

(3)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

15.10.2010

OA 103/2009 with MA 250/2009

None present for applicant.
Mr.D.C.Sharma, counsel for respondents.

Let the matter be listed on 6.12.2010.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

M.L.Chauhan

(M.L.CHAUHAN)
MEMBER (J)

vk

6-12-2010

Mr. Rajendra Vaish, Counsel for applicant
Mr. D. C. Sharma, Counsel for respondents

Heard learned Counsel for the parties.

For the reasons dictated separately,
the OA is dismissed, in view of dismissal of OA, no order
is required to be passed on MA No 250/2009. *vk*

Anil Kumar
(Anil Kumar)
M (A)

M.L. Chauhan
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 06th day of December, 2010

ORIGINAL APPLICATION NO. 103/2009

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Surajbhan son of Shri ChirANJI Lal, aged about 37 years, by caste Raigar (SC), resident of House No. 32, Mansinghpura, Raigar Basti, Tonk Road, Jaipur and working as Group D Darban, GSI Drilling Division, GSI, W.R., Jaipur.

.....Applicant

(By Advocate: Mr. Rajendra Vaish)

VERSUS

1. Union of India through Secretary, Department of Mines, New Delhi.
2. Director General, Geological Survey of India, 29, J.L. Nehru Road, Kolkatta.
3. Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongri, Jaipur.

.....Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(a) by an appropriate order or direction the impugned order dated 12.3.2009. (Annexure A/1) may kindly be declared as illegal and null and void and be quashed and set aside and the respondents be directed to initiate process of appointment in accordance with the selection committee recommendations (Annexure A/6) and issue appointment to the applicant as he being merit no. 1.

(b) if any adverse action is taken during the pendency of the Original Application in respect of promotion to the post of Map Mounter Group C through Limited Departmental Competitive Exams including the fresh appointment or fresh

selection or otherwise, the same may kindly be take a note of and be quashed and set aside;

(c) any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case may also be awarded to the applicant."

2. Briefly stated facts of the case are that respondents took steps for filling up one unreserved vacancy in the grade of Map Mounter in Group 'C' and for that purpose, a circular dated 06.11.2008 (Annexure A/4) was issued prescribing eligibility criteria which, inter-alia, stipulates that Group 'D' posts of Jamadar, Daftary, Safaiwala, Darban, Binder and Mali with six years regular service are eligible to appear in the trade test. It is the case of the respondents that out of 102 incumbents available in the aforesaid grades, only 10 employees including the applicant have submitted their option for appearing in the trade test. The selection result was declared vide order dated 27.11.2008 (Annexure A/6) and the name of the applicant is at sr. no. 8 and he had secured 92% marks, which is highest amongst all candidates. The grievance of the applicant is that vide impugned order dated 12.03.2009 (Annexure A/1), the said selection had been cancelled by the respondents despite there being vacancy and there was no complaint and irregularities committed while conducting such selection. It is on the basis of these facts; the applicant has filed this OA thereby praying for the aforesaid reliefs. It is pleaded that the action of the respondents is arbitrary, unjustified and illegal and the right of the candidates cannot be defeated by canceling the selection process. It is further categorically pleaded that the applicant has got vested right to be appointed against the said post after having been selected by the Departmental Promotion Committee by passing the trade test and having been selected at sr. no. 1.

3. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed. The respondents have categorically stated that as per the recruitment rules, the post of Map Mounter is a promotional post and promotion has to be made from eligible candidates through DPC duly constituted by the Appointing Authority subject to the passing of the trade test. The respondents have also placed on record the copy of the Recruitment and Promotion Rules as Annexure R/1. It is further stated that DPC was convened on 08.12.2008 for considering promotion case in the grade of Map Mounter but no candidate was recommended/selected for promotion to the post of Map Mounter by the DPC. The respondents have placed on record the recommendations of the DPC as Annexure R/6. It is further stated that on the basis of the observations and recommendations made by the DPC, HOD & Appointing Authority ordered to re-initiate promotion action as well as Trade Test for promotion to the post of Map Mounter. The respondents have also placed on record the noting portion of such decision taken by the Deputy Director on record as Annexure R/7. Thus, according to the respondents, pursuant to the decision so taken by the competent authority, circular dated 06.11.2008 and trade test conducted was cancelled vide circular dated 12.03.2009 and the applicant was informed accordingly. The respondents have further stated that fresh selection process, which was initiated for promotion to the post of Map Mounter has been stopped pursuant to the order passed by this Tribunal.

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

on record, it is not in dispute that the applicant possesses the requisite eligibility criteria for promotion to the post of Map Mounter. The respondents have placed on record the Recruitment Rules as Annexure R/1 wherein it is stated that mode of recruitment to the post of Map Mounter is 100% by promotion failing which by direct recruitment. The Recruitment Rules for the post of Map Mounter further provides that 25% promotion has to be made from the grade of Label Writer with 6 years regular service in the grade and 75% promotion has to be made from Group D categories of Jamadar, Daftary, Safaiwala, Darban, Binder and Mali with six years regular service in one or more Group 'D' cadres of Geological Survey of India subject to passing the trade test. Rule 15 stipulates the composition of the DPC. In the present case, although the applicant had passed the trade test but the DPC did not recommend the names of the persons who have qualified the trade test. At this state, it will be useful to extract the minutes of the DPC, which met on 08.12.2008, for promotion to the post of Map Mounter, which has been placed on record as Annexure R/6, which thus reads as under:-

"The Departmental Promotion Committee met on 08.12.2008 in room of Shri Rakesh Gupta, ME (Sr.) to consider the promotion to the post of Map Mounter. The committee observed the following point.

