

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

**O.A.210/00670/2015**

**Dated this Friday the 28<sup>th</sup> day of April, 2017.**

**Coram: Hon'ble Dr.Mrutyunjay Sarangi, Member (A)  
Hon'ble Shri Arvind J. Rohee, Member (J).**

Monalina Madhukar Tabhane,  
Residing at: Behind Manavta  
High School Petrol Pump Thana,  
Jawahar Nagar,  
Bhandara - 441 906. .. Applicant.

**( By Advocate Shri Suhas Mandal, proxy counsel  
for Shri N.K. Rajpurohit ).**

**Versus**

1. Union of India, through  
Secretary,  
Ministry of Defence,  
New Delhi - 110 011  
(South Block),  
Directorate General of  
Quality Assurance (DGQA).
2. Department of Defence Production  
(DGQA),  
Quality Assurance Estt.  
(Military Explosives),  
Dehu Road, Pune - 412 101. ..Respondents.

**( By Advocates Shri V.B. Joshi alongwith  
Smt.H.P. Shah ).**

**Order reserved on : 03.04.2017  
Order delivered on : 28.04.2017.**

**O R D E R**

**Per : Arvind J. Rohee, Member (J).**

The applicant aggrieved by the inaction on the part of the respondents to issue appointment order to her, approached this Tribunal under Section

19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"(a) this Hon'ble Tribunal be pleased to call for the records and proceedings and upon refusal of the same be pleased to direct Respondents to issue appointment order of the Applicant to the post of Lower Division Clerk along with all service benefits.

(b) this Hon'ble Tribunal will be pleased to pass such other and further orders as deem fit in the fact and circumstances of the case;

(c) the cost of this application be awarded to the applicant."

**2.** The applicant qualified B.E. (Mechanical) and her date of birth is 05.06.1985. She belongs to SC category. In pursuance of the Advertisement dated 09.08.2014 (Annexure A-1) issued by the respondent No.2 to fill up the posts of Lower Division Clerk (LDC), the applicant since was eligible, applied for the said post. She qualified the written test held on 16.11.2014 followed by practical test i.e. typing test on the same day. She was then called for the interview which she attended. She was told that character verification of the select candidates will be done and their police verification report will also be called.

**3.** Subsequently, the applicant received the letters dated 26.11.2014 and 01.12.2014 (Annexure A-

7 colly.) alongwith 3 attestation forms for verification of character antecedents. The applicant has duly filled in and submitted those forms to the office of Respondent No.2 vide letter dated 04.12.2014 (Annexure A-4) by Speed Post. Thereafter since nothing was heard from the other end the applicant submitted a representation dated 18.09.2015 followed by fax letter dated 22.09.2015 and Email dated 21.09.2015. This was followed by Speed Post communication dated 14.10.2015 to the respondents making request for issuance of appointment order to her. However in spite of waiting for considerable time, since nothing was heard from the other end, the present O.A. is filed for seeking the reliefs stated in para 1 above.

**4.** The reliefs sought are based on the following grounds as mentioned in Para 5 of the O.A. The same are reproduced here in verbatim for ready reference:-

"a) That the Applicant successfully cleared the Written Examination, Practical Test of Typing Writing as well as interview and hence Respondent No.2 has sent letter dtd. 26.11.2014 alongwith Attestation Forms for character and antecedents. Once, the Applicant was selected, there is no reason to the Respondents to deny appointment on the post of LDC.

b) That the Respondent has not

yet considered applicant representation dtd. 18.9.2015.

c) That the Applicant has no any other source of income for livelihood of herself and her family.

d) That the Applicant is eligible to be appointed for the post of LDC as she is selected on merit. Therefore, if the appointment is not given to the Applicant she will suffer an irreparable loss for herself and her family.

e) That the Applicant craves leave to rely upon the additional grounds, if any, at the time of hearing."

5. On notice the respondents appeared and by a common reply dated 10.02.2016 resisted the O.A. The inaction on their part is justified on the ground that although the applicant has qualified the written test, typing test and viva-voce, on account of complaint received in Vigilance Cell inquiry was conducted in which use of unfair means in the recruitment process was detected. A decision was, therefore, taken to cancel the entire selection process and to undertake fresh recruitment process of eligible candidates who appeared in the written test, typing test and viva-voce earlier. The details of the office order issued by the respondents is furnished in this behalf. This decision was taken on 28.12.2015 by the Board.

6. It is stated that the O.A. is premature since there is no cause of action for the applicant to approach this Tribunal and also for the reason that there is no adverse order passed against her so far. The select list candidates have no vested right of appointment and it is the prerogative of the employer to give the appointment. It is also stated that mere inclusion of name in select list does not confer any right of appointment and hence the O.A. is liable to be rejected. It is also stated that as and when fresh examination will be conducted for the said post, liberty will be given to the applicant alongwith others to participate in fresh recruitment process.

