

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 19739 OF 2017

1. Rajeev Singh, Age : 37 years,
Working as Works Manager,
Ordnance Factory, Chanda
R/at Q. No.04/A, Type 4, Sector
6, Ordnance Factory Chanda Estate,
Bhadrawati, Chandrapur,
Dt. Maharashtra-442501

2. Naveen James, Age : 38 years,
Working as Works Manager,
Ordnance Factory, Chanda
R/at Q. No.04/A, Type 4, Sector
6, Ordnance Factory Chanda Estate,
Bhadrawati, Chandrapur,
Dt. Maharashtra-442501

.....Petitioners

V/s.

1. The Union of India,
through The Secretary,
Ministry of Defence,
South Block,
New Delhi 110 001

2. The DGOF & Chairman,
Ordnance Factory Board,
10-A, Shahid Khudiram Bose
Road, Kolkata.700001

3. The Sr. General Manager,
Ordnance Factory Chanda,
Bhadrawati, Chandrapur Dt.,
Maharashtra

4. The Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110 069.

5. The Secretary,
Department of Industrial Policy
& Promotion, Ministry of
Industry & Commerce,
Udyog Bhawan,
New Delhi-110 011.

.....Respondents

Mr. Vicky A. Nagrani, Advocate for the petitioners.

Mr. D.A. Dube a/w. Mrs. Anjali Helekar, Advocate for
respondent no.1/UOI.

Ms. Lata Patne a/w. Mr. Vinod Joshi, Advocate for
respondent no.4.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATE :- 19th JULY, 2017.

ORAL JUDGMENT (PER :- SANDEEP K. SHINDE, J):

1. Rule. By consent, Rule is made returnable forthwith and the matter is heard finally.

2. Heard Learned Counsel for the petitioner, Learned Counsel for respondent no.1 and Learned Advocate for respondent no.4.

3. The petitioners are presently working as Works Manager, Ordnance Factory, Chanda. They were initially appointed as Assistant Works Manager in the year 2009 and 2008 respectively. They were promoted to the post of Works Manager in the year 2013 and 2011. An advertisement was published in the Employment News by UPSC inviting applications from eligible candidates for filling up total 42 posts of Deputy Controller of Explosives in Petroleum and Explosives Safety Organisation (PESO). They would claim that, they were fulfilling all conditions and requisite qualifications for the post of Deputy

Controller of Explosives. Its their case that, experience certificate was required from the parent department and thus they requested for such certificate. Respondents no.2 and 3 rejected their request and as such petitioners had filed O.A. No. 487 of 2012 before the Tribunal. That by way of interim order, the respondents were directed to issue provisional experience certificate so that they could appear in the recruitment process. The petitioners were selected for the said post. Respondent no.5 sought Character and Antecedent Verification and Medical Examination reports from respondent no.2, on three occasions, for issue of offer of appointment orders in favour of petitioners. It is petitioners case, that offer of appointment is being delayed due to non-receipt of the above reports. Finally vide order dated 30th December, 2014 respondents no.2 and 3 rejected their request. Aggrieved by the said order, the petitioners approached the Central Administrative Tribunal in O.A. No. 722 of 2015. Pending the O.A., the Tribunal vide order dated 28th

December, 2015 directed the respondents not to fill up two vacant posts of Deputy Controller of Explosives from the reserved panel till the next date of hearing. The petitioners sought directions to respondents no.2 and 3 to issue the "Character and Antecedent Verification and Medical Examination Reports", to respondent no.5 and contended that the refusal of the same was arbitrary and improper. The Tribunal, after hearing the petitioners and the respondents, was pleased to dismiss the claim of the petitioners vide order dated 11th April, 2017.

4. Aggrieved by the said order, this petition is preferred under Articles 226 and 227 of the Constitution of India.

5. Heard Learned Counsel for the petitioners and the respondents. Perused the Original Application, O.A. No.170/51 dated 21st October, 1952 and the counter of the respondents filed before the Tribunal.

. The Learned Counsel for the petitioner would contend that, order dated 13th December, 2014 passed by respondents no.2 and 3, *inter-alia*, rejecting their request for Character and Antecedent Verification and Medical Examination Report is unreasonable and arbitrary. The next contention is, the order is discriminatory, in as much as, the other employees working in other Ordnance Factories have already been released and joined the PESO as Deputy Controller, Explosives. The Learned Counsel would contend that, one Shri. Tejveer Singh who was working as Assistant Works Manager at the Vehicle Factory, Jabalpur, Ordnance Factory Board had rejected his technical resignation. However, the Jabalpur Bench of Central Administrative Tribunal had considered his O.A. No. 968 of 2015 and directed the respondents to consider his application for grant of technical resignation on lien basis. On the other hand, the Learned Counsel appearing for the respondents would contend that, there is acute shortage of officers at Ordnance Factory, Chanda and

