

O.A. 350/00125/ 2016

Order dated: 01.08.2019

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

Sumit Chakraborty,  
Son of Sri Prasad Kumar Chakraborty,  
Aged about 35 years,  
Unemployed youth, residing at 76/H/25,  
Beleghata Main Road,  
Kolkata – 700 010

..... Applicant.

**Versus**

1) Union of India through the Secretary,  
Ministry of Defence, Department of Defence  
Production & Supplies,  
South Block, New Delhi – 110 011.

2) The Chairman,  
Ordnance Factory Board,  
Ministry of Defence,  
Govt. of India,  
10A, Shaheed Khudiram Bose Road,  
Kolkata – 700 001.

3) The General Manager,  
Field Gun Factory,  
Ministry of Defence,  
Govt. of India,  
Kalpi Road,  
Kanpur – 208 009, U.P.

4) The Joint General Manager/Administration,  
Ministry of Defence,  
Indian Ordnance Factories,  
Field Gun Factory  
Govt. of India,  
Kalpi Road,  
Kanpur – 208 009, U.P.

..... Respondents.

For the applicant : Mr. K. Sarkar, Counsel  
For the respondents : Mr. P. Mukherjee, Counsel

## ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal, in third stage of litigation, praying for the following relief:

*"8.i) to direct the respondents to cancel, withdraw and/or rescind the speaking order dated 22.12.2015 as contained in Annexure "A-8" herein;*

*ii) to direct the respondents to consider the case of the applicant in the category of Blacksmith against 2013 notification on the basis of his prayer for permission to appear at 2013 selection, as would be evident from para 11 of the order of the Hon'ble Tribunal dated 23.09.2015 in OA No. 1353 of 2013 as contained in Annexure "A-7" herein;*

*iii) Alternatively, to direct the respondents to declare that OA No. 1353 of 2013 may be treated as a representation and/or application for a permission to appear at 2013 selection of the applicant and to consider the candidature of the applicant accordingly in the category of Blacksmith against 2013 notification;*

*iv) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;*

*v) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."*

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The submissions of the applicant, as articulated through his Ld. Counsel, is that, in September, 2012, an advertisement was issued for filling up of the post of Heat Treatment Operator and the applicant applied for the said post. As the Respondents rejected the candidature of the applicant on 19.09.2013, and, further proceeded to advertise to fill up five vacancies of the said post, the applicant, being aggrieved, had approached the Tribunal in O.A.No. 1353/2013, which was disposed of by the Tribunal directing that the authorities to consider

*[Signature]*

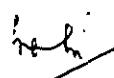
the case of the applicant, if he has already applied against the 2013 notification as per rules, and, against available vacancies.

The applicant had also approached the Tribunal in O.A.No. 284/2014, which was disposed of by the Tribunal on 14.05.2015 with the directions that if there is vacancy in the Blacksmith category the applicant can be considered against the same suitably in accordance with law provided he had stood 4<sup>th</sup> in the merit position.

That, in compliance to orders in O.A. 1353/2013, a speaking order was issued on 22.12.2015, rejecting the candidature of the applicant against available vacancy for the year 2013 and, accordingly, challenging the said speaking order at Annexure-A/8 to the O.A., the applicant has approached the Tribunal praying for the aforementioned relief.

4. Ld. Counsel for the Respondents vehemently argued, per contra, that the Respondent authorities had earlier advertised for the post of Heat Treatment Operator (SS) in 2012, and, in response, the applicant had applied on 27.09.2012. As his application was not supported by the requisite certificates in relevant field/trade from NCTVT/ITI, or equivalent Diploma/Certificate or equivalent, the candidature of the applicant was rejected, and, that, after considering the candidature of eligible candidates, the recruitment process was closed and successful selectees were offered appointment in order of merit. Of the two selected candidates, however, one candidate intimated unwillingness to accept the offer and the leftover vacancy was merged for recruitment year 2013.

