Item No. 1

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.A. No. 45 of 2015

1. The Union of India through its Secretary to the Ministry of Surface and Transport, New Delhi.

2. The Commandant, GREF CENTRE, (General Reserve Engineering Force), Dighi Camp, Pune, Maharashtra.

....*Appellants*

- Versus –

Shri Tongbram Budha Singh, aged about 27 years, S/o T.Raghu Singh, resient of Kumbi Setupur, P.O. Moirang,The-Kumbi, District-Bishenpur, Manipur at present residing at 25 BRTF, Lamphelpat, Imphal West, Manipur.

...*Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the appellants	:	Mr. S. Samarjeet, CGC
For the respondents	:	Mrs. H. Bisheshwori, Advocate
Date of hearing & order	:	21.08.2020

O R D E R

[A.B., J]

[1] Heard Mr. S. Samarjeet, learned CGC appearing for the appellants and Mrs. H. Bisheshwori, learned Legal Aid counsel appearing for the respondent.

[2] The present writ appeal has been filed against the order dated 27.08.2015 passed by the learned Single Judge in W.P.(C) No. 206 of 2009.

[3] The brief facts of the present case are as under :

The authorities of General Reserve Engineering Force (GREF) issued an Advertisement No. 01/2008 dated 07.06.2008 inviting applications from the intending eligible candidates for appointment to various posts including 10 (ten) posts of Carpenter. The petitioner, who was working as a Carpenter of the 25 BRTF (GREF), Lamphelpat on causal basis at that relevant point of time, applied for the post of Carpenter in terms of the said advertisement. Under the said advertisement, the essential qualification for the post of Carpenter, inter alia, are 8th Standard passed or equivalent with 3 (three) years experience in the trade, should pass Trade Test and has to pass practical and oral test in Hindi / English. The petitioner having found to be eligible and qualified for the post of Carpenter was allowed to join the selection process and he was selected for appointment to the post of Carpenter in terms of the aforesaid advertisement.

[4] While being subjected to medical examination, the authorities declared the petitioner to be temporarily medically unfit for one month for the reason of some certain ailments in his ear as evident from the letter 27.09.2008 issued by the authority. On receiving the said information, the petitioner got

himself treated in the RIMS, Hospital and after becoming fully fit, the petitioner reported for further process for appointment and proceeded to GREF Centre, Dighi Camp, Pune, in the month of October, 2008 for further medical examination by the authorities of the GREF and for training. Even though the authorities found the petitioner physically fit on medical examination, the petitioner was not given appointment on the ground that there is some issue relating to the appointment of candidates who are non-matriculate.

Having been aggrieved by his non-appointment, the petitioner approached this Court by filing the connected writ petition praying for directing the respondents to appoint him to the post of Carpenter, against which, he had duly applied and selected for such appointment.

[5] By relying on a letter dated 28.01.2009, the respondents contested the claim of the petitioner by stating that while the process of recruitment was going on, the authorities received instruction from the competent authority that recruitment of Grade – D staff including the post of Carpenter, according to the old recruitment rules, should not be proceeded. Because of such instruction, the petitioner was not appointed to the post of Carpenter.

[6] The learned Single Judge, after examining the aforesaid letter 28.01.2009 of the Government, found that the instruction contained in the said letter relates to clarification regarding Advertisement No. 02/2008 and not related to Advertisement No. 01/2008, under which, the petitioner applied and was selected for the post of Carpenter. Moreover, the learned Single Judge gave a specific and clear finding that the clarification or instructions were with regard

to keeping in abeyance of the issuance of call letters to the candidates who applied for the posts of Cook and Mess Waiter pursuant to the Advertisement No. 02/2008.

The learned Single Judge also pointed out that under the said letter dated 28.01.2009, nothing has been mentioned about the post of Carpenter nor the Advertisement No. 01/2008, on the basis of which, the petitioner applied and was selected for appointment to the post of Carpenter.

The learned Single Judge further held that the said letter dated 28.01.2009 relied on by the respondents was not applicable in the case of the petitioner.

[7] The respondents also submitted before the learned Single Judge that certain changes had been made in the Office Memorandum issued on 30.04.2010, wherein, recommendations were made to the effect that there will be no further recruitment in Group – D post and the existing Group – D posts will be placed in Group – C and that the minimum qualification for appointment will be 10^{th} passed or equivalent.

By relying on the said Office Memorandum, the appellants submitted before the learned Single Judge that because of the changes made in the Office Memorandum, appointment of the petitioner to the post of Carpenter, which belongs to Group – D, could not be made.

