

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

No. O.A. 350/1146/2013

Date of order: 27.03.2018

**Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Bikash Kora,
S/o. Late Mahadev Kora,
Aged 34 years,
Occupation – Unemployed,
R/o. Village & P.O. – Dhalla,
P.S. – Islambazar, Dist. – Birbhum,
West Bengal – 731214.**

.. Applicant

Vs.

- 
- 1. The Union of India,
Through Secretary,
Ministry of Defence,
New,
Department of Defence Production & Supplies,
New Delhi – 110 001.**
 - 2. The Chairman,
Ordnance Factory Board,
10 A, Auckland Road,
Kolkata – 700 001.**
 - 3. The General Manager,
Ordnance Factory Dum Dum,
Jessore Road,
Kolkata – 700 020.**

.. Respondents

For the Applicant : Ms. M. Saha, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved by non-receipt of appointment letter to the post of Machinist/Semi-Skilled in (ST Category) an application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

“(1) The immediate issuance of appointment letter to the petitioner without any further delay.

(2) The urgent order of status quo may be issued on the new recruitment process initiated by the OF Dum Dum vide notice Adv. No. OFRB/2012/1 with online Registration of Application (opening date 1.11.2012 and closing date 21.11.2012).

(3) The respondents be directed to suitably compensate the petitioner for harassing the petitioner and causing irreparable loss to his career progression.

(4) The respondents be directed not to issue any further selection or appointment letter to any of the applicants under the new recruitment process unless the selection process of the petitioner is completed and appointment letter is issued.

(5) Any other relief or relieves for which the petitioner is entitled to.”

II. Heard Ld. Counsel for both applicant and respondents and perused documents annexed to pleadings. Written arguments have been furnished by both Counsels on behalf of applicant and the respondents respectively. A vigilance report dated 17.11.2015 has also been submitted by the respondents in response to directions of the Tribunal dated 20.7.2015 and the contents of the same has been examined in the context of this application. Judgments relied upon by Ld. Counsel for applicant in support were also studied.

III. The applicant's contentions, as canvassed by his Ld. Counsel, is that the applicant had been successful in the written examination /trade test held on 7.3.2011 in connection with direct recruitment in the semi-skilled grade and had been duly selected for the post of Machinist in (ST category). That, however, in spite of waiting for long, no appointment letter was issued to the applicant.

The applicant could ascertain, after accessing information through provisions of RTI Act, 2005, that appointments in respect of candidates against 27 numbers of reserved vacancies have been directed to be kept in abeyance till

further orders.

That, the applicant had been issued an appointment letter by the Ordnance Factory Nagpur in October, 2011. The applicant, however, opted for Ordnance Factory Dum Dum to remain close to his widow mother and had foregone his appointment in Nagpur as he was under the strong conviction and belief that he would be issued appointment letter for Ordnance factory, Dum Dum within a reasonable period of time.

That, the applicant, preferred representations to the General Manager, Ordnance Factory, Dum Dum on 6.9.2011 & 18.9.2012 requesting for issue of appointment letter. The said communication has remained unanswered till date.

That an advertisement has been issued in Employment News between 4th -10th September, 2010 vide which the respondent authorities have unleashed a new recruitment process for selection of the said 27 Tradesmen without considering the case of the applicant along with 26 selected candidates.

Being aggrieved with the non-issue of appointment letter, the applicant has filed the instant application.

IV. Per contra, the Ld. Counsel for the respondents argued as follows:-

That, an advertisement was published in the 'Employment News' dated 4th to 10th September, 2010 in connection with direct recruitment against 27 number of reserved vacancies in the Semi-skilled grade for the trades of Examiner, Fitter (Gen/Mech), Grinder, Machinist, Millwright, Painter in Ordnance Factory Dum Dum (OFDC). The applicant, in response to the same, had offered his candidature for the aforesaid recruitment and that a written and practical examination was held in three phases in which the applicant was examined on 7.3.2011.

That, on the basis of total marks obtained in the written and practical

examination and after completion of the selection process, the candidates were sent Attestation Forms for verification of character and antecedents through police verification.

That, the entire process of recruitment against the aforesaid 27 vacancies was, however, halted as a result of an enquiry by the Director General of Ordnance Factories and Chairman to probe certain alleged irregularities pertaining to the ongoing process of recruitment against the aforesaid 27 vacancies and that the Ordnance Factory Board directed vide letter bearing No. 01/MISC/COMPLAINT/A/DISC/OFDC/11 dated 30.6.20011 to keep in abeyance the appointments in question (i.e. against 27 reserved vacancies) "pending finalisation of the enquiry". Accordingly, all the appointments including cases where appointment letters had been issued have been kept in abeyance by Ordnance Factory Dum Dum.