A new advertisement was published in 2013 in which the unfilled vacancies of the previous year were also notified but the applicant did not respond to the



same. In compliance with the direction of the Tribunal dated 23.09.2015 in O.A.No. 1353/2013, a speaking order was, thereafter, issued to the applicant, which is presently under challenge.

According to the Respondents, the applicant was not considered in 2012 as he did not possess the requisite eligibility criteria. Further, the applicant did not apply against the notification for the recruitment year 2013 and, consequently, the O.A. being misconceived, deserves to be dismissed.

5. The primary issue that requires to be considered in this context is whether the Respondent authorities, in their speaking order, had complied with the directions of the Tribunal dated 23.09.2015 and, also, whether the applicant has been able to successfully challenge the speaking order dated 22.12.2015.

6. At the outset, we refer to the results of the earlier litigation, in which the applicant had approached the Tribunal. O.A. 1353/2013 was disposed of on 23.09.2015 with the following directions:

*"7. We have also noted the clarifications furnished by the respondents as extracted verbatim hereinabove.*

*We are satisfied with the same. Having allowed, only those persons who had possessed NCTVT certificate, to participate we find no infirmity in the respondent's action in not issuing admit card to the present applicant on the ground that he did not possess NCTVT certificate.*

8. *We have further noted that it is not the case of the applicant that persons not having NCTVT or NAC have been recruited while he is deprived. No case of invidious discrimination is made out. The authorities have clarified that no person with NTC certificate was issued admit card.*

9. *Although at the first blush it seemed to be a case of change in the condition of recruitment midway, i.e. change of rules of game while the game is on, due to which the interim order was granted, at the conclusion of hearing it does not appear to be so. The selection of 2012 was a valid*

*hui*

one, however 1 vacancy remained unfilled as a selected person did not join. The applicant was not empanelled hence there was no question of offering him employment.

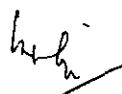
10. We have noted that unfilled vacancy of Recruitment year 2012 merged with 2013 thus the panel of 2012 was no more operative.

11. We further noted that the applicant has failed to challenge the inclusion of unfilled vacancy of recruitment year 2012 in 2013, rather he has prayed for a permission to appear at 2013 selection.

12. In the aforesaid factual backdrop we direct the authorities to consider the case of the applicant, if he has already applied against 2013 notification, against an available vacancy and as per rules."

The following are inferred from the above order:

- (a) That the Tribunal, having noted the clarifications of the Respondents and having consulted the relevant recruitment rules and the notification of 2012, concluded that there was no infirmity in the Respondents' action in not issuing the admit card to the applicant on the ground that he did not possess the NCTVT certificate.
- (b) That the applicant had not disputed the fact that he didn't have the NCTVT or NAC certificate, and, that, a case of invidious discrimination has not been made out by the applicant.
- (c) The selection of 2012 was held by the Tribunal to be valid.
- (d) One vacancy remained unfilled as the selected incumbent did not join the said post, but, as the applicant was not empanelled, the scope of offering the post to him did not arise. Also, as the unfilled vacancy of 2012 was merged with that of 2013, the panel of 2012 ceased to be operative.

A handwritten signature consisting of the letters 'h' and 'b' written in cursive, with a horizontal line extending from the 'b'.

(e) The applicant failed to challenge the inclusion of unfilled vacancy of recruitment year 2012 in 2013 but rather prayed for permission to appear at the 2013 selection.

(f) Respondent authorities were directed to consider the case of the applicant if he had applied against 2013 notification as per rules and against available vacancies.

It is, hence, established that the Tribunal considered the panel of 2012 as non-operative and, consequently, the scope of the applicant's further challenging his candidature in the notification of 2012 recruitment does not arise.

