

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2675 OF 2014

New Delhi, this the 12th day of May, 2016

CORAM:

HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

Miss Hemlata,

D/o Sh.Harendra Singh,

R/o H.No.84, Dashrath Kunj-C,

West Arjun Nagar,

Agra 282001

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Applicant

(By Advocate: Shri Yogesh Sharma)

Vs.

1. Union of India through the Secretary,
Ministry of Defence,
Govt.of India, South Block,
New Delhi

2. Directorate General of EME Civ-3,
MGO& Branch,
Army Headquarters,
DHQ PO New Delhi 11

3. The Commandant,
509, Army Base Workshop,
Agra Cantt.282001

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Respondents

(By Advocate: Shri Amit Anand)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant has filed the present O.A. seeking the following
reliefs:

ð(i) That the Hon'ble Tribunal may graciously be pleased to
pass an order directing the respondents placed on record
the complete vacancy position in respect of filled and

- unfilled vacancies to the post of Telecom Mechanic, Advertised in the advertisement dated Feb.2012.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not issuing the appointment letter to the applicant against the unfilled vacancies to the post of Telecom Mechanic as per the advertisement dated Feb. 2012 is totally illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to consider and to issue the appointment to the applicant to the post of Telecom Mechanic immediately with all consequential benefits from due date.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with costs of litigation.ö
2. Opposing the O.A., the respondents have filed counter reply. The applicant has also filed her rejoinder reply refuting the stand taken by the respondents.
3. We have perused the records, and have heard Shri Yogesh Sharma, the learned counsel appearing for the applicant, and Shri Amit Anand, the learned counsel appearing for the respondents.
4. The brief facts of the case, which are not disputed by either side, are that the Headquarters Base Workshop Group EME of the respondent-Department issued an Advertisement, which was published in Employment News 17 6 23 December 2011, inviting applications from eligible persons for filling 93 vacancies in the post of Telecom Mechanic at 509 Army Base Workshop EME, Agra. The breakup of the said 93 vacancies was 47-UR (8 reserved for Ex-Servicemen category, and 39 for General category), 14-SC, 7-ST, and 25-OBC. In response to the Advertisement, the applicant submitted her application as a General category

candidate. She appeared in the written examination conducted by the respondent-Department. Being declared successful in the written examination, she was called upon to appear for practical examination and interview. Accordingly, she appeared for practical examination and interview. The applicant's name did not appear in the select list of 39 General category candidates. As the applicant passed the prescribed trade test/practical examination, her name was kept at Sl.No.1 of the Reserve List for General category. The Reserve List was prepared by the respondent-Department, as per the policy decision taken by the Adjutant General's Branch, Integrated HQ of the Ministry of Defence (Army), vide letter dated 21.5.2007, for taking care of the eventualities of occurrence of a vacancy caused by the candidate not joining within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining. Out of the said 39 General category candidates, who were selected, and issued offers of appointment, one candidate, namely, Shri Robin Kumar Potlia, vide his letter dated 1.4.2013, expressed his unwillingness to accept the offer of appointment.

5. In the above backdrop, it is the grievance of the applicant that when the aforesaid General category candidate expressed his unwillingness to accept the offer of appointment, one out of the 39 vacancies for General category remained unfilled, and she, being placed at Sl.No.1 of the Reserve List for General category, had a right to be issued the offer of appointment.

Thus, it is contended by the applicant that the respondents have acted illegally and arbitrarily in not issuing the offer of appointment to her.

6. On the other hand, the respondents have taken the stand that the Government of India, vide Gazette Notification (Extraordinary) SRO 11(E) issued by the Ministry of Defence, vide letter F.No.11(5)/208/D (Civ.I) dated 28.8.2009, took a policy decision for bifurcation of the Highly Skilled (HS) workers in the ratio of 50:50 and for their re-designation as HS-II (with Grade Pay of Rs.2400/-) and HS-I (with Grade Pay of Rs.2800/-). Due to the said bifurcation and/or revision of the cadre structure in the trade of Telecom Mechanic, 65 Telecom Mechanics in HS-II were rendered surplus at 509 Army Base Workshop EME, Agra. The Headquarters Base Workshop Group, vide letter dated 3.4.2013, issued direction to take action in respect of the surplus Telecom Mechanics under the provisions of the Army Order 22/2001 and not to make any further recruitment. Therefore, the applicant could not be appointed against the vacancy in the post of Telecom Mechanic (HS-II) despite non-acceptance of the offer of appointment by one General category candidate.

7. In support of the case of the applicant, Shri Yogesh Sharma, the learned counsel appearing for her, relied on the decision of the coordinate Bench of the Tribunal in **Gulshan Kumar Vs. Govt. of NCT of Delhi and others**, OA No.2302 of 2013, decided on 29.10.2014. Shri Yogesh Sharma submitted that the purported bifurcation of HS workers, which had taken place in 2009, has no bearing on the recruitment process initiated by the

respondents in December 2011, and that the stand taken by the respondents is a clever ruse to unlawfully deny appointment to the applicant against one of the 39 vacancies earmarked for the General category, which remained unfilled on account of non-acceptance of the offer of appointment by one General category candidate.

