

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 68 of 1994
T.A. NO.

DATE OF DECISION 1-12-1994.
(At Agartala)

Shri Harlal Das

PETITIONER(S)

Mr M.Chanda (Amicus curie) with Mr P.S.
Choudhury.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr G.Sarma, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A)

1. Whether Reposters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships Wish to see the fair copy of the Judgment? *No*
4. Whether the Judgment is to be circulated to the other Benches? *No*

Judgment delivered by Hon'ble Vice-Chairman.

M.G.Chaudhary

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 68 of 1994.

Date of Order : This the 1st Day of December, 1994.
(At Agartala)

Justice Shri M.G. Chaudhari, Vice-Chairman.

Shri G.L. Sanglyine, Member (Administrative).

Shri Haralal Das,
son of Shri Sribash Chandra Das,
resident of Vill- Jirania,
P.O. Birendranagar,
P.S. Jirania,
Dist. West Tripura.

Applicant.

By Advocate Mr M.Chanda (Amicus curie)
with Mr P.S.Choudhury.

- Versus -

1. Union of India
represented by the Secretary,
(Home Affairs) attached to
the Ministry of Home,
Government of India,
New Delhi.

2. The Central Intelligence Officer,
Central Intelligence Office, M.H.A.
Government of India,
35 H.G. Basak Road,
Agartala, West Tripura.

Respondents.

By Advocate Mr G.Sarma, Addl.C.G.S.C.

O R D E R

CHAUDHARI J.(V.C)

If the applicant succeeds in this case to get the relief as we propose to grant this is more so because of the slip-shod manner in which the respondents have dealt with him all these years. Atleast in fairness the applicant was entitled to be told in writing officially that he could not be selected for whatever reason that may not have been possible.

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2. On 12.11.1984 a Memorandum bearing No.TRA.3/Est/84(1) was issued by Central Intelligence Office (M.H.A), Govt. of India, Agartala, inviting applications for recruitment to the post of Security Assistant in the scale of Rs.225-5-260-6-290-E8-6-300/- plus special Pay Rs.15/- per month. As the memorandum required SC/ST certificate to be produced it may be assumed that candidates belonging to these communities were eligible. The applicant has stated that he belongs to SC community. He also relies on Identity Card issued to him showing that he belongs to SC community. The aforesaid memorandum stated that it was proposed to hold an interview for recruitment to the aforesaid post and if willing the candidate may appear before the interview board on 29.11.84. The applicant was registered with the Employment Exchange of the Govt. of Tripura and came to know about such memorandum. He therefore, applied for the post and was called for interview. It is admitted by the respondents in the written statement that his name was received from the local employment exchange and that at the interview the applicant had produced all the requisite certificates and testimonials before the board on 29.11.1984. Thereafter the Central Intelligence Office (MHA), Govt. of India, Agartala issued memorandum dated 28.4.1985 (Annexure-2) informing the applicant that he was provisionally selected for the post of Security Assistant and that two copies of attestation forms were sent therewith with a request to return them immediately duly filled in properly in all respects for necessary

action at their end. The fact that the attestation forms were issued to the applicant is not disputed in the written statement. However, it is stated in para 7 that to avoid delay in issuing offer of appointment the candidates appearing in interview are issued attestation forms irrespective of their position in merit list so that offer of appointment could be issued to the candidates immediately after verification of character and antecedents. Most surprisingly the respondents have not dealt with the memorandum dated 28.4.85 informing the applicant that he was provisionally selected for the post and was required to complete the formalities so that he could be appointed. The fact that such a memorandum was issued however stands clearly established from para 7 of the written statement wherein the respondents have dealt with attestation forms which were mentioned in the said memorandum.

3. Now what happened thereafter is strange. The respondents thereafter remained totally silent. The applicant was never informed that he could not be appointed for any reason or that he was placed on waiting list or what at all has happened to his candidature. As stated earlier in para 7 of the written statement it is stated that the attestation forms were issued to expedite verification of character and antecedents before the offer of appointment could be made. It is not the case of the respondents that the applicant stood disqualified for being offered an appointment because something adverse was found on verification of his character or antecedents.