7. The applicant then filed rejoinder on 15.07.2016 and stated that there is nothing on record to show that the applicant indulged in adopting unfair practice during recruitment process and hence the decision taken by the respondents to cancel the entire selection process is improper and appointment should have been given to the candidates who are not responsible for using unfair means. Reliance was also placed on the decision rendered by the Hon'ble Supreme Court in **Ashok Chand Singhvi Vs. University of Jodhpur and others, AIR 1989 SC 823,** in which it has been held that since there was no

fault on the part of the student for getting the admission to the College and hence it will not be appropriate on the part of the University to cancel their admission. The same analogy will be attracted in the present case also pertaining to recruitment process.

8. The respondents then filed additional reply on 16.12.2016 and placed reliance on the decision rendered by Hon'ble Supreme Court in **Shankarsan Dash Vs. Union of India, (1991) 3 SCC 47** in which it has been held as under:-

"Even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies of any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

9. Since the respondents have taken rational

decision to cancel the selection process after carrying out thorough investigation into the complaint regarding unfair practice during recruitment process the OA is not maintainable. It is reiterated that fresh recruitment process will be started and the applicant will be informed to participate in it.

**10.** On 03.04.2017, when the matter was called out, we have heard the oral submissions of Shri Suhas Mandal, proxy counsel for Shri N.K. Rajpurohit, learned Advocate for the applicant on the instructions and the reply arguments of Shri V.B. Joshi assisted by Smt.H.P. Shah, learned Advocates for the respondents. We have carefully gone through the case record.

#### **FINDINGS**

**11.** The only controversy involved in the present O.A. is whether the applicant is entitled to the reliefs sought.

**12.** It is not disputed that the applicant being eligible applied for the post of LDC and he qualified the written test, typing test and viva voce also, since subsequently Attestation Forms were issued to her for being forwarded for Police verification. However, it is obvious from record that before completing the above formalities an

appointment order is issued to the select list candidates, the respondents have received a complaint from the Employees Union regarding commission of unfair practice during recruitment process. The complaint was thoroughly investigated by verifying all the application forms submitted by the eligible candidates, the marks secured by them in written test and typing test and thereafter only a decision was taken to cancel the selection process. Although the report of the investigation is not produced on record still it is obvious that the respondents have taken right appropriate steps on receipt of the complaint regarding use of unfair means during selection process by some candidates or even the staff members who were deputed for completion of selection process. In view of this although there is nothing on record to show that any steps were taken by the respondents to segregate tainted candidates from untainted ones, a fair policy decision was taken to cancel the selection process and to hold it afresh by giving opportunity to all the eligible candidates who appeared in the examination by giving relaxation in age to face the fresh selection process. It cannot be said that it is permissible for this Tribunal to interfere with such a policy decision, which is exclusively within

the domain of the respondents.

**13.** Relying on the law laid down by the Hon'ble Supreme Court in the case relied upon by the respondents, it is obvious that although the applicant has successfully crossed the three hurdles viz. written examination, typing test and viva-voce, still she has no vested right to be appointed and it is the discretion of the respondents to give appointments. It is aptly said that issuance of advertisement is nothing but giving an offer to apply for the post and it does not give any vested right of appointment to the select list candidates. As such the applicant is not entitled to the main relief sought and no direction can be issued to the respondents to give her appointment order. The decision relied upon by the applicant is not applicable to the facts of the case, since it pertains to cancellation of admission of students by the University and has nothing to do with the selection process.

**14.** However, so far as the other prayer is concerned it is obvious that since after cancellation of the selection process in October, 2015, no effective steps appear to have been taken by the respondents for initiating fresh recruitment process to fill up the vacancies. It is not known

what is the difficulty for the respondents to undertake the fresh selection process of all the candidates who were found eligible to appear in written test, typing test and viva-voce test in previous selection process. As stated earlier the respondents have in fact took a decision to hold the recruitment process afresh and it was not cancelled in toto or no decision was taken that fresh selection process will not be undertaken. In such circumstances of the case, the applicant who has legitimate expectation for her selection, is justified in saying that atleast a direction should be issued to the respondents to undertake fresh selection process and complete it within a time frame.

**15.** From the above discussion, it is obvious that although there is no impugned order as such which is subjected to judicial review in the O.A., still propriety demands issuance of appropriate directions to the respondents.

**16(a).** In view of this the O.A. is partly allowed.

**(b).** The respondents are directed to take immediate steps for undertaking fresh recruitment process to fill up the vacant post of LDC in pursuance of the advertisement dated 09.08.2014 and take all the proper steps as per recruitment rules

for holding written test, typing test and viva-voce of eligible candidates by giving relaxation in age to them who applied in pursuance of the said advertisement including the applicant.

**(c).** Fresh recruitment process as above shall be initiated within a period of one month from the date of receipt of certified copy of this order and it shall be completed within a period of two months thereafter by following the recruitment rules.

**(d).** It is needless to say that the applicant will be entitled to participate in the fresh recruitment process, without making fresh application to the respondents.

**(e).** The parties are directed to bear their respective cost of this O.A.

**(Arvind J. Rohee)**  
Member (J)

**(Dr.Mrutyunjay Sarangi)**  
Member (A).

H.