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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2418 of 2002

New Delhi, this the 29th day of September, 2003

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Jagdish Kumar
S/o Shri Ram Prasad,
R/O C/O Sunil Auto Electric Workshop,
Main Dhausa Road,
Opp. Suraj Cinema,
Shop No.8, Najafgarh,
New Delhi-43

(By Advocate : Shri B.B.Rawal)

Versus

Union of India
through

1. The Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.

.....Respondents

(By Advocate : Shri R.V.Sinha)

ORDER (ORAL)

SHRI R.K.UPADHYAYA, ADMINISTRATIVE MEMBER:

By this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the order dated 8.5.2002 (Annexure-A) as well as the order dated 28.8.2002 (Annexure-B) passed in pursuance to the order dated 1.4.2002 in OA No.1663/2000 and order dated 30.7.2002 in OA No.1941/2002 respectively. The applicant has also prayed for consequential benefits.

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2. It is stated by the applicant that he came across an advertisement in November-December, 1994 issued by the respondent-Intelligence Bureau inviting applications for the post of Junior Intelligence Officer(JIO), Grade-II (MT). Since the applicant had passed Matriculation Exam. from Varanasey Sanskrit Vishwavidyalaya, Varanasi in 1990, he applied for one of the posts. He also appeared for Driving Test and interview on 13.6.95. It is claimed that he was engaged by the respondents as a Daily Rated Casual Labour on which post he continued to work till 4.4.99. He was paid fixed salary of Rs.1400/-p.m. which was raised to Rs.1600/-p.m. in 1997 and Rs.1800/- p.m. w.e.f. 1998. He was paid enhanced salary of Rs.2000/- w.e.f. December, 1998. While working as Monthly Rated Casual Labour under the respondent, he came across another advertisement inviting applications for the post of JIO, Grade-II (MT) the last date of receipt of applications was 1.9.97. The applicant applied for the same and he was asked to give certain details like original certificates etc. The applicant claimed that on 6.5.98 he appeared before the respondent concerned with the original certificate of Matriculation issued by the Bihar School Examination Board, Patna in 1995 as the earlier Matriculation Certificate from Varanasey Sanskrit Vishwavidyalaya was not acceptable to the respondents. The claim of the applicant is that neither he was appointed as JIO, Grade-II (MT) nor he has been regularised on the post of Driver on which he was working for the last 4 years. On the other hand, he was told not to come to the office next day i.e. 4.4.99. Aggrieved by the conduct of the respondents,

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the applicant filed OA No..1663/2000 which was disposed of on 1.4.2001 with the following directions:-

"As applicant has filed this OA challenging his non-selection as JIO Gr.II, we dispose of the same with a direction to respondents to apprise applicant as to the reasons for his non-selection by means of a detailed order against vacancies advertised in August,1997 for which driving test/interview was held on 6.5.98 and for vacancies advertised in July,1999 for which it is stated that 2-67 applications were found valid. These directions should be implemented within 2 months from the date of receipt of a copy of this order. Meanwhile, if respondents are engaging Drivers on casual basis again, and applicant applies for the same, his case should be considered in preference to juniors and outsiders, provided his work and conduct has otherwise been satisfactory."

3. The impugned order dated 8.5.2002 (Annexure-A) has been issued by the respondents in pursuance to the directions of this Tribunal dated 1.4.2001, wherein it has been stated that on the basis of driving test/interview, a panel of 52 candidates in different categories was prepared. The applicant, an OBC category candidate, secured only 55 marks out of 100 in the above mentioned driving/interview test. The cut-off marks for the OBC category candidate for that examination was 58. As such the applicant's name could not be included in the select list as he had scored below the cut-off mark in OBC category. The applicant claims that he filed another OA No.1941/2002 after receipt of the OM dated 8.5.2002. This OA was disposed of at the preliminary hearing on 30.7.2002 with the following order:-

"We have considered the submissions made by the learned counsel and have perused the material placed on record and find ourselves in agreement with the learned counsel that no cogent and convincing reasons have been assigned

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in the impugned memorandum dated 8.5.2002. However, instead of quashing and setting aside the said memorandum we would like to give the respondents another opportunity to pass a supplementary order in continuation of the aforesaid memorandum bringing out therein proper and good reasons in support of rejection of the applicant's claim for appointment as JIO Gr-II (MT) particularly in relation to the examination held in 1999. This they should do expeditiously and, in any case, within a period of six weeks from the date of receipt of a copy of this order.