In response, the Ordnance Factory Board through a fax bearing No. 01/MISC/COMPLAINT A/DISC/OFDC/11 dated 29.9.2011 directed the Ordnance Factory Dum Dum to maintain 'Status quo' against the 27 number of vacancies. Thereafter, further directions were issued by the Ordnance Factory Board its letter bearing No. 02/AK/M/PER/OFB/12 dated 2.1.2012 to Ordnance Factory Dum Dum not to proceed further with any direct recruitment action in respect of IEs/NIEs against any sanction received at Ordnance Factory Dum Dum from Ordnance Factory Board so far.

That, subsequently, a Committee was constituted by the Ordnance Factory Board under the Chairmanship of Shri B.B. Sharma, Principal Director/Ordnance Factories Recruitment Board for direct recruitment of industrial employees for Ordnance Factory Dum Dum in its order No. 800/MP/Committee/A/I/896 dated 16.5.2012. In pursuance to the same, the OFB directed OFRB to process recruitment against 145 posts for OFDC consequent to which an advertisement against 145 number of vacancies in the semi-Skilled grade was published by the

OFRB in the Employment News dated 20-26th October, 2012. Examination was held in the months of February and April, 2013 under the supervision of OFRB.

That, the Ordnance Factory Board vide their letter dated 5.6.2013 intimated the following:-

“..... a vigilance enquiry was conducted by CVO, OFB into certain alleged irregularities in the recruitment to 27 posts of Industrial Employees (Trades men) at OFDC. Consequently, CVO/OFB vide letter No. OFBA/VIG/INV/190/2011 dtd. 13.8.2013 has informed that after investigating and examining the issue of irregularity alleged in the aforesaid OFDC recruitment case, it has been decided to take disciplinary action against certain officials of OFDC.

2. The competent authority has considered the above development and has come to the conclusion that the process of direct recruitment to 27 posts of Industrial Employees (Trades men) at OFDC was vitiated. And, accordingly, the competent Authority has decided to cancel the aforesaid recruitment examination and conduct the recruitment examination afresh, by giving an opportunity to those who had applied against the original advertisement and were eligible as per extant of OFB instructions, even if they may have now become overaged.”

Subsequently, O.A. filed by these applicants bearing No. 636 of 2013 (**Sanjit Ghose – vs. – U.O.I. & ors.**), No. 1146 of 2013 (**Bikash Kora – vs. – UOI & ors.**) No. 1526 of 2013 (**Dipankar Porel – vs. - UOI & ors.**) were received at Ordnance Factory, Dum Dum in July 2013, October 2013 and December, 2013 respectively, inter alia, praying for issuance of appointment letter to the petitioners in connection with recruitment against 27 vacancies. An order dated 29.7.2013 in O.A. 636 of 2013 (**Sanjit Ghose – vs. – U.O.I. & ors.**) was passed by the Tribunal directing the respondents as an interim protection “that appointment to one post in subsequent notification of November, 2012, in Fitter (G) Mechanic, shall abide by the result of this application. An order dated 26.9.2013 in O.A. No. 1146 of 2013 (**Bikash Kora – vs. – U.O.I. & Ors.**) was passed by the Tribunal with a direction that, “In view of the interim order granted by this Tribunal in O.A. No. 636 of 2013 vide order dated 11.7.2013, appointment to one post of Machinist Semi-Skilled shall abide by the outcome of the O.A.”. Further, the Tribunal in its order dated 17.12.2013 passed in O.A. No. 1526 of 2013 (**Dipankar Porel v. Union of India & ors.**) observed that, “In view of the matter, we are of the view that since even a selectee for a particular post has no right to be appointed and since the entire

selection process in respect of appointment of so many candidates have been kept in abeyance, there is no scope to pass any interim order at this stage.”

That in the meantime OFB vide its letter dated 05/06-09-2013, intimated cancellation of the recruitment examination of 27 Tradesmen as a result of irregularities in the recruitment that had been established in the Vigilance Enquiry. Accordingly, it was decided to take disciplinary action against certain officials of Ordnance Factory, Dum Dum. The competent authority, therefore, considered the above development and came to the conclusion that the process of direct recruitment to 27 posts of Industrial Employees (Tradesman) at OFDC had been vitiated and accordingly, it was decided to cancel the recruitment examination and conduct the recruitment examination afresh, by giving an opportunity to those who had applied against the original advertisement and were eligible as per extant of OFB instructions, even if they might have then become over-aged. An order dated 2.4.2014 passed by this Tribunal dismissing the O.A. No. 1526 of 2013 filed by Dipankar Porel. The relevant portion of the said order is extracted below:-

“7. In the supplementary affidavit the applicant has referred a letter dated 25.1.2014 issued by the respondents concerned being Annexure S-1 wherefrom it appears that the applicant was informed that in the event he is found eligible as per existing OFB instructions/order he would be allowed to sit in the test further irrespective of the fact, if he becomes over-aged in the mean time.

