

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37037 OF 2015 &
M.P.No.1 of 2015

S.Suresh Kumar ... Petitioner

-vs-

1.The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai 600 104.

2.Union of India
rep. By Commandant
Officer's Training Academy, OTA
Chennai 600 016.

.. Respondents

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the entire records pertaining to the order dated 02.09.2015 passed by the Central Administrative Tribunal, Madras Bench in O.A.N.o.697 of 2012 and M.A.No.884 pf 2012 and quash the same and consequently direct the second respondent to forthwith appoint the petitioner as Lower Division Clerk in the existing vacancy.

For Petitioner : Mr.P.Wesley Issac

For Respondents : Tribunal - R1
Mr.K.S.Jaya Ganesan - R2
Central Govt. Standing Counsel

O R D E R

NOOTY.RAMAMOHANA RAO, J.

This Writ Petition is directed against the Judgment rendered by the Central Administrative Tribunal, rejecting the Original Application, moved by the Writ Petitioner.

2.The facts lie in a very narrow compass. The Writ Petitioner responded to a Notification for recruitment for Lower Division Clerk in the Ministry of Defence. The vacancies are situated in their Officers' Training Academy at Chennai. The writ petitioner is a member belonging to the scheduled caste community. His overall merit rank was No.25, whereas, his merit ranking inter se amongst scheduled caste was No.3. However, only two posts are reserved to be filled in with candidates belonged to scheduled caste community. But, by an error, the writ petitioner was offered appointment as a Lower Division Clerk and he was asked to submit his medical fitness certificate, which he did. It is at that stage, while verifying the records, it was realised that by an error, offer of appointment was made to the writ petitioner, whereas the offer should have been made only to the first and second rankers amongst the merit list of scheduled caste community, but he is the third ranker. Consequently, they cancelled the offer of appointment made to the writ petitioner. That triggered the writ petitioner to prefer an Original Application before the Central Administrative Tribunal, which was dismissed.

3.The learned counsel for the petitioner before us would urge that the two candidates belong to the scheduled caste community have since resigned the service and consequently, the two vacancies which were notified for recruitment remain vacant as it is and hence the writ petitioner being the highest meritorious ranker amongst the left out candidates of scheduled caste community, there is no necessity for cancelling his offer of appointment and instead it should have fructified in appointing the writ petitioner, by issuing him the letter of appointment.

4.We are not in a position to accept the contentions canvased before us. In fact whether any meritorious candidate included in the merit list has any indefeasible right to get appointed to any service, is the question which has fallen for consideration before the Hon'ble Supreme Court in SHANKARSAN DASH v. UNION OF INDIA [AIR 1991 SC 1612]. The Constitution Bench of the Hon'ble Supreme Court has answered the said

question, holding that mere availability of the vacancy in a particular service does not clothe the meritorious candidate with any right to seek appointment there against. The said principle, is set out in the following words in paragraph No.7, as under:

"7.It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification mere amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana V. Subhash Chander Marwaha, (1974) 1 SCR 165: (AIR 1973 SC 2216), Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268: (AIR 1987 SC 169), or Jitendra Kumar V. State of Punjab, 91985) 1 SCR 899: (AIR 1984 SC 1850)"

In view of the above legal principle, the contention canvassed before us cannot be accepted.

5. There is also another dimension to this issue. The learned counsel for the petitioner has submitted that the two notified vacancies of scheduled caste community remained vacant, because, the selected candidates have resigned from the service. This statement presupposes that the two selected candidates have accepted the offer of appointments, joined the service at the first instance and it is subsequent thereto they have tendered resignation to the service. Therefore, the notified vacancies, with which we are concerned, have in fact been filled up, based upon relative merit ranking. When there is no vacancy available, the question of appointing the writ petitioner to the service would not arise. The two vacancies which have arisen consequent upon the resignation of the selected candidates, who initially accepted the appointment,

have to be reckoned only for the next recruitment process, but not for the current recruitment process with which we are concerned in this Writ Petition. Once those selected candidates accepted the offer of appointment and joined the service, the process of recruitment comes to an end. For this reason also, we do not find any merit in this Writ Petition and it is accordingly dismissed, at the admission stage.

6.We only hope and trust that the writ petitioner would continue to show the same spirit of pursuing his objective little more vigorously and end up in selection eventually, in his own right, if he has not already been selected for one service or the other by now. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar(Cs II)

/true copy/

Sub Assistant Registrar

rpa

To

1.The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai 600 104.

2.The Commandant
Union of India
Officer's Training Academy, OTA
Chennai 600 016.

+lcc to Mr.P.Wesley Issac, Advocate SR.No.1229

+lcc to Mr.J.Jayaganesh, Advocate SR.No.1392.

RSK(CO)
GN(31/01/2017)

W.A.No.37037 OF 2015