

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 451 of 2001

Jabalpur, this the 17<sup>th</sup> day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

Ajay Nikhre, S/o Bechan Nikhre,  
aged about 26 years, R/o House No.776  
Isai Mohalla, Gorakhpur, Jabalpur(M.P.)

APPLICANT

(By Advocate - Shri R.C. Tiwari)

VERSUS

1. Union of India  
through : The Chairman,  
Ordnance Factory Board,  
10-A, Shaheed Khudiram Bose  
Marg, Kolkata(W.B.)
2. General Manager,  
Gun Carriage Factory,  
Jabalpur(M.P.)
3. Dipak Kumar Kori,  
S/o L.P. Vinodia  
R/o House No.1476, Sheetle  
Mai, Abroad Bamba Devi, Vinobe  
Bhawe Ward, Ghamapur, Jabalpur  
(M.P.)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

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

"(i) to direct the respondent No.2 for issuance of appointment order for the post of Fireman Grade-II in favour of applicant.

(ii) to dismiss the Original Application 771/98 which has been filed by the respondent No.3 in the interest of justice".

2. Brief facts of the case are that the applicant and respondent no. 3 had applied for appointment of Fireman Grade-II (Rs. 2610-3340) in the Gun Carriage Factory(for short GCF), Jabalpur. For this appointment, two posts belong to Scheduled Caste. After selection procedure, present applicant was found fit for appointment, but the respondent no. 3 was not found physically fit by respondent no. 2.

2.1 After rejection of selection of respondent no. 3, he filed Original Application before the Tribunal in the matter of selection on the post of Fireman Grade-II on the basis of incorrect facts, while Dipak Kori was not eligible candidate for the selection as he could not complete the criteria as laid down by the S.R.O. whereas the applicant completed the fixed criteria for this post, hence the applicant is entitled for issuance of appointment letter but this Tribunal had granted the stay for this post and because of this he is suffering a great hardship.

2.2 The applicant made several representations for issuance of the appointment order to the post of Fireman Gr.II but the same had not been issued by respondent no. 1. Thereafter he filed Original Application bearing No. 92/2001 which was disposed of by the Tribunal directing the applicant to make a fresh representation to the respondents annexing the order of the Tribunal. The applicant in compliance with the Tribunal's order filed fresh representation to respondent no. 2 annexing the order of the Tribunal. After submitting the fresh representation on 13.5.2001, the respondent no. 2 had given information to the applicant on 29th March, 2001 that one Dipak Kori challenged the selection of scheduled caste and the Hon'ble Tribunal, Jabalpur granted stay for the post of Fireman Gr.II for appointment of the candidate. The Guidelines prescribed by S.R.O. with regard to appointment of the said post were fully completed by the applicant.

2.3 At the time of selection, Board has not committed any error for the selection process, therefore, challenge of the respondent no. 3 is baseless and Selection of the applicant done by the Board as a fair selection without any approach or pressure. In fact issuance of the appointment order is constitutional right of the present applicant.

3. Heard the learned counsel for the parties.

4. It is argued on behalf of the applicant that the

applicant had filed O.A. No. 92/2001 which was decided by the Tribunal vide its order dated 2.3.2001 directing the applicant to file a fresh representation within ten days from the date of the said order to respondent no. 2 along with a copy of the said order and with a copy of the same to respondent no. 3. He has further drawn our attention towards letter dated 29.3.2001 (A/3) addressed to the applicant by the Senior General Manager in which it is mentioned that in compliance of the order of the Tribunal passed in O.A., one post is kept reserved for the post of Fireman Gr.II for scheduled caste candidate till the final outcome of that O.A. Since one post was kept reserved and left vacant, the applicant was not considered for promotion to the post of Fireman Gr.II which shows malafide on the part of the respondents.

5. Learned counsel for the respondents argued that as of now the existing strength of the Fire Brigade Staff is 89 in number against the revised strength of 88. Thus, the respondents have already a surplus of one individual. Under such circumstances in the absence of vacancy, appointment of the applicant is not feasible. It is further argued that it is open to the Govt. to decide how many appointments shall be made. The mere fact that this candidate's name has been empanelled in the select list, the same will not entitle him to a mandamus that he be appointed. In the instant case the applicant by getting his name selected in the select list thus does not gain any right for appointment even if he wish to do so. It is further argued that the applicant has only been selected and he is yet to be appointed.

6. After hearing the learned counsel for both the parties and careful perusal of the record we find though the applicant was selected for the post of Fireman Grade-II already but since the respondents are/in surplus of one individual against the existing vacancies, the applicant cannot be

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adjusted for want of vacancy. Moreover, the Hon'ble Supreme Court in the case of Govt. of Orissa through Secretary, Commerce & Transport Department, Bhubaneswar vs. Shri Haraprasad Das & Ors., reported in JT 1997 (9) SC 246, has held that it is not open to the Tribunal to direct the Govt. to fill up certain posts as empanelment in selection list does not give a right to the respondent to be appointed when no posts exist. When a policy decision has been taken by the Govt., not to fill up a particular post, the Tribunal was beyond its jurisdiction in directing Govt. to make further appointment. Their Lordships have further held that it should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed.

7. In view of the settled position of law that mere empanelment or inclusion of one's name in the select list does not give right to him to be appointed, in the present case we cannot give a direction to the respondents to appoint the applicant to the post of Fireman Grade-II and particularly in view of the fact that one person is already in surplus against the existing vacancies. Therefore, the O.A. is bereft of merit and is accordingly dismissed. No costs.

(Madan Mohan)  
Member (Judicial)

(M.P. Singh)  
Vice Chairman

Issued  
on 30.6.04  
BS

पृष्ठान्त से ओ/न्या.....जयपुर, दि.....  
य तिलिपि अन्ते लिखत -  
(1) सचिव, न्याय न्यायालय एवं प्रशासनिक, जयपुर  
(2) आवेदक श्री/श्रीमती/श्री.....के काउंसल RC Tiwari  
(3) प्रत्यक्षी श्री/श्रीमती/श्री.....के काउंसल SA Dharmadika  
(4) न्यायाधीश, न्यायालय, जयपुर न्यायाधीश