8. Having regard to the factual matrix of the case, we are of the view that there is no scope of judicial review to grant the relief as sought for.”

That, the respondents, in compliance to the orders of the Tribunal, have disclosed the irregularities detected by Vigilance Department in the recruitment process against 27 vacancies by a supplementary affidavit.

That, there were two distinct recruitment processes, the first against 27 vacancies as advertised between 4th to 10th September, 2010 and the second for 145 vacancies as advertised between 20th to 26th October, 2012 and that the applicant had applied against the recruitment process advertised in 2010 against

27 vacancies and not against the subsequent recruitment process of 145 vacancies.

That, as a result of the vigilance enquiry conducted by Chief Vigilance Officer (CVO), Ordnance Factory Board, into certain irregularities in the recruitment to 27 posts of Industrial Employees (Tradesmen) and after investigating and examining the issue of irregularity, the process of direct recruitment against 27 vacancies of Industrial Employees was found to be vitiated.

That a fresh examination against 27 vacancies of Tradesman for earlier recruitment process has been held, as directed by the OFB, on 30.11.2014 but the results, however, are yet to be published. Opportunity had been given to all those who had applied in response to the original advertisement and who had been found eligible as per the extant OFB instructions.

That as stated in their reply dated 14th Jan, 2015, the Ordnance Factory Board had revised its earlier recruitment policy No 570/A/1(III) dated 15/20.10.1999 for Industrial Employees as per directions of Hon'ble Supreme Court and had issued a revised policy for recruitment of Industrial Employees by No. 570/A/I(PT)/54/IVI294 dated 6.1.2011, which, inter alia, had mentioned the following:-

- i. *Recruitment through Employment Exchange and open advertisement to be issued inviting applications.*
- ii. *Ex-Trade apprentices need not apply and ex-trade apprentices of the factory need not apply and they will be considered along with others. However, age relaxation will be given for the period they have undergone training.*
- iii. *Educational qualification for direct recruitment will be NCTVT in relevant Trade failing which ITI/Diploma/Certificate in the same trade.*
- iv. *Written Test will be of 100 marks and syllabus of NCTVT will be followed.*

- v. *Syllabus of written test will be broadly as that of NCTVT exam syllabus.*
- vi. *Practical Test will be of 100 marks and syllabus of semi-skilled grade of same trade will be followed.*
- vii. *All eligible candidates will be called for Written Test.*
- viii. *Practical Test of 100 marks will be on the basis of merit of written test and candidates to be called in 1:3 ratio to the number of vacancy.*
- ix. *Final merit list to be prepared on the basis of total of written and practical test marks.*
- x. *If marks are equal, ex-trade apprentices will be given preference.*
- xi. *Between ex-trade apprentices, candidates senior in batch will be preferred.*
- xii. *Factory should maintain batchwise, tradewise, ex-TAs seniority strictly as per NCTVT Exam."*

That, the following irregularities were detected in the process of recruitment against the 27 vacancies as advertised in 2010. That, instead of calling all eligible candidates in written test as per OFB circular No. 570IA/I(PT)/54/(Vol.IV)/294 dt 6.1.2011, OFDC prepared a merit list of Ex.TAs of OFDC and called in 1:2 ratio in relevant trade for the vacant 27 posts, in violation of the extant order of calling all eligible candidates for written test. Written test of the vitiated recruitment process was conducted in three phases on three days i.e. on 7.3.2011, 4.4.2011 and 29.4.2011 calling ex-TAs in 1:2 ratio in the relevant trade and all diploma holder (16 Nos.) to fill up the posts of examiners. Question papers dt. 7.3.2011 and 4.4.2011 were the same. According to records, that question papers were sent to GM/OFDC on the pretext of his approval and it appeared that after several corrections, question papers have been approved by GM/OFDC unauthorisedly through an exclusive committee was nominated to set question papers. Written

