action of the respondents thereby declaring the panel so far as general candidates are concerned as no more valid is arbitrary apart from the fact that the applicant could not have been denied such appointment in view of the law laid down by the Apex Court as noticed by the Allahabad High Court in the case of Rakesh Kumar (supra).

5. In view of foregoing discussions, we hold that the applicant is entitled for being appointed on the post of LDC and respondents are directed to give appointment to the applicant against one post of LDC within a period of six weeks from today.



6. The OA is accordingly allowed with no order as to costs.



(A.K. BHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)