[8] After examining the said Office Memorandum, the learned Single Judge noted that the said Office Memorandum was issued on 30.04.2010 much after the said Advertisement No. 01/2008 was issued on 07.06.2008. Thereafter,

the learned Single Judge categorically gave a finding that the Office Memorandum could have no retrospective effect as far as the Advertisement No. 01/2008 dated 07.06.2008 is concerned and that there was no provision in the said Office Memorandum prohibiting the authorities from proceeding with the recruitment process which had already been initiated and completed prior to the issuance of the said Office Memorandum.

Thereafter, the learned Single Judge held that the said Office Memorandum dated 30.04.2010 could not have any effect to the recruitment process initiated in terms of the Advertisement No. 01/2008 dated 07.06.2008 and the learned Single Judge allowed the writ petition by directing the respondents to take appropriate steps for affording appointment to the petitioner to the post of Carpenter within a period of 2 (two) months from the date of receipt of a copy of the order.

[9] The present writ appeal has been filed by the respondents challenging the order of the learned Single Judge only on the following ground :

> *"7. GROUND ON WHICH THE CONCUSION & DECISION OF THE LD. SINGLE JUDGE IS CHALLENGED.*
>
> *7.1. For that, the Respondent/Writ Petitioner cannot be appointed to the post of Carpenter in pursuance to the instruction received by the Competent Authority vide dated 28/01/2009 issued by Department of Personnel & Training (DOPT) and Border Road Development Board (BRDB)."*

[10] The contents of the letter dated 28.01.2009 relied on by the appellants are as under :

> *"**BORDER ROAD DEVELOPMENT BOARD***
> ***GE – I***
>
> *Subject :* ***Clarification regarding Advertisement No. 02/2008.***

Reference Dte.GBR's Note No. 12408/Advt. No. 01/2008/DGBR/…… dated 12.11.2008 on the above mentioned subject.

2. A case was referred to Department of Personnel & Training to clarify the following points relating to recruitment of Cook and Mess Waiter against vacancies notified in Adv. No. 02/2008 :

(a) Whether call letters are to be issued to all candidates who have applied irrespective having minimum education qualification of 10th passed or otherwise as these posts were advertised prior to implementation of 6th CPC report.

(b) Whether call letters are to be issued to those candidates who are in possession of minimum education qualification of 10th passed.

(c) Whether posts of Cook and Mess Waiter are to be notified afresh in Employment News for recruitment as per education qualification notified by 6th CPC.

3. In response, DOPT vide their Note dated 22.01.2009 (copy enclosed) have clarified that the fresh notification of the vacancies at this stage can only be based on the provision in the Recruitment Rules in force. In view of the fact that Govt. has approved the 6th CPC recommendations on minimum educational qualifications etc. for appointment to new existing civilian D Post, the Ministry may keep in abeyance for the time being, the recruitment to these posts and await general guidelines being issued (from DS (E)'s side) whenever RRs are to be suitably amended and recruitment action taken.

4. In view of the above Dte.GBR are advised that issuance of call letters to candidates who applied for the post of Cook & Mess Waiter, be kept in abeyance till general guidelines for recruitment in civilian Group D posts are issued by DOPT.

Sd/-
(K.S. Rao)
Under Secretary (GE-I)

Brig. K.P. Singh
Dy. Director General (Pers)
Seema Sadak Bhawan
Naraina, New Delhi

BRDB ID NO. BRDB/06/128/2007/GE-I *Dated: 28th January, 2009"*

[11] Mr. S. Samarjeet, learned CGC appearing for the appellants submitted that because of the instructions given in the aforesaid letter dated 28.01.2009 as quoted herein above, the respondents could not appoint the petitioner against the post of Carpenter even though he was selected for such appointment.

[12] In our view, the submission of Mr. S. Samarjeet, learned CGC is nothing but reiteration of the arguments advanced by the counsel for the appellants before the learned Single Judge and that the learned Single Judge had already considered and elaborately dealt with the issue.

We have also perused the said letter dated 28.01.2009 and in our considered view, the said letter is in connection with the clarification regarding Advertisement No. 02/2008 and issuance of call letters to the candidates who applied for the posts of Cook and Mess Waiter pursuant to the said Advertisement No. 02/2008. It has nothing to do with the Advertisement No. 01/2008 and appointment of the petitioner against the post of Carpenter.

[13] After hearing the counsel of the parties and perusal of the records and also after considering the facts and circumstances of the present case, we find no justification or ground for interfering with the order passed by the learned Single Judge. Accordingly, we dismiss the present writ appeal. Parties are to bear their own cost.

JUDGE **CHIEF JUSTICE**

FR/NFR

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