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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /350/709/2017

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Geetendra Kumar Sahu,
Aged about 39 years,
S/o Shri Sukh Lal Sahu,
Vocational Instructor (Turner),
Govt. of India, DGT, MSDE,
Advanced Training Institute Kolkata,
Dasnagar, Howhar – 711105.

.... Applicant.

Versus ~

1. Union of India,
Through The Secretary,
Govt. of India,
Directorate-General of Training (DGT),
Ministry of Skill Development and
Entrepreneurship (MSDE), 2nd Floor,
Annexe Building Shivaji Stadium,
Shaheed Bhagat Singh Marg,
Connaught Place,
New Delhi – 110 001.
2. The Secretary,
Union Public Service Commission,
(Sangh Lok Seva Ayog),
Dholpur Housé, Shahjahan Road,
New Delhi – 110 069.
3. The Director,
Govt. of India, DGT, MSDE,
Advanced Training Institute Kolkata,
Dasnagar Howrah – 711105.

.... Respondents.

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For the applicant : In person

For the respondents : Mr. T.K. Chatterjee, counsel
Mr. A.K. Chattpadhyay, counsel

Heard on : 28.11.2018

Order on : 2.1.19.

ORDER

Bidisha Banerjee, Judicial Member

This O.A. was filed in order to seek the following reliefs:-

"8.1. "Quash the impugned letters by setting aside of letters dated 14.12.2016, dated 17.01.2017, dated 18.04.2017 & 21.04.2017" (Index Sl.No. 5, 6, 8 & 9).

Because, the delay / lapse of the Govt. procedure by the respondent No. 01 as per DoPT O.M. etc, which are not followed to complete the recruitment process well in time.

8.2. Direct the respondent No. 02 to consider the case / matter as normal circumstances / exceptional circumstances and release the name from reserve panel as early as possible as per requests vide letters dated 28.11.2016 & 16.12.2016 by the Respondent No.01.

By considering the delay / lapses of Govt. procedure, as per DoPT O.M. etc and also the Ministry / Department facing shortage of officers as per advt. for the post & vide letter dated 16.12.2016 Annexure – A/25.

That the applicant has only and only this chance for the post due to over aged (i.e. about 39 ½ years), in this life of applicant as per Advisement No. 18/2013 & RR rule. The applicant was already applied 04 (four) times for the post (i.e. Training Officer) through UPSC Annexure – A/39 & A/40 and only this time the applicant called for interview & the applicant is at Sl. No. 01 in the reserve panel which is already made for the purpose & post.

That, the applicant has performed his complete duty / roll without fail at any circumstances as & when instructed by Respondent No. 02 time to time; from the date of advertisement to the date of interview & maybe the applicant don't have any mistake in this regard.

That, the applicant has fundamental rights (Right to equality Articles 14 & 16 of the Constitution of India) to get equal opportunity. Equality of opportunity in matters of public employment or appointment.

That, the applicant is under the Respondent No. 03 & posted at Turner section after joining, from 24.10.2007 to till date and presently the

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applicant have complete charges of turner section from dated 30.10.2015 to till date **Annexure – A/43 & A/44**.

8.3. Award the opportunity to the applicant by releasing the reserve panel of the post for better prospect in future of applicant life & his family.

8.4. That, the whole exercise of the selection of candidates for the post (i.e. Selected & reserved listed candidates) is going to be futile and infructuous Annexure – A/27 para 2. Due to violation of rules / regulation, procedure, DoPT O.M., instruction & information on recommendation letter etc made for selection / post by the Respondent No. 01.

8.5. Direct the respondent No. 01 & 02 to consider the service of applicant for the post [i.e. Training Officer Turner (OBC)] after the 9th months from the date of recommendation letter issued (i.e. 16.01.2015) for Shri Vinod Kumar by respondent No. 01.

(Because, the offer of appointment should be given within 3 months from the date of recommendation letter, maximum time period allowed to join the post 2 months on his appointment letter and maximum time period 3 months can be given, if the recommended candidate requesting for extension the time period to join the post; total 09 months. [i.e. 3 months & 6 months. As per DoPT OM No. 39011/6/2012-Estt.(B), dated 16.08.2012 & OM No. 35015/2/93-Estt(D), dated 09.08.1995].

8.6. Direct the respondent no. 01. & 03 to award the increments from July, 2016 and others pay etc after fixing the pay of applicant as per Govt. rule wef after 9 months from the date of recommendation letter of the Shri Vinod Kumar.

