

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 19th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.620 of 2012

(U/S 19, Administrative Tribunal Act, 1985)

Pramila Pal D/o P.L Pal, aged about 39 years, (D.O.B. 10.10.1973),
Resident of 127/6, Vijay Nagar, Kanpur Nagar 208005.

..... Applicant

By Advocate: Shri S.K. Pandey

Versus

1. Union of India through the Secretary, Ministry of Defence (Production), Govt. of India, New Delhi.
2. Director General, Ordnance Factories, Ministry of Defence, Govt. of India, Ordnance Factories Board, 10-A Shahid Khudi Ram Bose Road, Kalkata-1.
3. General Manager, Ordnance Factory, Kalpi Road, Kanpur 208009.
4. Smt. Saraswati Verma W/o Braj Raj Kishor, Resident of 4/97, Ambedkar Puram, Awas Vikas Yojana-3, Kanpur Nagar.
5. Sri Ratneshwar Verma, the then Officer Incharge, Ordnance Factory, Kanpur and presented posted as Additional Manager, Ordnance Factory, Ambar Nath (Maharashtra).

..... Respondents

By Advocate: Shri N.P Singh/Shri R.K. Srivastava

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. Applicant Pramila Pal case, as per, application is that she is a handicapped person, belongs to the OBC category and was issued the National Trade certificate for

Vocational Training and completed her apprenticeship from Hindustan Aeronautics Limited, Kanpur under the Apprenticeship Act, 1961 between 24.9.1997 to 23.9.1998. She also cleared her National Apprenticeship between 24.9.1997 to 23.9.1998 conducted by the National Council for Vocation Training wherein she obtained 468/700 marks. She also cleared her Instructor Training from Advanced Training Institute, Govind Nagar, Kanpur in 2009 and also cleared her B.A. in 1998 from Chhatrapati Shahaji Maharaj University, Kanpur and M.A. in 2 subjects Sociology in 1998 and History in 2005, and M. Phil in 2008.

2. An advertisement was issued by respondent No.3 in employment news dated 13-19 August 2011 for 36 Group 'C' posts in different category, which included 2 posts in Fitter (Electronics), one post of Fitter (Electronics) was reserved for Scheduled Caste and one post for OBC and both these posts were meant for handicapped quota. Hence no candidate out side the handicapped quota can be appointed against the post of Fitter (Electronics) in pursuance of aforesaid advertisement. Applicant applied for the post of Fitter (Electronics) and after passing the written examination, she appeared in the trade test/skilled test held on 17.1.2012.
3. Applicant's further case is that respondent No.5 who was Officer In Charge of O.F.C. being related to respondent No.4 was interested in appointing respondent No.4 and therefore, illegally entertained the application of respondent No.4 despite the fact that respondent No.4 did not belong to Handicapped quota and thereafter he finalized the selection of respondent No.4 before proceeding on his transfer to Ordnance Factory, Maharashtra. That all the selection proceedings were

finalized by respondent No.5. Applicant also avers that her result was deliberately withheld by respondent No.5 to favour respondent No.4 who was selected to the said post vide result declared on 28.1.2012 and that too appointing a non-handicapped person (respondent No.4) to the post of Fitter (Electronics) meant for handicapped quota.

4. Applicant has averred in the O.A. that respondent No.3 gave her a reply under R.T.I Act that respondent No.4 (Saraswati Verma) who is not a handicap person, was appointed on the basis of her merit in the category of OBC and no handicapped candidate was found eligible for appointment.
5. Applicant also averred that in another advertisement published in Employment News dated 10-16 March, 2012 in which 8 posts of the Fitter (Electronics) were advertised out of which 3 posts for General candidates, 2 for S.C. candidates and 3 for OBC candidates was reserved but no post of Fitter (Electronics) was meant for handicapped quota.
6. Applicant's specific case is that respondent No.4 despite being less meritorious then applicant has been appointed out of favoritism by respondent No.5 and that the post of Fitter (Electronics) was meant for handicapped quota, as per, advertisement.
7. Applicant avers that in subsequent exam, she was declared successful vide letter dated 6.1.2012 (Annexure A-10)and called for skilled test but was deliberately not qualified to benefit respondent No.4. Hence, the OA seeking the following reliefs-

"(i) Issue a writ, order or direction in the nature of certiorari to quash the panel dated 28.01.2012 only to the extent it relates to the post of Fitter (Electronics) meant to handicapped quota (Annexure A-1).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to consider the applicant for appointment to the post of Fitter (Electronics) under handicapped quota fairly on the basis of performance of the applicant in written test and skill test.

(iii) Issue any other writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) The cost of the application may also be awarded in favour of the applicant".

