

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(2)

OA NO. 338/2003

This the 13th day of February, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A. SINGH, MEMBER (A)

Sh. Udhav Shah
s/o Sh. Rameshwar Shah,
R/o A-29, Mahavir Enclave, Palam,
New Delhi.

(By Advocate: Sh. T.C. Aggarwal)

Versus

Union of India through

1. The Director General,
Doordarshan, Doordarshan Bhawan,
Mandi House,
New Delhi-110001.
2. The Director Engineering,
T.C.Tower,
Doordarshan, Pitampura,
New Delhi.
3. The Director,
Delhi Doordarshan Kendra,
(Doordarshan), Akashvani Bhavan,
Parliament Street,
New Delhi-110001.

(By Advocate: Sh. S.K. Pabbi)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

This is a second round of litigation. Applicant is aggrieved of impugned order passed by Resp. No.2 whereby the respondents is stated to have denied implementation of the Tribunal's order dated 21.7.2000.

2. Facts in brief as alleged by the applicant are that applicant is working as Safaiwala under the respondents. He holds the qualification of Secondary School Certificate from the National Open School and his services has been utilised as Helper. Applicant had been making a representation for being regularised as Helper but the same was not done. However, the

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applicant was allowed to appear in test and interview for the said post of Helper as a direct candidate alongwith the candidates sponsored by the Employment Exchange. It is further stated that according to the Recruitment Rules respondents were bound to fill 50% of vacancies by promotion of the Khalasi - eligible working in HPTV Pitampura and 50% by direct recruitment through Employment Exchange.

3. It is further stated that 6 posts of Helper was created. It is further alleged that respondents failed to follow the statutory rules and filled these posts on transfer basis and only one post was filled from nominee of Employment Exchange under direct quota. All other posts were filled by transfer which is not a mode of recruitment. It is further stated that considering the facts the Tribunal in earlier OA as an interim measure restrained them from filling the posts and the said vacancy continued to exist. It is further stated that respondents had favoured the persons who had approached them and appointed them on transfer basis in colorable exercise of power which is illegal. It is further stated that in the earlier OA direction were also given to the respondents to appoint the applicant if he was at No.3 in the select list for the direct recruitment to the post of Helper and the OA was disposed of with this direction subject to availability of vacancies. Since the order was not being complied with applicant filed a CP. The Court dismissed the CP and accepted the plea of the applicant that there was no vacancy available under the direct recruit quota and that is why while disposing of the CP Tribunal observed that we are unable to agree with the learned counsel for the petitioner that the respondents

have committed contempt of Tribunal's order. So it is after the dismissal of the CP, applicant has again filed the present OA.

4. Applicant still insist that there were 6 vacancies out of which two have been filled on transfer basis and applicant being at No.3 had not been taken as a direct recruit.

5. Respondents were contesting the OA and submitted that after the earlier OA was disposed of the department had considered the appointment of the applicant to the post of Helper but rejected the claim of the applicant. It was ordered that since it was not feasible to appoint the applicant to the post of Helper as there is no vacancy. Further it was made clear that DPC held on 10.9.99 for selection of 2 Helpers under direct recruit quota placed the applicant under Sl. No.3 in the reserved panel. In case the selected candidates failed to accept the post then the applicant could have been appointed against the direct recruit quota but since the 2 vacancies had been filled by the 2 candidates who had been selected on direct recruitment basis so no vacancy is available. This was the stand taken by the respondents in the contempt petition also. Now the applicant has again filed the present OA on the same ground and since the facts have been earlier adjudicated and since the Tribunal had dismissed the OA as well as the CP so applicant is just wasting the time of this Tribunal and he cannot be allowed to agitate again.

6. Respondents further pleaded that HPT Doordarshan, Pitampura was separated as an independent office from the establishment of Doordarshan Kendra, New Delhi w.e.f.

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September 1996 and Director Engineering has been delegated the powers of the Head of Office and controlling office for the staff working at the HPT, Pitampura. It is further stated that at the time of declaring HPT as an independent office there were five vacant posts in the category of Helper and action is taken to fill up those posts as per Recruitment Rules. The first vacant post on the Roster is for departmental candidate which was filled from amongst the Khalasis who are in the feeder cadre to which the applicant has no right and as far the direct recruitment is concerned, applicant alongwith the other departmental candidate was allowed to appear in test and interview without any preferential right alongwith Employment Exchange canidates.

7. It is further stated that out of 5 posts, 3 posts fall to the promotional quota and only 2 posts could be filled by direct recruitment quota. It is also stated that out of 3 posts meant for promotional quota one post was filled by Arjun Shah on transfer basis and it was also made clear that if he does not join his order would be cancelled and post would be filled up under the promotional quota from amongst the Khalasis still the applicant will not get a chance of promotion as he was not Khalasi nor he could be adjusted against a quota of promoted candidates. It is further stated that the case of the applicant was considered as a direct candidate but he could not make up the grade and since the 2 posts had already been filled up on transfer basis so roster for 4 posts have been drawn and only 2 posts were available against direct quota which had been filled up by direct recruitment so there is no vacancy available under the direct recruitment quota. Thus, it is submitted that OA be dismissed.

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8. We have heard the learned counsel for the parties and gone through the record.

9. Counsel for applicant insisted that there is an admission on the part of the respondents that there were 3 vacancies available for direct recruitment quota and to support his contention counsel for applicant referred to the earlier written statement filed by respondents which is Annexure A-5 and submitted that this goes to show that respondents have filled 2 posts on transfer basis which is against the rules and had they not filled 2 posts on transfer basis then out of the 6 posts 3 posts should have gone to direct recruitment quota and 3 posts to the promoted quota and the applicant who was 3rd in the panel would have been selected.

10. Counsel for applicant also referred to a letter written by Doordarshan Group-D employees Union wherein Union had made a case that the Tribunal has been wrongly informed that there is no post of Helper lying vacant and it was being stated that one post of Helper is still vacant which had been filled by one Smt. Bhagwati Devi who is regular employee of Delhi Doordarshan Kendra and who has to go back to Delhi Doordarshan Kendra as such a vacancy is available.

11. On going through these contentions of the learned counsel for applicant we are of the considered opinion that the contentions raised by the applicant has no force. It is an admitted case of the respondents as they have clearly indicated in their counter affidavit that when this HPT Doordarshan, Pitampura was made an independent office one post of Helper had already been filled up so only 5 vacancies were

available and out of the 5 posts as per roster the 1st post was meant for promotion, 2nd for direct recruitment, 3rd for promotion, 4th for direct recruitment and 5th post again was meant for promotee quota. Thus, there were only 2 posts available for direct recruit quota. Though in the written statement it is stated that out of the 2 posts, 2 posts have been filled by transfer, 2 posts by promotion and 2 posts by direct recruitment and it is stated that filling up post on transfer basis is illegal and that promotion should be given to direct recruit quota then one post could have been available by direct recruit, if no post on transfer basis had been filled up.

12. To rebut this contention, learned counsel for the respondents explained that when HPT became independent unit one post had already been filled up so only 5 posts have become available and against one post meant for promotee quota one person had been appointed on transfer basis and even if that transferee is repatriated then also applicant has no right to get appointed against promotee quota because he is not in the feeder cadre. Applicant had competed only for direct recruit basis and since the applicant was at No.3 on the panel the first 2 persons who were selected against direct recruit quota had joined the organisation and they are working as Helpers. So no post against direct quota is available. In our view also, while filling up the vacancies the rule of quota is to be applied when the vacancies had become available. If one of the vacancies have been filled up earlier so that is not to be clubbed and then quota rule is to be considered. So we have to see that out of the 5 vacancies available how many vacancies were available for direct recruitment. If 5 vacancies have become available at the

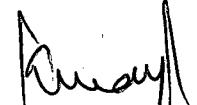
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particular point out of those as per roster only 2 vacancies had become available for direct recruit and 2 vacancies had been filled by direct recruitment and there is no infirmity in that.

13. In this regard as per the legal position is concerned, we are also supported by judgment of Hon'ble Supreme Court in case of State of Punjab vs. R.N.Bhatnagar reported in JT 1998 (9) SC 7. Since only 2 vacancies of direct quota were available and 2 persons have been taken on direct recruitment quota so we find that applicant has no case that the vacancy under direct recruitment is still available for which he should be considered. Hence OA has no merits and the same is accordingly dismissed.



(S.A. SINGH)
Member (A)



(KULDIP SINGH)
Member (J)

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