- (i) It was observed that only 09 Group D personnel had appeared for Trade Test. It was seen that most of the senior personnel have not appeared for Trade Test. It is to be ascertain whether ample opportunity was provided to the senior officials as per the seniority list.
- (ii) There is only one post of Map Mounter. There are guidelines that fixed number of officials should constitute the normal zone of consideration. It is not clear whether the officials are under the normal zone of consideration were informed about Trade Test.

The following action is to be initiated before hadn and resubmitted for consideration:-

1. Only eligible no. of candidate as per govt. guidelines for single post of Map Mounter be called for Trade Test.
2. Since the response of earlier circular was poor so the eligible candidates be provided with individual letter for appearing in Trade Test so that senior personnel also get the opportunity.
3. Fresh Trade Test be conducted and the case be resubmitted for consideration by the committee."

5. As can be seen from the observations made by the DPC, the DPC had recommended that selection was not held as per the guidelines issued by the Government which prescribes that only those eligible persons who falls within the normal zone of consideration are required to be called for trade test and only 9 Group D persons have appeared in the trade test. It is stated that most of the senior persons have not appeared and it is to be ascertained whether ample opportunity was provided to the senior officials. Such recommendations have been accepted by the competent authority whereby fresh selection was ordered to be conducted, canceling the earlier selection. We see no infirmity in the action of the respondents. The applicant is not entitled for relief for more than one reasons. It is evident from the record that around 102 incumbents were eligible for promotion and only 10 persons including the applicant submitted their options. Admittedly, the respondents had not adhered to the selection by calling only those candidates which falls in normal zone of consideration. All the persons who were eligible were called for trade test ignoring the guidelines which stipulates that the fixed number of officials be called for trade test which may constitute the normal zone of consideration. Thus, we see no infirmity in the action of the respondents. Simple because the applicant was eligible to appear and had passed the trade test does

not necessarily mean that he must be treated as having requisite seniority for entering into zone of consideration. Law on this point is no longer res-integra. At this stage, we wish to refer to the decision of the Apex Court in the case of **Union of India vs. Deo Narain & Others**, JT 2008 (10) SC 294, whereby the Apex Court has held that eligibility and seniority are quite distinct, different and independent of each other. A person may be eligible, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite seniority for entry in the zone of consideration. Even if he fulfils the first requirement, but does not come within the zone of consideration in the light of his position and placement in seniority and the second conditions is not fulfilled, he cannot claim consideration merely on the basis of his eligibility or qualification. It is only at the time when seniority cases of other employees similarly placed are considered that his case must also be considered. As can be seen from the recommendations made by the DPC, even the candidates who did not fall in the zone of consideration were allowed to appear in the trade test and the consideration was not confined to persons who falls within normal zone of consideration as such the applicant has got no right for consideration, in view of law laid down by Apex Court in the case of Deo Narain (Supra).

6. That apart, yet for another reasons, the applicant is not entitled for any relief. The case set up by the applicant in the OA is that (Para No. 5(f) of the OA) he has a vested right of appointment after having been selected by the Departmental Promotion Committee by virtue of trade test and interview and having been selected at no. 1, his right under the Constitution of India cannot be ignored or snatched by the

respondents in a whimsical and arbitrary manner. The respondents in their reply have categorically stated that the DPC, which met on 08.12.2008 did not recommend the names of any candidate for promotion, as such no candidate was promoted to the post of Map Mounter.

7. We have also reproduced the recommendations of the DPC in the earlier part of the judgment. Thus in the absence of any select list, the applicant has got no right to be promoted to the higher post of Map Mounter. The law on this point is no longer res-integra. At this stage, we wish to refer to the decision of the Apex Court in the case of **State of M.P. & Others vs. Sanjay Kumar Pathak & Others, 2008 (1) SCC (L&S) 207**. That was a case where recruitment process for Assistant Teacher was initiated by the State Government. Process was halted on account of stay granted by the Administrative Tribunal. Subsequently, the Hon'ble Supreme Court upheld the selection process but in the meanwhile power of recruitment passed on to Janpad Panchayats. The Apex Court held that the process was halted at the stage of tabulation of marks and, therefore, there was no select list. The candidates in the absence of arbitrariness, unfairness or mala fides, had no right to insist that the earlier process must be completed. The Apex Court had further held that even though the selection may have been completed, no appointment can be made in the absence of select list. Since in the instant case, no select list was prepared, as such no relief can be granted to the applicant thereby directing the respondents to give him appointment to the post of Map Mounter.

UCL

8. The reliance placed by the learned counsel for the applicant on the judgment of the Apex Court in the case of **K. Manjusree vs. State of Andhra Pradesh & Another**, 2008 (1) SCC (L&S) 841, is not attracted in the instant case as it is not a case where selection criteria was changed. In the instant case, when the DPC has not recommended the name of the applicant for promotion, how the applicant can seek relief that he should be given appointment based on such recommendations made by the DPC?

9. For the foregoing reasons, the OA is bereft of merit and is accordingly dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)

MEMBER (J)

AHQ