8.7. Award the cost of this application.

8.8. Award the cost of harassment of applicant from the date of advertisement of this vacancy to till not join the post.

8.9. Award any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of this case."

2. Ld. counsel were heard. Materials on record, written submissions and memo of documents submitted by both the parties were perused.

3. The following position emerged therefrom:-

(i) An advertisement was issued by UPSC which was published in the Employment News for 23rd to 29th November, 2013 for recruitment in 2 posts of

Training Officer(Turner) OBC in DGT, Ministry of Labour and Employment, now DGT,MSDE. One, Sri Vinod Kumar and Sri Manu Kumar were selected and a reserved panel of Geetendra Kumar Sahu, the present applicant and Smt. Kalpana Subhash Rewaskar was prepared on 7th January, 2015.

(ii) Admittedly the panel had to remain valid for a period of 18 months i.e. till June, 2016. Meanwhile, the selected candidates, Mr. Vinod Kumar and Manu Kumar were offered appointment to join as Training Officer(Turner) on 12.11.2015. Said Vinod Kumar sent a mail on 23.11.2015 seeking three months' time to join the post since he had to resign from the erstwhile organisation. On 4th December, 2015, he was granted permission to join duty latest by 28.02.2016, failing which, his offer of appointment would be deemed to be cancelled. An order was issued stating as under:-

"Consequent to his nomination to this Ministry by Union Public Service Commission vide their letter no. F.1/351(74)/2013 R-V dated 28.01.2015 on the basis of interview for recruitment to the post of Training Officer (Turner) in this Directorate General of Training and subsequent to his acceptance of the Offer of Appointment vide letter dated 23-11-2015, Sh. Vinod Kumar is hereby posted as Training Officer (Turner) in the Pay Band – 2 of Rs. 9300-34,800/- with Grade Pay Rs. 4600/- at ATI-Howrah on or before 28.02.2016 and until further order on the same terms and conditions as mentioned in the offer of appointment dated 12-11-2015.

2. It is certified that he has been medically examined and found fit for the Government Service.

3. He will be on probation for a period of two years from the date of her appointment which may be extended or curtailed at the discretion of the competent authority."

(iii) On 29.02.2016 Vinod Kumar prayed for further time to join and was further allowed time till 18 April, 2016 and finally intimated his unwillingness on 24.10.2016. The applicant who was in the reserved list has come before this Tribunal alleging that the authorities ought not to have permitted Vinod Kumar to

join after 28.02.2016 and when he failed to join even on 18.04.2016, his offer of appointment ought to have been cancelled immediately and the applicant, who figured in the reserved panel, should have been offered appointment, but instead of doing so, the respondents chose to wait and offer appointment to the wait listed candidates in 2018, which was arbitrary.

4. Id. counsel for the respondents UPSC would vehemently oppose the contention on the ground that the panel as well as the reserved panel stood invalidate after a period of 18 months from the date of its preparation and, therefore, when Vinod Kumar expressed his unwillingness to join, the life of the panel as well as reserved panel had expired; so, there was no question of offering appointment to the present applicant.

5. Mr. T.K. Chatterjee, Id. counsel appearing for the other official respondents would very fairly submit that due to change in the officers timely action could not be taken up to offer appointment to the present applicant after getting the panel validated upto two years but before expiry of the 18 months from 16.01.2015 or 08.01.2015 when IBR was finalised. The applicant's case was sent only after reserve list had outlived its validity period due to which UPSC refused to operate the reserved list vide its order dated 17.01.2017. The candidate who was offered appointment from wait list, has not been impleaded, but the post is still vacant. However, indubitably and irrefutably the wait listed candidate was offered appointment long after the validity of the panel was over.

6. That apart, the fact remains that the applicant stood selected as a reserved list candidate and Vinod Kumar from the main list failed to join within the extended time period of April, 2016 and, therefore, the authorities have

arbitrarily deprived the present applicant for appointment immediately after the further time limit expired in the month of April, 2016 when the panel was still valid. Such arbitrary and whimsical action depriving an eligible candidate to earn his livelihood could neither be comprehended nor countenanced. In order to compensate the present applicant who was never at fault, the authorities should consider his case appropriately keeping in mind the fact that the panel was valid till June, 2016. The respondents should not be allowed to reap the benefit of their own wrong by not offering appointment to a reserved list candidate when the panel was still valid.

6. Accordingly the O.A. is disposed of with a direction upon the respondents to consider the case of the present applicant in accordance with the above observations and pass appropriate orders as per law, in regard to his joining, within 8 weeks from the date of receipt of this order.

7. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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