examination was conducted for half an hour. Irrespective of Trades, the questions set were common for all tests conducted on 7.3.2011 and 4.4.2011. While the OFB guidelines dated 6.1.2011 mandated that syllabus of written test will be broadly as that of NCTVT examination, requisite syllabus were not followed. Question on syllabus of different trades to assess technical knowledge of the appearing candidates as required was not set. Investigation revealed that Practical Test was conducted for duration from 15 minutes to 4 hours whimsically without any laid down standard. Practical test syllabus was not followed for conducting practical test. Practical test result was verbally communicated to the Chairman of Selection Committee by officials nominated for conducting the practical test. Some practical tests were conducted by the same person and some by group of persons nominated. Accordingly, all the applications received in response to the original advertisement were again scrutinized in terms of OFB guidelines, which had been revised as per the guidelines of the Hon'ble Supreme Court and the eligible candidates were called for appearing at the examination afresh which was held on 30.11.2014 and the results of which have not yet been declared. The respondents further averred that any recruitment process, which is fraught with irregularities due to violation of rules and guidelines on the subject, cannot be said to have been based on legality; and hence, appointment of the petitioner in pursuance of the said vitiated process of recruitment is illegal.

That, before conducting the fresh examination against 27 posts, the applicants in O.A. No. 636 and 1146 of 2013 had prayed before the Tribunal to stay the said re-examination by filing MAs. The Tribunal, however, had fixed the date of hearing on 28.11.2014 and, being aggrieved, the instant applicant had filed a WPCT before the Hon'ble High Court at Calcutta. The Hon'ble High Court at Calcutta was pleased not to admit the said Writ Petition and the Tribunal on 28.11.2014 had passed an order as follows:-

“2. Applicant is given liberty to appear at the examination which is said to be

held on 30.11.2014 without any prejudice and contention.”

ISSUES

V. The issue which requires to be resolved in the context of adjudication of the instant application is whether the applicant is entitled to appointment when the process of recruitment of 27 posts of Industrial Employment (Tradesman) relating to such appointment had been held to be vitiated.

FINDINGS

VI. (i) The respondent authorities had initiated two separate processes for appointment to the posts of Fitter (Gen/Mech) Semi-skilled as follows:-

(a) Against 27 vacancies as advertised between 4th to 10th September, 2010.

(b) Against 145 vacancies as advertised between 20th to 26th October, 2012.

The applicant had applied in response to the advertisement dated 4th to 10th September, 2010 as affirmed by the respondent authorities. It is noted here, however, that in his application, the applicant has stated as follows:-

“The advertisement published in the Employment News dated 4-10 September, 2010 amply testifies the fact that respondents have unleashed a new recruitment process for the selection of the same tradesmen without considering the case of the petitioner along with 26 selected candidates and without affording reasonable opportunity to accommodate them in the existing vacancy which is absolutely unjustified and untenable in law. A Xerox copy of the advertisement dated 4-10th Sept. 2010 is enclosed as Annexure A/8 as a forming part of this petition.”

The above contention of the applicant is not correct as because the applicant, by his own averment, has stated that he had appeared in the written examination/trade test held on 7.3.2011 (Annexure A-1 to the O.A.)

The contents of the said Annexure is reproduced below:-

“By Speed Post with A/D

FAX No. : (033) 25512136
TELEX : 021-5117

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE

TELEGRAM: OFDUM ORDNANCE FACTORY DUM DUM
PHONE : 2559-3100/1043/5232

No. 013/R. Cell/27/2010-2011 Date: 19.2.2011
From: THE GENERAL MANAGER

TO
SHRI BIKASH KORA,
VILL : DHALLA, P.O. DHALLA,
P.S. – ILAMBAZAR, DIST. BIRBHUM,
PIN – 731214, W.B.

**SUB: Written Examination of Trade Test in Connection
With appointment in the grade of Semi-skilled-
Holding of.**

**REF: Advertisement published in Employment News
4th-10 Sep'10- Reserved Vacancies for 27 Nos.**

You are hereby intimated that as a part of the process for recruitment of Ex-Trade Apprentices in this factory in the grade of Semi-Skilled of different trades against 27 (twenty seven) Nos. of sanction of OF Board for the year 2010-11, a written examination and trade test will be held in order to assess the suitability of the candidates against the reserved categories. Accordingly, you may appear in person on 7.3.2011 for appearing in the Written examination and Trade Test, to offer yourself as a candidate as per the schedule indicated below.

Date	:	07.03.2011
Time	:	09:00 A.M.
Venue	:	OFDC Canteen Hall Upstairs.

XXXX

XXXX

XXXX

XXXX

XXXX



(J.C. Bhattacharyya)

Asst. Works Manager

For General Manager"

- (c) The applicant, by his own admission, had been selected by Ordinance Factory at Nagpur and had been issued an offer of appointment In October, 2011.