Ld. Counsel for the applicant robustly submits, during hearing, that the prescribed qualifications for the 2012 recruitment were prejudicial to the applicant as eligibility was confined only to those who possessed NGVT or NAC qualification, and, hence, rejection of his candidature vide speaking order dated 19.09.2013 without revisiting the said issue was arbitrary and illegal. The same cause of action, however, had already been adjudicated upon on merit in O.A. 1353/2013, and, hence, the applicant is now barred by *res judicata* to approach the Tribunal on the ~~selfsame~~ cause of action.

7. Next, we examine the speaking order dated 22.12.2015 (Annexure-A/8 to the O.A.) issued in compliance to the direction of the Tribunal dated 23.09.2013 in O.A. 1353/2013, which reads as under:

"To  
Shri Sumit Chakraborty  
R/o 76/H/25, Belghata  
Main Road, Belghata  
Kolkata – 700 010

Sub:- OA No. 1353 -2013 – filed by Shri Sumit  
Chakraborty Vs UOI & Others

Ref:- Hon'ble CAT, Calcutta Order dated 23/09/2015

*In compliance with the directives of the Hon'ble CAT, Calcutta order dated: 23/09/2013 in the subject OA filed by you, the following is furnished in the form of Speaking Order:*

*That Hon'ble CAT, Calcutta in OA above mentioned, has reiterated that "no case of invidious discrimination has been made out by Field Gun Factory, Kanpur by not issuing admit card" to you for the written examination conducted by the Field Gun Factory for the post of Heat Treatment Operator (HTO) in the recruitment year 2012.*

*That Recruitment action of year 2012 was completed for all purposes and thereafter only action for Recruitment for 2013 took place.*

*That against 2013 notification, published in Weekly Edition of Employment News dated: 28 Sept 2013, 05 posts of HTO were advertised along with different vacancies for 08 other trades, inviting applications on line from all eligible Indian nationals & subsequently recruitment process was also carried out.*

*That you had not applied for any post against notification mentioned above i.e. for the Recruitment year 2013 & hence no consideration of your candidature for the recruitment 2013 arises in accordance with rules.*

*That since you had not applied for any post against the notification made in the Recruitment years 2013. Hence your case cannot be considered against any available vacancy of year 2013 in accordance with the rules governing direct recruitment.*

*That accordingly this order is issued to you in compliance with the order dated: 23/09/2015 of Hon'ble CAT, Calcutta.*

Sd/-  
(Smt. Sharmishtha Koul Sharma)  
Jt. General Manager/Admin  
For General Manager"

The speaking order reveals as follows:

(a) The Tribunal, in its orders dated 23.09.2015, had observed that no case of invidious discrimination has been made out by the Respondent authorities by not issuing admit card to the applicant for the recruitment process of 2012 and

that the actions for recruitment for the year 2012 has been completed for all purposes.

(b) Although, the Tribunal had directed the authorities to consider the applicant's case, as per rules, against available vacancy, if the applicant applies for 2013 notification, the applicant has refrained from applying for the recruitment year 2013. Hence, the scope of considering his candidature, bereft of his application, does not arise.

8. We find no factual or legal infirmity in the speaking order, as the 2012 recruitment was closed for all purposes as observed by the Tribunal and reiterated in the speaking order by the Respondent authorities. Further, when a candidate does not apply against a specific recruitment notification he cannot nurture any legitimate expectations to be considered in the same. The Tribunal had also clarified in its direction that "if he has already applied against 2013 notification". It is not a matter of factual dispute that the applicant did not apply against 2013 notification. Hence, the applicant cannot claim to be considered in the recruitment process for 2013. The argument of Ld. Counsel for the applicant that the O.A. 1353/2013 may be treated as a representation or application for permission to appear at 2013 selection has already been adjudicated upon by the Tribunal in O.A. 1353/2013 wherein the Tribunal had categorically directed the Respondents that his candidature is to be considered as per rules and against available vacancies only if the applicant applies against 2013 notification.

9. Accordingly, we find absolutely no merit in the O.A. and the same is dismissed. Parties will bear their own costs.

(Dr. Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)