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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH.

OA. 309114
OA. 482112

DETAILS OF THE APPLICATION:

PARTICULAR OF THE APPLICANTS:

Smt. Dipali Roy, D/o Late Sudhir Kumar Roy, aged about 29 years, working as Security Guard since June, 2008, residing at 84/3, Shyamnagar Pirtala Road (Jorapukur), P.S.- JAGADAL, Post Office - Shyamnagar, Dist.- North 24 Parganas.

.....APPLICANT

-V E R S U S-

PARTICULAR OF THE RESPONDENTS:

- 1) Union of India through the Secretary, Department of Atomic Energy, Anushakti Bhawan, C.S.M. Marg, Mumbai - 400 001.
- 2) The Director, Department of Atomic Energy, Variable Energy Cyclotron Centre, Government of India, Sector - I, Block - AF, Bidhan Nagar, Kolkata- 700 064.
- 3) The Administrative Officer, Department of Atomic Energy Centre, Government of India, Sector-I, Block - AF, Bidhan Nagar, Kolkata - 700 064.
- 4) The Deputy Chief Security Officer, Department of Atomic Energy, Variable Energy Cyclotron Centre, Government of India, Sector - I, Block - AF, Bidhan Nagar, Kolkata- 700 064.

.....RESPONDENTS.

No. O.A. 350/00309/2014
O.A. 350/00482/2012

Date of order: 07/09/2017

Present: Hon'ble Mr. S.K. Patnaik, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. A. Chakraborty, Counsel
For the Respondents : Ms. M. Bhattacharya, Counsel
Mr. B.B. Chatterjee, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Heard Ld. Counsel for sides, perused documents and records.

2. The Ld. Counsel for the applicant has submitted that Smt. Dipali Roy, a Scheduled Caste candidate so certified by her own admission, was engaged and deployed by a contractor M/s. S & IB Services Private Limited, Kolkata as a Lady Security Guard in Variable Energy Cyclotron Centre, a Central Government Department and a constituent unit of the Department of Atomic Energy, Mumbai. She was so engaged by the contractor agency for the purpose of providing Security services (as a Guard at Variable Energy Cyclotron Centre (VECC) from June, 2008 to 23.6.2014.

3. That in December, 2010, an advertisement bearing No. VECC-8/2010 was published by the Variable Energy Cyclotron Centre for recruitment of eight posts of Security Guard (2 Unreserved, 4 OBC, 2 ST). No posts were advertised for Scheduled Caste category.

4. That the cut off date for reckoning of eligible applicants was 21.1.2011, 21.1.2011 being the last date of submission of the application. The prescribed upper age for eligibility as on 21.1.2011 was 27 years and the applicant was more than 27 years on the cut off date.

5. That the applicant had earlier filed an O.A. No. 85 of 2011 with the prayer for permission to participate in the selection process. On 3.2.2011,

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the O.A. was dismissed as withdrawn.

6. That the applicant thereafter filed an O.A. bearing No. 482 of 2012 seeking permission to participate in the selection process, namely, for participation in the exams for the purpose of recruitment of security guards for Variable Energy Cyclotron Centre as advertised in December, 2010. On 25.5.2012 the Central Administrative Tribunal, Calcutta Bench, directed as under:-

"The respondents to consider her for the post of Security Guard provisionally and result thereof should not be declared without leave of the Court. We hope and trust that the selection committee would consider her fairly and objectively."

7. The respondents thereafter allowed the applicant to appear for the physical test on 6.6.2012, for the written test on 1.9.2012 and for the interview on 3.9.2012 respectively.

8. That the Central Administrative Tribunal, Calcutta Bench further directed on 1.7.2015 that:

"The respondents are allowed to proceed with the selection in respect of other candidates keeping one post reserved for consideration of the applicant, if she is otherwise found eligible as per law. Also they shall be at liberty to publish the result of the candidates keeping the result of the applicants in a sealed cover. List this matter along with O.A. No. 309/2014 on 6.8.2015."

Final orders on O.A. No. 482 of 2012 are yet to be passed.

9. That the applicant has once again filed another O.A. No. 309 of 2014 claiming entitlement to absorption.

10. The Ld. Counsel for respondents argued as follows:-

The applicant had been engaged by the contractor from S&IB services and had been placed at the Variable Energy Cyclotron Centre from June, 2008 to June, 2014. There was no employer- employee relationship between her and Variable Energy Cyclotron Centre/Department of Atomic

Govt.

Energy.

11. Further the agency S&IB Services had a service contract for Security services and no contract for supply of labour.

12. The recruitment rules for engagement of Security Guards in Variable Energy Cyclotron Centre under Department of Atomic Energy do not permit absorption of recruits of contractual employees of a private agency. Ld. Counsel for the respondents has further stated that as directed by Hon'ble Tribunal on 1.7.2015, the respondent authorities had allowed the applicant to participate in the selection process and her results are retained in a sealed cover. Ld. Counsel prays for leave of Tribunal to publish the petitioners result after de-sealing the same.

13. Ld. Counsel for applicant does not object to the same.

14. Hence, the interim relief dated 1.7.2015 is vacated and the respondent authorities are at liberty to publish the result of the applicant/petitioner kept in sealed cover under orders of the Tribunal dated 1.7.2015 and O.A. No. 452 of 2012 is disposed of accordingly.

15. Returning to the contentions of the applicant for absorption as submitted in O.A. No. 309 of 2014 references made by the applicant to AIR 1996 SC 2275 [Dr. Surinder Singh Jamwal and another v. State of Jammu & Kashmir & ors.]

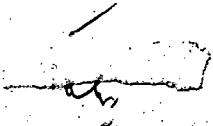
as well as AIR 1996 SC 417 [Khagesh Kumar v. I.G. Registration & ors.] are examined. The applicants in the cited matters are ad hoc employees/daily wagers directly engaged by the State Government and these instances are distinct from the case of the applicant who is a contractual employee of a private security agency. In the case of Uma Devi (2006) 4 SCC 1, the Hon'ble Apex Court had held that the Supreme Court and High Courts should not issue such directions on public employment unless recruitment itself was made regularly.

16. In the instant case too, the authorities cannot override their

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recruitment rules to absorb the ^{applicant} petitioner as a regular staff of a government establishment.

17. Thus the O.A. does not succeed.
18. There will be no order as to costs.


(Dr. Nandita Chatterjee)
Administrative Member


(S.K. Pattnaik)
Judicial Member

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