

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR

Original Application No.203/00007/2014

Jabalpur, this Tuesday, the 17th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Manohar Lal Baghel, S/o Late Rang Singh Baghel, aged about 37 years, R/o Purani Basti Ward No.2 Satnami Para Kota, Raipur Dist. Raipur (C.G.) 492006
2. Laxmikant Tiwari S/o Shri Ramanand Tiwari, Aged about 36 years R/o Gandhi Nagar, Lakhe Nagar Raipur Dist. Raipur (C.G.) 492006

-Applicants

(By Advocate –**None**)

V e r s u s

1. Accountant General (A&E) Chhattisgarh Raipur, Vidhan Sabha Road Raipur (C.G.) 492007
2. Senior Audit Officer (Admn.) Office of the Accountant General Vidhan Sabha Road, Raipur (C.G.) 492007
3. Vinay Kumar Bansod, S/o Rajkumar Bansod, Aged about 23 years, working in the office of Accountant General, A & E Vibhan Sabha Chowk Raipur (C.G.) 492007
4. Mukesh Kumar Gajbhiye S/o Shri Arun Gajbhiye aged about 32 years working in the office of Accountant General, A & E Vibhan Sabha Chowk Raipur (C.G.) 492007
5. Shanti Lal, working in the office of Accountant General, A & E Vidhan Sabha Chowk Raipur (C.G.) 492007
6. Pramod S/o Goukaran Baghel, Working in the office of Accountant General, A & E Vidhan Sabha Chowk Raipur (C.G.) 492007

- Respondents

(By Advocate –**Shri P. Shankaran Nair**)
(Date of reserving the order: 10.07.2018)

O R D E R
By Ramesh Singh Thakur, JM:-

None for the applicant. Even in the second call none appeared for the applicant. We propose to decide this Original Application ex-parte in the absence of any representation on behalf of the applicant and by hearing learned counsel for the respondents alone by exercising our power under Rule 15 (1) of the Central Administrative Tribunal (Procedure) Rules, 1987 in pursuance of our order passed on 17.04.2018.

2. The applicants are challenging the legality and validity of the impugned order dated 01.02.2012 and 03.02.2012 issued by the respondent No.2, whereby they were not being selected for appointment to the post of Multi-Tasking Staff (for Accountant General (Audit)/Accountant General A& E).

3. The brief facts of the case are that applicants have applied for the post of Multi-Tasking Staff advertised by the respondent-department vide Rojgar Samachar dated 25th September to 01st October 2010 (Annexure A-2). The applicants have been working with the respondent-department as Multi Tasking Staff since 2002 (Annexure A/3).

3.1 Thereafter, the respondents issued interview call letters on 28.10.2011 (Annexure P/5) to applicant No.1 to appear in the interview on 22.11.2011 in the office of respondents Nos.2 and 3.

The applicants submitted that they have applied for the aforementioned post through Reserve Category i.e. Scheduled Castes. They appeared and result was published on 01.02.2012 and 03.02.2012 (Annexure A-1) where their names have not found place in the said selection list. It is further contended by the applicants that the candidates i.e. respondents Nos.3 to 6 who are selected on the said post have obtained less marks than applicant No.1.

3.2 Applicants have made representations for their appointment to the said post of MTS on 18.02.2012 and regarding irregularities in selection procedure on 01.03.2012 (Annexure A-7 & A-8) to the respondents. Hence, this Original Application.

4. The applicants in this Original Application have prayed for the following reliefs:-

“8.1 This Hon’ble Court may kindly be pleased to issue appropriate writ and quash the impugned order dated 01.02.2012 and 03.02.2012 (Annexure P-1) issued by the Respondent No.2.

8.2 This Hon’ble Court may kindly be pleased to issue a writ of mandamus and direct that the respondents they may allow the petitioners to work in the office.

8.3 This Hon’ble Court may further be pleased to pass an appropriate order or issue writ as deemed fit under the facts and circumstances of the case.”