therefore the Competent Authority, i.e. Ordnance Factory Board, Calcutta have taken a decision not to issue provisional Experience Certificate and Medical Examination Report. The Learned Counsel further contended that, the Ordnance Factory, Chanda was experiencing acute shortage of officers and prior replacement would be required and as such it was not possible on their part to forward the provisional experience certificate to PESO. He would refer to decision of Ordnance Factory Board, Calcutta which had decided that department could not spare the applicants/petitioners being Group "A" Officers in Chemical Engineering Stream on compelling reasons, functional requirements and in public interest. He has brought to our notice that the Group "A" Officers of Chemical Engineering Stream had applied for the post of Controller of Explosives and out of nine, four officers had been selected for the said post. He would further contend that, due to shortage of officers in general, officers

belonging to the Chemical discipline in particular, it was decided, not to process the case of all four officers. The Learned Counsel has made a reference to Government of India, MHA OM No.170/51-Ests., dated 21st October, 1952 which stipulates as follows :-

“vi. Notwithstanding anything contained in the preceding paragraph in a case in which a particular employee cannot be spared without serious detriment to important work in hand public interest would justify withholding of his application even if otherwise the application would have been forwarded.”

On this premise, he would contend that no interference is called for in the order passed by the Tribunal.

6. We have perused the O.M. dated 21st October, 1952 which regulates the manner in which he applications of the employees are to be forwarded for other employment. Clause (vi) empowers the

administrative authorities to withhold application if it is likely to ensue serious detriment to important work in hand, so also in public interest. It appears from pleadings of respondents, that applicants play pivotal role in Production Shop Floor to plan, chalk out production and all sorts of managerial decisions to achieve the production targets fixed by organisation from time to time and there is an acute shortage of officers in overall IOFS Cadre. We find force in the contention of the respondents, in as much as, they have pleaded that the petitioners being Group "A" Officers in Chemical Engineering Stream, their transfer would not be in the public interest and their retention in the same establishment is a functional requirement. This being administrative decision, the Tribunal rightly refused to interfere with the same and as such we do not find any irregularity or fault on the part of the Tribunal in dismissing the claim of the petitioners.

7. The petitioners next contention is that, the

respondent's decision is selective, in as much as, in the case of Tejveer Singh, the respondents have released his necessary documents/certificates which enabled him to secure the post of a Deputy Controller of Explosives. In our view, the petitioners contention is not correct as it appears, case of Tejveer Singh is different. He was a Group "B" Officer and he was applying for a Group "A" post and therefore it was an advancement of character promotion. It is admitted position that the applicants herein who are proposing to join the post of Deputy Controller of Explosives carries less grade-pay than what is being drawn by them at present. It further appears, nine Group "A" officers of Chemical Engineering Stream had applied for the post of Deputy Controller of Explosives and out of nine, four officers have been selected for the said post. It is admitted fact that, the respondents herein decided not to process the cases of these four officers (Group "A") for issuing a copy of report of Character and Antecedent Verification including the petitioners herein.

This decision was taken as there is acute overall shortage of officers in IOFS Cadre. Besides, the petitioners herein are holding the post of Works Manager in the pay-scale of Rs.15,600- 39,000 with grade pay of Rs.6,600/- whereas pay-scale of the post applied for is Rs.15,600/- to Rs.39,000/- with the grade pay of Rs.5,400/-. Looking at these facts, the contention of the petitioners cannot be accepted that, they were treated differently and/or selectively as against the selection of that of Tejveer Singh. We have already stated hereinabove that, Tejveer Singh is not a Group "A" officer. His pay-scale is lesser than the pay-scale of the petitioners herein and therefore it cannot be said that the petitioners are being discriminated by the respondents and meted out a different treatment. It may also be stated that, one Nitesh Chaurasia, Works Manager at Ordnance Factory, Itarsi though selected by UPSC, the department of the Industrial Policy and Promotion was informed by the Ordnance Factory Board vide letter dated 19th March, 2015 that in

view of shortage of officers in the Chemical Stream, Ordnance Factory was unable to spare the services of officers. It shows that, Group "A" officers who are selected by UPSC were retained by the respondents by taking recourse to Clause (vi) of the O.M.170 of 1951 dated 21st October, 1952. We therefore hold that the petitioners were not treated selectively.

8. After perusing the pleadings and the documents placed on record, the decision of the respondents that not to relieve the petitioners from the present position cannot be faulted with. The respondents have pleaded that the petitioners are working at managerial level, in-charge of shop floor operations and doing supervisory work in production. The respondents have further pleaded, since Ordnance Factory deals with production of defence equipment for the country, their continuation of Ordnance Factory, Chanda was absolutely essential and therefore in public interest, they were not relieved.

9. That for the aforesaid reasons, we do not find any fault in the decision of the respondents which, in our view, was taken in public interest by considering the nature of work being carried out and the position of the petitioners in the Ordnance Factory. As such, no interference is called for. The petition is accordingly dismissed. The Rule is discharged.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)