4. The applicant could merely knock at the doors of the authorities wanting an appointment as he was already selected and not knowing what the respondents intended to do. It is stated by him that he sent his first representation on 18.9.86 to the Central Intelligence Officer, Agartala pointing out that he was waiting for the appointment in view of the memorandum dated 28.4.85. He sent similar further representations to the same authority on 21.8.87, 7.10.88, 9.12.89, 15.6.90 and as no reply was received to any of these nor he was appointed he sent his representation to the President of India on 4.7.91, through the Personal Secretary to the President. Again on 9.4.93 he sent a representation to the Central Intelligence Officer, Agartala seeking relief early and lastly he also sent a legal notice to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi on 3.3.92 through Mr P.S.Choudhury, a copy of which is at Annexure-3. As no reply was received to any of the representations the applicant filed the present application on 28.3.94. The applicant prays that the respondents be directed to issue him the appointment letter to the post in question in response to acceptance of offer contained in the memorandum dated 28.4.85(Annexure-2) and such other relief as may be called for may be granted.

5. The applicant orally prayed for condonation of delay producing the copies of representations. While admitting the petition on 31.3.94 the question of delay was left open to be decided at the final hearing as it had been opposed by Mr G.Sarma, learned Addl.C.G.S.C for the respondents.

6. Ordinarily after such a long lapse of time we would not interfere in a matter of appointment. Mr Sarma once again reiterates the objection of limitation contending that as the claim of the applicant rests on the memorandum dated 28.4.85, the application filed on 23.8.94 after a long lapse of time and is thus it is hopelessly barred by time. It is true that even if limitation of 18 months is to be counted under Section 21 of the Administrative Tribunals Act it would appear to be so. It is submitted by Mr Chanda on behalf of the applicant that the limitation did not stop to run as the last representation filed by the applicant nor any of the representations filed earlier were disposed of by the respondents and each one was in continuation of the earlier one. We are inclined to think in the circumstances of the case ~~that the~~ ^{where} applicant could not have thought of doing anything more having regard to the fact that legal awareness of the procedure cannot be expected on the part of such a person. A section of people still believes that going with folded hands to the Govt. authorities would be proper way to achieve their object. It seems that the applicant who belongs to SC community could not think of rushing to the Tribunal in good time as he was kept in the dark about his representations. In our opinion the circumstances justify our holding that the cause of action was kept alive by the applicant till filing of the last representation and the application thus can be treated within limitation. Had the respondents chosen to reply any one of the representations at any time they would not have been required to face the

present situation. Hence we condone the delay and proceed with the merits. We make it clear that we have condoned the delay in the facts and circumstances of this case within the ambit of Section 21 of the Act.

7. That the applicant was sponsored by the Central Intelligence Office vide memorandum dated 12.11.93, that he had appeared at the interview and was selected, that he belongs to the SC community as required by the memorandum, that he had produced all requisite certificates and testimonials and he was provisionally selected for appointment and his final appointment was only subject to verification of character and antecedents on furnishing the attestation forms and thus he had fulfilled the prescribed requirements can admit of no dispute. The respondents have not come out with any explanation in the written statement to show that there was any justifiable cause to keep silent on the appointment of the applicant. In para 3 of the written statement they have stated that nominations were sought for filling four vacant posts. However, the memorandum dated 12.11.84 did not state so. It is stated that 234 candidates were called for the interview and out of them 137 had appeared and after a panel was drawn the applicant figured at serial 46. It has not however been explained as to what was zone of consideration for the four vacancies and why a panel of 137 candidates prepared or why the applicant was not kept on waiting list. The explanation does not inspire confidence because there was no indication either in Annexure-I or II that the appointment of the applicant was dependable upon his position in the select list or

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that on merit he had earned a lower position. The memorandum dated 12.11.84 gives the impression that only one post was to be filled in. May be due attention was not given at the time of preparing the memorandum but it was expected of the respondents atleast to give the necessary details in the written statement to throw light on what actually was done. It could not be difficult for them to show that four persons from the panel were appointed and they were above the applicant on merit in that list. It is contended that the attestation forms which were issued to the applicant did not give him any guarantee of employment. Yet the written statement itself states that the attestation forms are issued so that offer of appointment can be issued to the selected candidates immediately after verification of character and antecedents. Although in that context it is stated that these forms are issued subject to position in the merit list, that question has been left unexplained. Under the circumstances we are convinced that much injustice has been done to the applicant, who has unnecessarily been kept on the hope of getting the appointment without even informing him that he could not be appointed. To persons such as the applicant who hails from lower strata of the society such sort of indefinite waiting is very harsh and in the light of the Directive Principles of the Constitution of India the members of SC community do deserve to be treated in a better way than totally being ignored. It is high time that such awareness is reflected in the administration.

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8. That brings us to the question as to what relief should be granted. The applicant has now become overage for a fresh selection. He cannot, however, be deprived of his legitimate expectation on that ground when he had been eligible at the time when he was provisionally selected. However even so his appointment will necessarily depend on availability of vacancies. Fortunately the applicant who is present is willing to accept the appointment anywhere in India and not necessarily in the State of Tripura. That leave a wide scope for accommodating him in the post of Security Assistant for which he was provisionally selected.

9. In the result, following order is passed :

It is declared that the applicant is deemed to have been selected for appointment on 28.4.85 and he is entitled to when appointed to be treated as appointed notionally from the date on which a candidate was appointed to the post of Security Assistant pursuant to the interview held on 29.11.84. The applicant however, will not be entitled to claim the actual benefits or monetary benefits by reason of the national appointment as above including seniority.

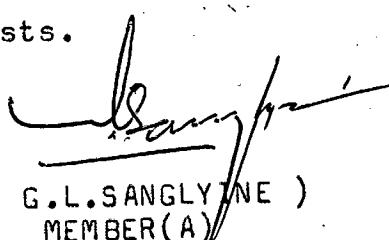
The respondent No.2 is directed to appoint the applicant as Security Assistant if any vacant post is available under his zone. In case there is no immediate vacancy available or is likely to occur in the zone of respondent No.2 then the respondent No.2 is directed to move the Joint Director, S.I.B of the Govt. of India,

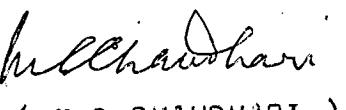
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Ministry of Home Affairs stationed at Shillong for appointment of the applicant at any place within North Eastern Region where the post of Security Assistant will be available. The applicant has given his consent to accept the appointment at any place within the North Eastern Region.

In the event the applicant cannot be appointed either in the zone under respondent No.2 or in the North Eastern Region then the Respondent No.2 shall move for appointment of the applicant to the post of Security Assistant at any place within India wherever a vacancy may be available for appointing him. The applicant has stated before us that he is willing to accept such appointment anywhere in India. The above directions shall be carried out within a period of six months from the date of receipt of the copy of this order by respondent No.2. It is left to the discretion of respondent No.2 as also to Joint Director, S.I.B, Shillong to accommodate the applicant as far as possible within the zone of respondent No.2 or alternatively atleast in the North Eastern Region if necessary by creating a post and or in the event of vacancy arising on transfer of an incumbent Security Assistant to any other region within the period of six months. We hope that a serious effort will be made by the respondents for securing appointment to the applicant at an early date as the applicant obviously could not avail of the monetary benefit all these years which he would have got if he would have been appointed earlier.

10. With the above directions the application is partly allowed and stands disposed of. There will be no order as to costs.


(G.L.SANGLYNE)
MEMBER(A)


(M.G.CHAUDHARI)
VICE-CHAIRMAN