

Central Administrative Tribunal
Jabalpur Bench

OA No.1137/04

Indore, this the 19th day of August, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

1. Tulsi Das Kori
S/o Late Sh.B.L.Kori
2. Sant Ram Rajak
S/o Late Shri A.L.Rajak
3. Santosh Tiwari
S/o Late Shri J.D.Tiwari
4. Rajesh Kumar Sharma
S/o Late Shri R.K.Sharma
(All are working as Messenger Boy,
Gun Carriage Factory, Jabalpur.

Applicants

(By advocate Shri Pankaj Dubey)

Versus

1. Union of India through
Secretary
Ministry of Defence
New Delhi.
2. General Manager
Gun Carriage Factory
Jabalpur
3. The Deputy General Manager (Personnel)
Gun Carriage Factory
Jabalpur.
4. Shri Hari Narayan
5. Shri Hallu Singh
6. Shri Ravi Kumar Verma
7. Shri Rajesh Kumar
8. Shri Mohd. Saleem
9. Shri Bharat Lal
10. Shri Amrit Lal



11. Shri Surya Pal
 12. Shri Dileep Singh
 13. Shri Chandrika Prasad
 14. Shri R.N.Sharma
 15. Shri Sushil Kumar
 16. Shri Rakesh Kumar Kannoja
- (Respondents No.4 to 16 all working with respondent No.2.)

Respondents

(By advocate Shri Om Namdeo)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) Quash impugned order Annexure A4 as illegal and arbitrary and in violation of clause 6 of the notification dated 6.10.2001.
- (ii) Direct the official respondents to appoint the applicants on the post of labour (unskilled) with effect from 28.2.2002 and grant all consequential benefits.

2. The brief facts of the case are that the applicants are working on the post of Messenger Boy with respondent No.2. They are presently under the non-industrial category. A notification was issued by the General Administration Department of respondent No.2 whereby applications were invited from Group-D employees working in the non-industrial category. The said notification provided for the change of post of Group-D employees of non-industrial category to the post of labour (semi-skilled) in the industrial category. Among other conditions prescribed in the said notification one is that the candidates who were already availing the upgraded pay scale in their existing posts shall not be entitled for the change of post, as the change of post was only in the post of labour (semi-skilled). The applicants possessing all eligibilities made applications and appeared in the interviews. However, their names did not find place in the list of successful candidates (Annexure A4). On the other hand, private respondents were selected against the statutory provisions contained



in the notification. Therefore, the applicants are deprived of the channel of promotion. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicants that the action of the official respondents in issuing the impugned order and selecting the private respondents who do not fill the prescribed eligibility criteria is apparently illegal and arbitrary and in violation of the principles of fair play and transparency in the selection process. The impugned order has caused irreparable damage to the service prospects of the applicants. Hence the applicants are legally entitled to the reliefs claimed.

4. In reply, learned counsel for the respondents argued that the applicants were appointed in the year 1986 to 1988 as Messenger Boys while private respondents who are in the category of messenger boys and peons were appointed in the year 1980 to 1984. Thus as per the OFB directive the respondents had followed the principles of inter-se seniority of the volunteers while converting them to labour unskilled to the extent of compassionate appointment. The respondents have appended Annexure R1, which shows the seniority of the applicants vis-à-vis the private respondents. As per SRO (Annexure R2), out of the private respondents, the trade of Mali and Messenger Boy were in receipt pay in the scale of Rs.2550-3200. While as a few of the private respondents who were in receipt of ACP-01 were in the scale of Rs.2650-4000. While as the category of Mali and the Messenger Boy were in the equivalent or nearly equivalent scale of labour unskilled i.e Rs.2550-3200/- the latter category was in the higher scale. In order to meet their demands, an option was taken from these private respondents whether they are willing to come to a lower scale of pay although they are in receipt of higher scale of pay. The private respondents along with the applicants indeed agreed for the above proposal to come to the lower scale of pay. On examining the relative seniority of the applicants vis-a vis private respondents, the respondents re-designated the private respondents as per the inter-se seniority in the respective grade to industrial employees. Thus the re-



designation of private respondents as per the inter se seniority is within the ambit and the policy framed by OFB vide order dated 21.4.97 (Annexure R3). The counsel further argued that even now the private respondents are in receipt of a scale of Rs.2550-3200/- in the grade of labour unskilled. Hence the action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for both parties and perusing the records, we find the applicant No.1 & 3 have not mentioned about their educational qualification in the OA, which was essential according to condition No.2 of the notification Annexure A1. We have perused the concerned records filed on behalf of the respondents. The argument made in this behalf by the learned counsel for the respondents seems to be correct. The arguments advanced on behalf of the applicant are that the post of messenger boy does not have any promotional avenues and the non-industrial employees working on the post of messenger ^{boy} and similar other posts were only benefited and imparted with an opportunity of having better service prospects by virtue of their redesignation on the post of Labour unskilled in the industrial category. However, in an utter surprising manner the official respondents had illegally and in complete violation of the directives and the policies framed by the OFB in this regard had extended the benefit of selection and redesignation to the private respondents in spite of the fact that they were not eligible for such redesignation as an industrial employee. The respondents could not properly explain about the aforesaid arguments advanced on behalf of the respondents as to whether the pay scale of any employee cannot be lowered down even on own request under any provision of law. The representations of the applicants Annexure A8 & 9 are said to be still pending according to the contention of the applicants.

6. Considering all facts and circumstances of the case, we are of the considered opinion that the impugned order dated 28.2.2002 (Annexure A4) is liable to be quashed. We do so accordingly. The respondents are directed to consider the aforesaid representations of



the applicants within a period of three months from the date of receipt of a copy of this order, by passing a speaking, detailed and reasoned order. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

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पूरांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अग्रे भिज -

- (1) सचिव, उच्च न्यायालय जार एग्रेसि एथन, जबलपुर
- (2) आवेदन श्री/श्रीमती/बु..... के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/बु..... के काउंसल
- (4) वरिष्ठ, केपडा, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

Permyko Dubey
25/8/05
an Nanda
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