5. Learned counsel for the respondents in their reply has submitted that applicants were engaged by the office of Accountant

General, Chhattisgarh Raipur as Daily Wages Labourers during the period 2002 to 2010. There was a provision in the notification (Annexure A-2) that those, who had been earlier engaged as Daily Wage Labourer for at least two years in the concerned offices of the Indian Audit and Accounts Department to which the vacancies relate, would be eligible for age relaxation to the extent of period of their engagement as Daily Wage Labourer over and above the age relaxation admissible to the SC/ST/OBC/PH/Ex-Serviceman. However, no relaxation was allowed to SC/ST/OBC candidates considered against General Category posts on own merit basis except to the extent of causal service rendered.

5.1 Applicants had applied for selection to the post of M.T.S. Both applicants were 8th pass and had working experience of more than two years. Applicant No.1 form was considered under SC Category by giving age relaxation and subsequently applicant No.1 was called for interview. Whereas Applicant No.2 belongs to General Category and his form was rejected due to over age even after relaxation of age for casual service.

5.2 It has been submitted by the respondents that after the selection a merit list was drawn by the duly constituted selection board, but Applicant No.1 could not find a place in the merit list as he got only 76 marks whereas cut off marks for SC category was

78. Reservation to SC/ST/OBC candidates as provided under the relevant instructions has been strictly followed while selecting candidates based on merit to the extent of reservation applicable to each category. Applicant No.1 cannot be adjusted in General Category because of over age.

5.3 In regard to list issued by the respondent No.1 on 16.12.2009 contains the names of daily wage labourers engaged and not a list of selected MTS. Therefore, no question of seniority arises.

5.4 It is submitted by the respondents that the interview call letter issued on 29.10.2001 to applicant No.2 was conducted to select the unskilled daily wage labourer and not for the recruitment to the regular post of MTS.

5.5 Learned counsel for the respondents submitted that selection of respondents Nos.3 to 6 were made under General Category on own merit basis because they had secured minimum cut off marks for General Category which was 59.

5.6 Learned counsel for the respondents has placed reliance on judgment passed by this Tribunal in Original Application No.427/2012 decided on 11.03.2016. He further submits that the contentions raised by the applicants are baseless and therefore the instant Original Application is liable to be dismissed.

6. Heard the learned counsel for the respondents and have perused the pleadings and documents annexed thereof.

7. There is no dispute about the fact that the applicant No.1 could not compete in the SC category as candidates selected in that category had secured higher marks than him. As far as selection of applicant No.2 is concerned, he belongs to General Category and his form was rejected due to over age even after relaxation of age for casual service. The grievance of the applicant No.1 is that respondents Nos.3 to 6 have secured less marks than him and were selected in General Category. The applicant No.1 was considered under SC category by giving age relaxation. In the merit list the applicant No.1 has secured 76 marks whereas cut off marks for SC category was 78. If the application of applicant No.1 was to be considered under General category, then his application would have been rejected due to over age. Moreover no age relaxation was allowed to SC/ST/OBC candidates considered on own merit against General Category post except for causal service period. So, applicant No.1 has been given age relaxation on the basis of SC category, hence it is to be considered in that category only. So, in General category the applicant cannot be considered being over age.

8. The learned counsel for the respondents as relied upon the order passed by this Bench in Original Application No.427/2012 dated 11.03.2016 and similar issue has been discussed and the law settled by Apex Court in the matter of ***Indra Sawhney v. Union of India***, 1992 Supp (3) SCC 217 has been relied upon. The instant case is fully covered by the judgment and the order passed by this Tribunal in O.A. No.427/2012 (Supra).

9. The judgment passed by Hon'ble Supreme Court in the matters of ***Indra Sawhney v. Union of India***, 1992 Supp (3) SCC 217 has been held that those members belonging to the reserved categories who get selected in the open competition on the basis of their own merit, have a right to be included in the general list/unreserved category and not be counted against the quota reserved for the reserved categories. There is no dispute about the legal proposition propounded by the Hon'ble Supreme Court. But in the instant case there is the bar in the notification where it has been categorically mentioned that no age relaxation is allowed to SC/ST/OBC candidates against General Category posts. The applicants have availed the age relaxation under the Scheduled Castes category, they should be considered in that particular category only as per the settled law. Hence, no fault can be found in the action of the respondents in not including the applicant No.1

under the General Category as he was over aged and could not have competed under the said category.

10. Resultantly, this Original Application is dismissed being devoid of merit. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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