Admittedly, the applicant had not joined this post as affirmed by him in Para 4.4 of the Application. Hence, it is not the applicant's case that he had never been issued with an offer of appointment. Rather he volunteered to forego the offer in expectation of an appointment letter which was never assured to him by the respondents.

- (d) The applicant was issued an admit card to appear at an examination

scheduled on 30.11.2014 with reference to his application against OFC advertisement dated 4th to 10th September, 2010 (annexed as MA-3 to MA No. 386 of 2014) and as directed by the Tribunal on 28.11.2014, the applicant was given liberty to appear at the examination without any prejudice and contentions.

(e) In her written notes of arguments the applicant's Counsel has referred to judgments in the following matters:-

- I. *Amar Nath Singh and Others v. UOI* 1998 (3) UPLBEC 1885
- II. *Kumari Anamica Mishra and Anr. v. UPSC* 1989 SCALE (2) 1095
- III. *Alok Pal v. State of West Bengal* Calcutta High Court 2012 16th August.
- IV. *Joginder Pal & others v. State of Punjab*, Supreme Court 2014.

The matters have been examined in the relevant context and the following is deciphered:

In the case of **Amar Nath Singh and others** (supra), the Hon'ble Court stated as follows:-

"11. As noted in the beginning, the Scrutiny Committee found the following four faults with the panel prepared by the Recruitment Committee:-

- (i) *Excess recruitment to the extent of 99 candidates;*
- (ii) *Violation of extant rules/circulars information of the panel;*
- (iii) *Certain SC candidates who had secured more marks were not brought on merit list, and*
- (iv) *Procedure following by the Recruitment Committee has not been elaborated in that at no point of time the original application forms were scrutinized /compared and as such the possibility of impersonation by affixing different photographs in the call letter at various stages cannot be ruled out.*

The above irregularities /Shortcoming were rectifiable."

The Apex Court held the shortcomings to be rectifiable; this is not the context in which the instant application has been filed and hence reliance cannot be placed on the same.

In the case of Alope Pal (supra) the process was kept in abeyance, purportedly due to an embargo imposed by the Hon'ble Court which is not the cause of action in the instant matter.

In the case of Joginder Pal (supra) the ratio was based on segregation of tainted and untainted candidates, which is not the issue to be adjudicated in the instant application.

In the case of Anamica Mishra (supra), the Court's decision was in the context of cancellation on account of improper feeding of results in the computer and the Hon'ble Court had ordered that recruitment process be redone. This ratio also fails to support the case of the applicant.

On the other hand, in the matter of **Union of India v. Anand Kumar Pandey (1994) 4 SCR 486**, it has been held that in a situation where cancellation of a selection examination on ground of wide spread malpractice was inevitable and the successful candidates in the tainted examination were asked to sit for another test, no demand for show cause could be claimed.

Further in **Union of India v. Tarun Kumar Singh 2001 AIR SCW 1928** the Hon'ble Supreme Court has held:

“.....the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of law. That apart an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment.”

In **State of Haryana v. Subhas Chander Marwaha 1973 (2) SLR 137**, and in **Lila Dhar v. State of Rajasthan AIR 1981 SC 1777**, the Hon'ble Apex Court has held that it is a settled principle of law that selection has always been considered as an administrative function and the administrative authority is regarded as the best judge for it. As long as the function of such authority is within the law, courts will be slow to interfere; rather it has no business to interfere. The Court does not also function as an appellate forum in selection matters.

VII. Accordingly, we hold that if the applicant himself had participated in the re-examination, the relief sought against the respondent authorities by calling for order of status quo on the new recruitment process initiated by the Ordnance Factory Dum Dum vide its advertisement dated 20-26th October, 2012 is infructuous.

VIII. Regarding issue of appointment letter to the petitioner without any further delay, as the results of the re-examination held on 30.11.2014 against 27 posts are yet to be declared, it is premature for the Tribunal to interfere in this matter.

IX. The question of compensation to the applicant for harassment and causing irreparable loss to the applicant does not arise as because he himself had volunteered to forego the temporary offer of appointment of October, 2011 from the respondent authorities.

X. The O.A. is accordingly dismissed on merit.

XI. The respondent authorities are at liberty to declare the results of the selection process held as a result of re-test against 27 vacancies and also the results of the fresh recruitment process against 145 vacancies.

XII. The interim order dated 26.9.2013 of the Tribunal, that, "we direct that appointment to one post of Machinist Semi-Skilled shall abide by the result of this application" stands vacated.

XII. Parties are to bear their respective costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP