

(2012) 01 AHC CK 0738

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35956 of 2010

Union of India and Others

APPELLANT

Vs

Anil Kumar Bajpai and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 16(1)
Ordnance Factories Group C Supervisory and Non — Gazetted Cadre (Recruitment, Indian Ordnance Factories Group C Supervisory and Non — Gazetted Conditions of Service) Rules, 1989 — Rule 4, 5

Citation : (2012) 3 ADJ 349

Hon'ble Judges : Sunil Ambwani, J; Manoj Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon'ble Manoj Misra, J.—This writ petition has been filed by Union of India through Secretary, Ministry of Defence and Supply, Department of Defence Production, Board of India, New Delhi, as also by the General Manager, Ordnance Equipment Factory, Kanpur, and the Secretary Ordnance Factory Board, Kolkata, whereby they have challenged the order dated 26.2.2010 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 1156 of 2003 filed by Anil Kumar Bajpai (the respondent No. 1). By the impugned order, the Central Administrative Tribunal has quashed the order dated 6.9.2002 whereby the claim of the respondent No. 1 for appointment on the post of Chageman Grade-II/CT, as against the vacancies arising subsequent to the year of the recruitment examination, was rejected.

2. The brief facts giving rise to the case are that the respondent No. 1 after having completed the training was appointed on the post of Sewing Machine Mechanic (Semi-skilled) w.e.f. 1.4.1985 and was subsequently re-designated as Sewing Machine Mechanic w.e.f. 1.4.1987. Thereafter, the respondent No. 1 held the post of LDC w.e.f. 22.1.1998 in the Ordnance Factory, Kanpur. On 30.8.2000, a circular was circulated by the General Manager, Ordnance Equipment Factory,

Kanpur thereby inviting applications to appear in the Limited Departmental Competitive Examination (L.D.C.E.) for filling up three posts of Chargeman Grade-II (TECH/Clothing Technology), out of which one post was reserved for OBC. The respondent No. 1 appeared in the Limited Departmental Competitive Examination-2000 and by the letter of General Manager, Ordnance Equipment Factory, Kanpur was informed that he had passed the written examination and was required to attend the interview. The respondent No. 1 thereafter appeared in the interview and a list of four candidates in the order of merit was prepared wherein the respondent No. 1 was placed at Serial No. 4. Three candidates out of the list were promoted as Chargeman Grade-II/CT but the respondent No. 1 was left in the waiting list. Later, certain vacancies on the post of Chargeman Grade-II occurred after the L.D.C.E-2000 for which fresh applications were invited vide circular dated 29.9.2001. The respondent No. 1 applied for participating in the L.D.C.E-2001 but just before the actual date of examination, the eligibility criteria was changed by circular dated 21.12.2001. As a consequence, the respondent No. 1 was not allowed to appear in the examination of L.D.C.E.-2001. However, by relying on a circular dated 8.2.1982, the respondent No. 1 filed a representation claiming that he should be given appointment on the basis of his selection in the L.D.C.E. 2000. He claimed that as per the circular dated 8.2.1982 where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment should be reduced by the number of candidates already awaiting appointment, so that the candidates awaiting appointment be given appointment first before starting appointments from a fresh list from a subsequent recruitment or examination. This representation of the respondent No. 1 was rejected by the order dated 6.9.2002 which reads as under:

With reference to your representation cited above, it is submitted that vacancies to be filled up through LDCE are calculated and notified yearwise. Next year's vacancies can't be filled up from previous examination.

In view of above, your request to consider your appointment against the vacancies of Chargeman Grade-II/CT arose after LDCE-2000 cannot be acceded to.

3. Aggrieved by the rejection of his representation, the respondent No. 1 filed O.A. No. 1156 of 2003 seeking the following reliefs:

- i. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 6.9.2002 (Annexure A-1) denying the promotion/appointment on the post of Chargman Grade-II/Clothing Technology despite of being declared pass and availability of vacancies.
- ii. To issue a Writ, order or direction in the nature of mandamus directing the respondents to promote the petitioner on the post of Chargeman Grade/Clothing Technology on the basis of pass result declared by the respondents w.e.f. from

the same date from which his colleagues have been promoted with all consequential benefits in view of the provisions made in respondent's O.M dated 8.2.1982.

iii To issue a Writ, order or direction in the nature of Mandamus directing the respondents to refund the examination fees for which he was restrained to appear in the examination on false grounds.

iv. To issue a writ, order or direction in the nature of Mandamus directing the respondents to compensate the petitioner in restraining the petitioner to appear in Limited Departmental Examination for the post of Chargeman Grade II (Tech) or Non-Tech on the incorrect grounds of having B.Sc. Degree with P.C.M just one or two weeks earlier to the date of examination, in utter violation of the provisions made in Circulars and recruitment rules for the purpose.

4. In response to the Original Application, a counter-affidavit was filed on behalf of Union of India and others by Sri C.N. Gullie, Works Manager/Administration in the Ordnance Equipment Factory, Kanpur. In paragraph 6 of the counter-affidavit, it was stated that for filling up the vacancies of Chargeman Grade-II against 25% quota through departmental candidates, a Limited Departmental Competitive Examination (LDCE) is conducted by OFB/OFIOL every year. Vacancies of LDCE quota are worked out on the basis of vacancies likely to arise during the financial year. With the appointment of selected candidates to the extent of the declared vacancies, the function of the LDCE becomes completed. Future vacancies are filled up by conducting next LDCE. In paragraph 7 of the counter-affidavit, it was stated that for appointment on three posts of Chargeman Grade-II in Clothing Technology (CT) and other trades through Limited Departmental Competitive Examination (LDCE-2000), applications were invited from eligible candidates vide circular dated 30.8.2000. In paragraphs 8 and 9 of the counter-affidavit it was stated that seven candidates including the petitioner applied for the post of Chargeman Grade-II/Tech./Clothing Technology (CT), and they were allowed to appear in the LDCE-2000 which was conducted by the Regional Training Institute, Kanpur now called as OFIOL. Four candidates, including the respondent No. 1 herein, were declared successful in the written examination and were interviewed by a Board of Officers for final selection, wherein the respondent No. 1 secured 4th position in the order of merit. The candidates who secured 1st, 2nd and 3rd position in the order of merit were appointed against the declared vacancies of three post of Chargeman Grade-II/Clothing Technology (CT). Consequent to the appointment/joining of the selected candidates against the advertised vacancies, there was no further action due at the factories end. No waiting list is maintained as per the orders and the selection is to the extent of the declared/advertised vacancies. In paragraph 10 of the counter-affidavit it was stated that on account of the confusion created by the circular dated 8.2.1982, clarificatory instructions were issued by Ordnance Factory Board vide circular No. 1091/A/W dated 6.4.1990 thereby advising the factories that in the case of direct recruitment, list of selected candidates is prepared to the extent of the number of vacancies.

Thus, there was no question of maintaining the waiting list. Accordingly, the claim of the respondent No. 1 that his name was put in the waiting list was not correct. The selection was made to the extent of advertised/declared vacancies/posts. All the three candidates who were higher in the order of merit than the respondent No. 1 were offered appointment and had joined, therefore, the respondent No. 1 had no further right to seek for adjustment against the future vacancies on the basis that he was placed in the order of merit of LDCE-2000.

5. The Central Administrative Tribunal placing reliance on certain portions of the circular/office memorandum dated 8.2.1982 and the clarificatory letter dated 6.4.1990 of the Ordnance Factory Board, passed the impugned order. The concluding portion of which reads as under :

A perusal of the records available on file will show that the applicant was declared successful after the written examination and the interview, but was not appointed because there were only three vacancies available. As far as the status is concerned, the applicant was a selected candidate and therefore, as per circular referred to above, dated 8.2.1982, it is clear that it is the responsibility of the respondents to appoint him on subsequent vacancies before starting fresh recruitment. The respondents have not denied the applicant's statement that vacancies were available and which have not yet been filled.

In view of the above, the O.A is allowed. The impugned order dated 6.9.2002 is quashed and set aside. The respondents are directed to promote the applicant against vacancies which arose subsequently within a period of three months from the date of receipt of a copy of this order. No costs.

6. We have heard counsels for the parties and have perused the record.

7. The counsel for the petitioners has assailed the Tribunal's order on the ground that the Tribunal grossly misinterpreted the Office Memorandum/Circular dated 8.2.1982 as well as the Ordnance Factory Board's clarificatory letter dated 6.4.1990. He submits that the circular/letter could not be interpreted so as to provide a right to the Respondent No. 1 to stake claim for appointment against future vacancies. He has also contended that the LDCE-2000 examination for the post of Chargeman Grade-II (Tech./CT) was held for selecting three candidates and that three candidates who were selected were higher in the order of merit than the respondent No. 1. All these three candidates were given appointment. Therefore, it cannot be said that the respondent No. 1 was placed in the select list. The right of the respondent No. 1, if any, was to get the benefit of appointment, in case any of the three selected candidate had failed to join the post. Once the selected candidates had joined the post offered to them, the selection process for the year 2000 was over and for subsequent vacancies there had to be a fresh recruitment process.

8. Before the submissions of the petitioners' counsel are analysed it would be useful to quote the circular dated 8.2.1982, as also the clarificatory letter dated 6.4.1990, which was relied by the Central Administrative Tribunal for allowing the

Original Application of the respondent No. 1. The circular dated 8.2.1982 has been brought on record by means of Annexure 5 to the Supplementary affidavit dated 14.12.2011 sworn by Ramji Gupta on behalf of the petitioners. The said circular reads as under :

The undersigned is directed to say that references are being received from time to time from Ministries/ departments enquiring as to what should be the validity period of a list of selected candidates prepared on the basis of direct recruitment of departmental competitive examination.

2. Normally, in the case of direct recruitment a list of selected candidates is prepared to the extent of the number of vacancies, (other persons found suitable being put on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment). Similarly, in the case of department competitive examinations, the list of selected candidates has to be based on the number of vacancies on the date of declaration is based on merit. A problem may arise when there is a fluctuation in the vacancies after the list of selected candidates is announced.

3. The matter has been carefully considered. Normally recruitment whether from the open market or through a Departmental Competitive Examination should take place only when there are no candidates available from an earlier list of selected candidates. However, there is likelihood of vacancies arising in future, if names of selected candidates are already available, there should either no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already on the list of selected candidates awaiting appointment. Thus, there would be no limit on the validity of the list of selected candidates prepared to the extent of declared vacancies, either by the method of direct recruitment or through a departmental competitive examinations.

4. Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes change, after his name has been included in the list of selected candidates. Where the selected candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment be reduced by the number of candidates already awaiting appointment should be given appointments first, before starting appointments from fresh list from a subsequent recruitment or examinations.

5. Ministry of Finance etc. are requested to bring the above instructions to the notice of all the appointing authorities under them for information and guidance.

The clarificatory letter dated 6.4.1990, which has been brought on record by means of Annexure 5 to the Supplementary counter-affidavit dated 14.12.2011 filed by the respondent No. 1 is being quoted as under :

No. 1091/A/W. Government of India, Ministry of Defence, Ordnance Factory Board, 6, Esplanade East, Calcutta-69, the 6th April, 1990.

Factories,

Sub- Preparation of list of selected candidates for direct recruitment.

Ref: This office instruction No. 289/A/A circulated under memo No. 039(6)/A/A dated 27.2.1984.

Attention is drawn to the above instruction under which guide lines were issued for preparation of select list of candidates. The provision of these guide lines are that in the case of direct recruitment, a list of selected candidates is prepared to the extent of the number of vacancies (other persons found suitable being on a reserve list, in case some of the persons on the list of selected candidates do not become available for appointment). Similarly, in the case of Departmental Competitive Examination, the list of selected candidates is to be based on the number of vacancies on the date of declaration of the list based on merit. Once a person declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus, where candidates are awaiting appointment, recruitment should either be postponed till all the selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment. Such candidates should be given appointment first, before starting appointments from a fresh list from subsequent recruitment or examination.

In spite of such clear instructions, some factories are preparing select lists of unduly high number of candidates inviting number of Court cases and other complications. In order to avoid such complication the above rule position in regard to preparation of list of selected candidates is once again brought to the notice of all to follow the provisions strictly.

(B. MISRA) STAFF OFFICER/W for Director General, Ordnance Factories.

9. A perusal of the Office Memorandum dated 8.2.1982 indicates that there is no limit on the validity of the list of selected candidates. But the Office Memorandum dated 8.2.1982 does not provide for selection of candidates in excess of the vacancies notified. In this view of the matter, the interpretation that can be provided to the Office Memorandum dated 8.2.1982 is that if there is a fluctuation in the vacancies after the list of selected candidates are announced then the selected candidates can be adjusted against the future vacancies but it cannot be interpreted so as to mean that even those candidates who have been put on the reserve would be entitled to appointment against the future vacancies. This circular was, therefore, clarified by a letter dated 6.4.1990, which has also been quoted by us. There a statement was made that a list of selected

candidates should be prepared to the extent of the number of vacancies. Other persons found suitable should be put on a reserve list, and be offered appointment only when some of the persons on the list of selected candidates do not become available for appointment.

10. In case the Office Memorandum dated 8.2.1982 is interpreted in the manner as has been done by the Tribunal, then the said Office Memorandum may not be able to with stand the mandate of Article 16(1) of the Constitution of India which provide that there shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State.

11. The above interpretation finds support from the judgment of the Apex Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , the relevant portion i.e. paragraph 23 is quoted hereinunder :

It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list will get exhausted, having served its purpose.

12. The above judgment has been relied on in a later judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. B. Valluvan and Others, .

13. We are, therefore, of the view that once the three selected candidates for the post of Chargeman Grade-II/CT had joined in pursuance of L.D.C.E.-2000, against the three advertised post, the respondent No. 1, having been put on the reserve, had no right to seek for appointment/ promotion against the future vacancies on the post of Chargeman Grade-II/CT on the basis of the result of L.D.C.E.-2000. The order of the Tribunal is, therefore, liable to be set aside.

14. At this juncture, it would be necessary to mention that the counsel for the

respondent No. 1 has raised before us another plea, which was not considered by the Tribunal. He contends that the respondent No. 1 was not treated fairly inasmuch as he was denied the right to appear in a subsequent LDCE of the year 2001 by changing the eligibility criteria, after having already notified the same. The counsel for the respondent No. 1 has placed before us the circular dated 29.9.2001 which indicated that three posts of Chargeman Grade-II(CT) were again advertised wherein the eligibility criteria was provided as under :

Recognised three years Diploma or equivalent in Engg. Tech of the relevant trade or B.Sc with Physics, Chemistry & Mathematics with 2 years experience in the trade. B.Sc. candidates will be considered for Clothing Tech, Only.

All categories of skilled workers or equivalent of skilled workers like, Tracers with 02 years experience possessing education qualification as above may apply in the prescribed format of the application.

15. Citing the aforesaid eligibility criteria, he contends that the candidates possessing degree in B.Sc with Physics, Chemistry and Mathematics and having two years experience in the trade were entitled to be considered for Clothing Technology only. The respondent No. 1 possesses the aforesaid qualification as he is B.Sc with Physics, Chemistry and Mathematics.