The OA is disposed of in the aforestated terms with this clarification that if the applicant is still aggrieved by the orders to be passed by the respondents as above, he shall be at liberty to file a fresh OA or seek revival of the present OA in accordance with law."

4. The impugned order dated 28.8.2002 (Annexure-B) has been issued by the respondents in compliance of this Tribunal's order dated 30.7.2002. The applicant has been informed by the impugned order dated 28.8.2002 that for filling up of 80 posts of JIO-II(MT)/MT in IB, 18000 applications were received. After preliminary scrutiny of these applications, only 2067 applicants were found to be eligible. The applicant's name was not included in the list of eligible candidates. The applicant's application in original was destroyed in September, 2000 after completion of the prescribed period of retention of said applications.. The rejection of the application in preliminary screening indicates that it was incomplete due to which it was rejected along with other such applications. The applicant claims that his fundamental rights under Articles 14, 16 and 21 of the Constitution of India have been infringed as he has not been given appointment.

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5. The respondents have opposed this OA. Initially, the stand taken by the respondents was that the OA is barred by principles of res-judicata as the applicant had earlier filed OA No.1663/2000 and OA No.1941/2002 before this Tribunal on the same ground. On merits, it is stated that the impugned orders dated 8.5.2002 and 28.8.2002 have been issued as per the directions of this Tribunal in OA No.1663/2000 and OA No.1941/2002 respectively and the same have been passed after taking into consideration the facts and rules on the subject. The respondents have also pointed out that the diploma/certificate issued by the Varanasey Sanskrit Vishwavidyalaya is legally valid only for the period between 1958-74. The recent notification dated 2.1.2002 (Annexure-R2) confirms the fact that the Varanasey Sanskrit Vishwavidhyala, Varanasi is a fake educational institution. Therefore, the Matriculation Certificate, issued by the Varanasey Sanskrit Vishwavidyalaya in the year 1990 and produced by the applicant in 1995 was not a legally valid one and cannot be considered for the purpose of matriculation qualification required to be possessed by the applicant for appointment to the post of JIO-II/MT in IB. So far as the candidature of the applicant for the post of JIO-II/MT in response to an advertisement published by the IB in August, 1997 is concerned, it has been stated by the respondents that applicant appeared in the driving test/interview but since he had not scored above the cut-off marks, his name could not be included

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in the select list/panel of 52 candidates selected. So far as the candidature of the applicant in response to the advertisement dated 10/16.7.99 is concerned, his application was rejected at preliminary scrutiny stage as it was incomplete and after completion of the prescribed period of retention of these original applications, the same were destroyed. According to the respondents, the present application is devoid of merit and deserves to be dismissed.

6. In the rejoinder filed, the applicant has reiterated the same contentions as raised in the OA.

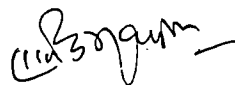
7. We have gone through the pleadings as available on record. However, we are deprived of the assistance of the learned counsel of the parties as they were not available even at the second call and appeared later on when the order was reserved. However, we find no justification to allow the present application for several reasons. Admittedly, the applicant was not having a recognised Matriculation Certificate when he was initially subjected to driving test and interview. In the second examination in 1997, he did not score the required cut-off marks as an OBC candidate. So far as the grievance of the applicant relating to examination held in 1999 is concerned, it is an admitted fact that the applicant was not called for driving test/interview. The applicant should have availed the remedy available to him before the

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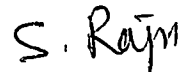
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aforesaid driving test/interview was held. The applicant having not done so he cannot challenge the selection now. In the facts and circumstances of this case, we do not find any justification to grant any relief as claimed in the OA.

8. The OA is accordingly dismissed without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(SHANKER RAJU)
JUDICIAL MEMBER

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