8. Shri Amit Anand, the learned counsel appearing for the respondents, relied on the decision of the Hon'ble Supreme Court in **Mitrangshu Roy Choudhary Vs. Union of India and others, JT 1999 (3) SC 117**, to contend that the applicant cannot claim appointment as a matter of right, and that in view of the fact that 65 Telecom Mechanics were rendered surplus, the action of the respondents in not issuing the offer of appointment to the applicant cannot be said to be fraught with any illegality.

9. After giving our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contention of the respondents.

10. The respondents have not produced before this Tribunal the Ministry of Defence's letter dated 28.8.2009, *ibid*, regarding bifurcation of HS workers in the ratio of 50:50. They have also not produced before this Tribunal any material to show that as a consequence of bifurcation and/or revision of the cadre structure, 65 Telecom Mechanics (HS-II) were rendered surplus. They have also not produced the letter dated 3.4.2013 purportedly issued by the Headquarters Base Workshop Group. In their counter reply, the respondents have also not shown any reason as to why

they initiated the recruitment process in December 2011 to fill 93 vacancies in the post of Telecom Mechanic and completed the recruitment process by selecting and issuing offers of appointment to 93 selected candidates which included 39 General category candidates, besides preparing Reserve Lists for different categories, if at all, according to them, 65 Telecom Mechanics (HS-II) were rendered surplus in the year 2009, i.e., much prior to initiation of the recruitment process in question. Thus, we are not inclined to accept the stand taken by the respondents in support of their case. In view of the admitted facts that the applicant's name appeared at Sl.No.1 of the Reserve List for General category, that one General category candidate did not accept the offer of appointment, and that one out of 39 vacancies for General category remained unfilled, we do not find any substance in the contention of the respondents that the applicant cannot claim appointment as a matter of right. In our considered view, the respondents were bound to give effect to the Reserve List for General category by issuing the offer of appointment to the applicant when one of the 39 vacancies for General category remained unfilled on account of non-acceptance of the offer of appointment by one General category candidate.

11. **In Mitrangshu Roy Choudhary Vs. Union of India & others** (supra), the appellants were selected under the Apprentices Act, 1961, as Trade Apprentices in the Carriage & Wagon Department of N.F.Railway, and successfully completed the training in System Technical School. Thereafter, they were interviewed against 25% vacancies of Fitter in Group

C category. They also joined as Fitter Grade III, but subsequently their appointments were cancelled, and instead they were appointed as Carriage Khalasis (Group D). The O.A. filed by them having been rejected by the Tribunal, the appellants filed Civil Appeals. Dismissing the Civil Appeals, the Hon'ble Supreme Court held that there was no guarantee or promise for employment held out by the respondents while sending the appellants to undergo the apprenticeship course. Therefore, the appellants did not have the right to be appointed under the Apprentices Act, 1961, in view of the specific legal provision under Section 22 of the Act. In view of the settled position of law, though under Rule 159 of the Rules of Recruitment and Training, 25% of the posts were to be filled up by the course completed apprentices, the appellants could not claim appointment as a matter of right for this post.

11.1 In the instant case, the respondents initiated and completed the recruitment process for filling the notified vacancies in the post of Telecom Mechanic on regular basis. The selection of the candidates was not made under the Apprentices Act, 1961. The applicant succeeded in the prescribed recruitment test, and her name was placed at Sl.No.1 of the Reserve List for General category candidate. The said Reserve List was prepared by the respondents as per their own policy decision for taking care of the eventuality of occurrence of any vacancy caused by any selected candidate not joining and/or not accepting the offer of appointment. Thus, by preparing the Reserve List, the respondents held out promises to the candidates named

therein that in the event of occurrence of vacancies for the reasons mentioned in the policy decision, they would be issued offers of appointment. When admittedly one General category candidate expressed his unwillingness to accept the offer of appointment, the respondents, being bound by their own policy decision, had to issue the offer of appointment to the applicant who was placed at Sl.no.1 of the Reserve List for General category. Thus, the respondents cannot be allowed to take the plea that the applicant had no right to claim appointment. In this view of the matter, the decision in **Mitrangshu Roy Choudhary Vs. Union of India & others** (supra), besides being distinguishable on facts, is of no help to the case of the respondents.

12. It would be significant to note here that in **Govt. of NCT of Delhi & Ors Vs. Naresh Kumar**, W.P. (C) No. 323 of 2012, decided on 14.8.2013, the Hon'ble High Court of Delhi, while considering an identical question, observed thus:

16. In the decisions reported as 1984 (Supp) SCC 687 **Prem Prakash v. Union of India & Ors.**, 1996 (8) SCC 637 **Pilla Sitaram Patrudu & Ors. Vs. Union of India & Ors.**, 1998 (5) SCC 246 **Surender Narain Singh Vs. State of Bihar** and 2008 (7) SCC 728 **Balwant Singh Narwal & Ors. Vs. Union of India**, the law declared was unless there was a valid reason not to fill up notified vacancies, all notified vacancies had to be filled up if suitable candidates were empanelled.ö

13. In the light of our above discussions, we have no hesitation in holding that the action of the respondents in not issuing the offer of appointment to the applicant is illegal and arbitrary. Accordingly, we direct

the respondents to issue letter/offer appointing the applicant to the post of Telecom Mechanic within a period of three months from today.

14. Resultantly, the O.A. is allowed to the extent indicated above.

No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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