16. He submits that by circular dated 21.12.2001, the eligibility criteria was changed so much so that only candidates possessing recognised three years Diploma in Engineering Technology of the relevant trade with two years experience were considered eligible. Thus, the candidates possessing B.Sc degree only were deprived from consideration.

17. The counsel for the respondent No. 1 submits that this last minute change in the eligibility criteria was arbitrary and once the eligibility criteria was notified it could not have been changed by the employer.

18. Per contra, counsel for the petitioners have placed before us a photocopy of the statutory rules notified on 4.5.1989 and published in the GAZETTE OF INDIA, EXTRAORDINARY PART -II, Section 4. These rules are titled as "INDIAN ORDNANCE FACTORIES GROUP C SUPERVISORY AND NON-GAZETTED CADRE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES-1989. Rule 4 of the aforesaid rules provides for the method of appointment, age limitation, qualification, etc. Under rule 5 it is provided that the method of appointment to the said posts, the age limitation, qualifications and other matters connected therewith shall be as specified in Column 5 to 14 of the Schedule. The Schedule attached to the aforesaid rules with regard to the post of Chargeman Grade-II provides as under :

Name of Posts

Educational and other qualifications required for direct recruitment

1

Chargeman Grade-II (Tech)

Recognised 3 years Diploma or equivalent in Engg./Technology/ D?man ship with 2 years experience in relevant technical field or B.Sc with Physics, Chemistry and Math, where diploma for any category cannot be identified by OFB and with two years experience in the relevant field. In design category, if recognized certificate in D? Manship Diploma course is less than 3 years duration experience in D? manship to cover the balance period will be necessary.

Chargeman Grade-II (Non-Tech and Store)

A degree from a recognized university with 2 years experience in the relevant field.

Supervisor (Non-Tech and Store)

A Degree from a recognized university. Experience in the relevant field desirable.

19. Relying on the aforesaid rules, the counsel for the petitioner has argued before us that a person holding the degree of B.Sc with Physics, Chemistry and Mathematics and with two years experience in the relevant field is entitled to be considered eligible only where Diploma for any category has not been identified by OFB (Ordnance Factories Board). The counsel for the petitioner has placed before us a letter dated 13.12.2001 (Annexure 3 to the supplementary affidavit dated 14.12.2001) wherein the Director General, Ordnance Factories, Kolkata has written to the General Manager, Clothing Group of Factories as under :

Recently a case has been referred to OFB Hqrs. For confirmation whether a candidate having qualification of the B.Sc degree with Physics, Chemistry and Mathematics can be permitted in LDC Examination for CH-II (CT) trade.

The case has been examined at the level of Member/Per. The qualification for induction to various trades at CM-II(T) level were circulated vide 2982/LDCE/CM-II/A/NG dated 26.11.1999. Accordingly, it has been decided that in OEF Group of Eys. For LDCE of CM-II(T)/CT trade B.Sc candidates should not be allowed to appear for the same.

The above information may strictly be adhered to.

20. Relying on the aforesaid letter, the counsel for the petitioners has argued that since the Ordnance Factories Board has identified that Diploma is necessary, they have prohibited the candidates holding B.Sc degree only from appearing in the examination, therefore, the denial of permission to the respondent No. 1 to appear in the examination for the post of Chargeman Grade-II (CT) was not arbitrary.

21. In view of the aforesaid background, we find force in the submission of the petitioners that denial of permission to the respondent No. 1 to appear in the 2001 LDCE examination for the post of Chargeman Grade-II/CT was not

arbitrary. Moreover, from the record it does not appear that the respondent No. 1 had immediately approached the Tribunal against the denial of permission to appear in the LDCE-2001. Since the said examinations have already been over long time back, it would not be appropriate for us to consider grant of any relief on that score.

22. In the result, the petition succeeds and is allowed. The order dated 26.2.2010 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad is hereby quashed and set aside. There shall be no order as to costs.

Hon"ble Sunil Ambwani, J.

I agree.