



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.1401/2013

Date of hearing: 07.11.2016

Dated of order: 09/11/2016



Present:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Nand Kishore Shaw, son of Late Sitaram Shaw, aged about 21 years, residing at 616, Surkikal, Ichapur, Post Office Nawabganj, District - 24 Parganas (North), Pin-743144.

.....Applicant

VERSUS

1. UNION OF INDIA, Service through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110001.
2. The Secretary, (Defence Production), Ministry of Defence, Government of India, Department of Defence Production, South Block, New Delhi-110001.
3. The Chairman Cum Director General, Ordnance Factory Board, having his office at 10A, Shaheed Khudiram Bose Road, Kolkata-700001.
4. The General Manager, Metal & Steel Factory, Ishapore, Government of India, Ministry of Defence, Ishapore, District-24 Parganas (North), Pin-743144.

.....Respondents

Counsel for the Applicant :Mr.P.C.Das, Advocate
Counsel for the Respondents :Mr.M.Bhattacharyya, Advocate

ORDER

MS.JAYA DAS GUPTA, AM:

The Applicant (Shri Nand Kishore Shaw) has filed this

Original Application U/s. 19 of the Administrative Tribunals Act,

1985 seeking the following reliefs:

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"(a) To pass an appropriate order directing upon the respondent authority to issue the appointment order in favour of the applicant to the post of Fireman in terms of the Advertisement published by the Metal & Steel Factory, Ishapore in the Employment News dated 21-27 January, 2012 for recruitment for the post of Fireman as your applicant has secured 47 marks out of 150 marks being Annexure-A-1 and A-4 of this original application.

(b) To pass an appropriate order directing upon the respondent authority to fill up the vacancy of 10 candidates in terms of Annexure-A1 and A-4 of this original application as your applicant being a qualified candidate appeared in the said selection process and secured 47 marks out of 150 and qualified in the said selection process and to issue appointment order in favour of him from the date when the penal will be operated."

(extracted as such)

2. The case of the Applicant, in gist, is that he had applied

for consideration to the post of Fireman in response to the advertisement issued by the Respondents in Employment News dated 21-27 January, 2012. He appeared at the written test which was held on 06.08.2013 and, also measurement of physical standard test and endurance test was conducted by the Respondents in his case. He was hopeful to be appointed to the post of Fireman. But he did not receive any offer of appointment and it has been alleged that less meritorious candidates were selected and were likely to be appointed. Hence the instant OA with the aforesaid reliefs.

3. Per contra, it is the case of the Respondents that twenty

eight candidates, including the applicant, were called to appear at the written test scheduled to be held on 06.08.2013 but only eleven

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candidates, out of twenty eight, appeared at the written test held on 06.08.2013. However, after evaluation of the answer sheets, only five candidates were found eligible for endurance test and physical measurement. It has been stated that 10 (ten) vacancies were advertised to be filled up viz; UR -05, ST-01 and OBC-04. Accordingly, a merit list was prepared relevant portion of which is set out below:

Sl. No.	Name(S/Shri)	Roll No.	Category	Marks obtained	% marks
1	Sanjoy Das	FM-23	GENL	72	48.00
2	Umesh Giri	FM-10	OBC	68	45.33
3	Sunil Kr. Meena	FM-2	ST	62	41.33
4	Ravindra Haridas Chatap	FM-17	GENL	61	41.33
5	Udaybhan Singh	FM-04	GENL	62	40.66
6	Karuna Pradhan	FM-21	OBC	59	39.33
7	Rahul Kumar	FM-28	SC	57	38.00
8	Pankaj Singh	FM-24	GENL	48	32.00
9	Nand Kishore Shaw	FM-09	GENL	47	31.33

The written test was conducted for 150 marks and the cut off marks was fixed at 40% i.e. 60. The following UR candidates secured the cut off mark of 40% in the written test:

Sl.No.	Names	Total marks secured out of 150	% of marks
1	Sanjoy Das	72	48.00
2	Sunil Kr. Meena	62	41.33
3	Ravindra Haridas Chatap	61	41.33
4	Udaybhan Singh	62	40.66

The Applicant was not considered for appointment as he had got only 47 marks out of 150 which is below the cut off marks of 40%. He obtained 31.33% in the written test. Hence, he was not issued any order of appointment. Accordingly, the Respondents have prayed for the dismissal of this OA.

4. Heard both and consulted the records.

5. The learned counsel for the applicant drew our attention to the advertisement to state that no cut off marks has been mentioned in the advertisement which is illegal. In this connection, the learned counsel for the applicant cited the decision of the Hon'ble Apex Court rendered in the case of **Majeet Singh, UDC and others v Employees' State Insurance Corpn. And another**, AIR 1990 SC 1104. Relevant portion of the decision is quoted herein below:

"6. So far as the remaining question that was debated before the Tribunal is concerned, we are of the view that the scheme intended for recruitment should be on the basis of an examination comprising of written test and interview. We agree with the submission of Shri Madhav Reddy that inter- view has its own place in the matter of the selection process and the choice of the candidate. Once this is recognised, it would be appropriate to require every candidate to pass the interview test and for that purpose there should be a basic limit provided. In the absence of any prescription of qualifying marks for the interview test the same prescription of 40% as applicable for the written examination seems to be reasonable. That has been the view expressed by one of us (Punchhi, J.) in a decision (Rajesh Sood & Ors. v. Director-General, Employees State Insurance Corporation & Anr., decided on August 7, 1985) to which our attention has been drawn. We approve of the view. Accordingly, we modify the direction of the Administrative Tribunal and hold that in the oral examination the pass mark shall be 40% and 40% pass marks shall be insisted separately for the written as also the oral test for qualifying in the selection."

6. We see that the submission of the learned counsel for the applicant does not hold good as the Hon'ble Apex Court in the aforesaid case have held that in the oral examination the pass mark shall be 40% and 40% passmarks shall be insisted separately for the

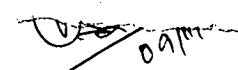
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written as also the oral test for qualifying in the selection which is not the case of the applicant. In the present case, the Respondents have prescribed 40% as the cut off marks in the written test and as the four candidates, under UR category, have secured more than 60 marks out of 150 in the written test they are eligible to be appointed, contrary to the assertion made by the Applicant. The applicant has only got 47 out of 150 in the written test i.e. less than 40% of the cut off marks and the Respondents have rightly not selected the applicant.

7. The next contention of the learned counsel for the applicant is that the advertisement does not mention the number of vacancies to be filled up and as such, restriction of the selection only four UR candidates is illegal. However, in the advertisement it has clearly been stated that ten vacancies are to be filled up which includes five UR vacancies.

8. Hence there is no ground for the Tribunal to interfere in the matter. This OA is accordingly dismissed and consequently, the stay order dated 31.10.2013 stands vacated. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)


(Justice V.C. Gupta)
Member (Judl.)