8. It is further case of applicant that two posts of Fitter (Electronics) one for SC and one for OBC category were in handicap quota as per advertisement. The Employment Advertisement of August 2011 (Hindi version) regarding Fitter Electronics (Semi-skilled) relevant to the controversy in instant case is as below:

No. of vacancies	Reservation (SC	OBC	PH/OH
02	1	1	2

PH = physically handicapped. OL= One leg. BL= Both legs
 Posts reserved for physically handicapped will be adjusted by Horizontal Reservation i.e. the selected candidates will be adjusted against the categories of SC/ST/OBC/GEN to which they belong.

Essential Qualification: Matriculation or equivalent examination. National Council of Trades for Vocational Training (NCTVT) certificate in relevant trade failing which by ITI or equivalent Diploma/certificate holder.

9. The official-respondents in their counter affidavit have taken the stand that at the time of preparing select list neither applicant nor other PH candidates were found suitable for the said post even after being considered on relaxed standard. Since no candidates was found suitable for the PH quota, the vacancy was carry forward for the next block and that respondent No. 4 (Smt. Saraswati Verma) of OBC quota was selected on the basis of merit list but due to the interim order of the Tribunal, appointment letter has not been issued to respondent No. 4.
10. It is the further case of respondents that since no PH candidate including the applicant was found suitable for the post of Fitter (Electronics), the PH quota was carried forward for the next block and respondent No. 4 was appointed on basis of merit list. It is further averred that the advertisement was published in Hindi and English and due typographical mistake, two post of PH quota instead of one PH quota was printed in the Hindi version of the advertisement. Respondents have denied the allegation of nepotism against respondent No. 5 and all the actions were taken by the respondents in accordance with Rules and respondent No. 4 was appointed on merit.
11. The allegations of applicant that the post of Fitter (Electronics) was de-reserved, allegations against respondent No. 5 and withholding of the result of applicant are denied by the respondents. Respondents have further taken the plea that vacancies of PH quota in particular cadre and not in particular posts are carried forward, as such, the vacancies of PH quota of previous block year of Industrial Employee Cadre were carried forward and 8 vacancies of PH quota in Industrial

Employee cadre were advertised in Employment News of March 2012 out of which 4 persons were found suitable for Machinist (SS), 1 was found suitable for fitter General (SS) and 3 were found suitable for Turner (SS). It is not mandatory that the vacancy of previous block year of PH quota published against a post is to carry forward for that particular post only in the next block year.

12. The respondents have further taken the plea that the applicant was not found suitable on the basis of marks scored in written test and skill test even while considered on relaxed standard. The respondents have very clearly stated in paragraph 21 of the counter affidavit taken a specific plea that the candidates who were selected for the post of Fitter (Electronics) were not PH candidates.
13. Respondent No. 4 (Smt. Saraswati) also filed her counter affidavit denying relationship with respondent No. 5. She has further averred that in the information given to the applicant under the RTI Act, it has been made clear to her that post of PH quota is still vacant for want of qualified candidate. Respondent has specifically denied that she has been selected against the post of PH quota.
14. In the supplementary affidavit filed by applicant, it has been averred that the counter affidavit has been filed by Smt. Ranjita Rashmi Works Manager (Admin.), Ordnance Factory, Kanpur and that she has no authority to file the counter affidavit on behalf of respondents No.1, 2 and 3. Further that even if she can file the counter affidavit, it can only be on behalf of respondents No.1, 2 and 3 and not on behalf of respondents No. 4 and 5 until she is duly authorized by them. Applicant has taken the view that the two posts of Fitter Electronics was reserved for Handicapped quota and further one post was for OBC

and other for S.C. candidates and that the respondents are trying to mislead the Tribunal by placing incorrect advertisement in the English newspaper. And that no corrigendum was issued for correcting the Hindi advertisement of August 2011 and, therefore, it is incorrect to say that only one post was reserved for Physically Handicapped person.

15. Applicant controveering the counter affidavit of respondent No.4, has stated that it is incorrect to state that no handicap person was suitable for the post and the respondents were adamant to entertain the application of non-handicapped person and finalize their selection in exclusion to the applicant. Respondent No. 4 is being favoured by the establishment can be further seen from the fact that the copy her documents have been attested by officials of respondent-department. It has been further averred in the rejoinder affidavit that rather than the respondent No. 4 stating in her counter affidavit there is no relationship between her and respondent No. 5 has taken the plea that there is no documentary evidence showing the relationship. Applicant has referred to the order of C.I.C. who has clearly recorded a finding of fraud in finalization of the selection. The marks for interview have been illegally prescribed as 100 so as to favour respondent No.4. She has also averred that no counter affidavit have been filed by respondent No. 5 to deny his relationship with respondents No.4.
16. It would be pertinent to note that two posts of Fitter (Electronics) one for SC and one for OBC category and were in handicap quota as per advertisement in Hindi. The Employment Advertisement of August 2011 regarding

Fitter Electronics (Semi-skilled) as is relevant to the controversy in instant case as below:

As per the *Hindi Advertisement*:

No. of vacancies	Reservation (SC OBC)	PH/OH
02	1 1	2

As per the *English Advertisement*:

No. of vacancies	Reservation (SC OBC)	PH/OH
02	1 1	1

PH = physically handicapped. OL= One leg. BL= Both legs
Posts reserved for physically handicapped will be adjusted by Horizontal Reservation i.e. the selected candidates will be adjusted against the categories of SC/ST/OBC/GEN to which they belong.

Essential Qualification: Matriculation or equivalent examination. National Council of Trades for Vocational Training (NCTVT) certificate in relevant trade failing which by ITI or equivalent Diploma/certificate holder.

17. All things equal, the points of disputes between the parties are:

- 1) The English advertisement say there is one post of PH in OBC category whereas the Hindi advertisement says there are 2 posts in PH quota
- 2) Based on the Hindi, advertisement, applicant case is that there were two posts in PH quota , one each for SC and OBC categories.
- 3) As per applicant, respondent No. 4 (OBC) who was not a handicap candidate has been adjusted in PH quota out of favouritism and nepotism whereas respondents case is that no PH candidate qualified and so respondent No. 4 was selected in the OBC

category and the PH quota carried over to the next block.

18. The dispute raised by applicant is that respondent No. 4 was not a PH candidate but wrongly given the PH quota to the exclusion of the applicant. On the other hand, the stand of respondents is that applicant could not secure the necessary minimum marks for being selected and there being no PH candidate for selection, respondent No. 4 who is of OBC category was selected on merit and the PH quota carried over to the next block.
19. We have heard and considered the arguments of learned counsels for the parties and gone through the record as well as written arguments of respondent Nos. 1 to 4.
20. Whatever may be the position, the dispute between the parties is limited as to whether the respondent No. 4 was wrongly and illegally selected for the post of Fitter (Electronics).
21. The stand of respondents being, firstly applicant could not secure minimum marks required for the selection and appointment and therefore, the quota for PH could not be filled and the same was carried over to the next block. In this regard, even the information given to the applicant under RTI Act is that respondent No. 4 was not selected to the post on basis of PH quota.
22. In fact the firm stand of the respondents is that respondent No. 4 is not a handicapped person but a OBC category person who having secured the meritorious position has been selected for the post of Fitter (Electronics) in exclusion to the applicant who was not found suitable for the post even though being

considered on relaxed standard by the Selection Board and the vacancy of the PH quota has been carried forward to the next point. Respondents further stating that no PH person could qualify for the said post.

23. The stand of the respondents that the applicant could not qualify for the said post in the combination of written test and Trade test/Skill Test has not been controverted by the applicant whose main grouse and concentration has been on the facts that respondent No. 4 was not a handicapped person but still selected on the basis of favouritism and nepotism on the quota of P.H.
24. Looking to the pleadings of the parties and the material on record, it is apparent that applicant has not been able to prove that respondent No. 4 despite not being a PH candidate has still been appointed on the basis of being a PH person to the exclusion of applicant who, in any case, did not qualify for being selected to the post of Fitter (Electronics). The question of the difference in the Hindi and English advertisements regarding the number of seats available in PH quota become meaningless for the purpose of the present dispute raised by the applicant since she did not qualify and was not found suitable to be selected for the said post, whether there be one post or two posts in PH quota.
25. The contention of applicant that Smt. Ranjita Rashmi, Works Manager (Admin.) Ordnance Factory, Kanpur cannot file Counter Affidavit on behalf of respondents unless authorized by them is correct. However, respondent No. 4 has filed her counter affidavit. It has been further submitted that no corrigendum was issued for correction of alleged mistake in the Hindi advertisement. This inaction of respondents makes no

difference so far as applicant is concerned since it be one seat or two seats for PH quota, the applicant had failed to qualify for appointment on the basis of PH quota. Applicant's plea that documents of respondent No.4 were attested by officials of respondents department suggests that it is an act which favouritism towards respondent No.4 by department has no force to be rejected. Applicant's reference to remarks of CIC are of no avail to applicant. The remarks of CIC shows his overreach and going beyond his jurisdiction. Her assertion that respondent No. 5 has not filed his counter affidavit does not detract from the final conclusion reached to dispose of this O.A.

26. In view of the facts and circumstances of the case, we are of the view that applicant has failed to substantiate her case. The O.A. being meritless is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
Member (J)

(GOKUL CHANDRA PATI)
Member (A)

Manish/-