

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2294/2002

New Delhi, this the 22nd day of February, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Mrs. Mukesh Lata Gautam
W/o Dr. R.R. Gautam
R/o E-82, MCD Officer's Colony
Thompson Road
New Delhi.

... Applicant

(By Advocate: Sh. B.B.Raval)

Versus

1. Union of India
Through its Secretary
Ministry of Labour
Shram Shakti Bhawan
Rafi Marg
New Delhi - 110 001.
2. Directorate General of Employment & Training
Shram Shakti Bhawan
Rafi Marg, New Delhi - 110 001.
3. Director
Central Institute of Research & Training
In Employment Services, Pusa,
New Delhi - 110 012.
4. Chairman
Union Public Service Commission
Dhaulpur House, Shahjahan Road
New Delhi - 110 011.

5. Mr. S.C.Sharma
Sub-Regional Employment Officer
Directorate General of Employment & Training
(Presently posted in J&K)
service to be effected through, DGE&T. .. Respondents

(By Advocate: Sh. T.C.Gupta with Sh. J.B.Mudgil for Respondents No.1-3; Shri N.S.Mehta for Respondent No.4 and Respondent No.5 in person)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

Applicant (Mrs. Mukesh Lata Gautam), by virtue of the present application, seeks to set aside the recommendations in favour of Shri S.C.Sharma (Respondent No.5) for appointment to the post of SRO in Research Division contending that he does not fulfil the requisite essential qualification and could not have been posted as such. She also prays that she should be declared to have been selected being the senior-most and the only person left in the field, after disqualification of Sh. S.C.Sharma (Respondent No.5).

2. The relevant facts are that the above said post had been advertised. Names were called. Following were the qualifications and other requisites that were to be filled up:

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"14. (Ref. No.F.1/504/95-R.III/IV)

SENIOR RESEARCH OFFICER
(OCCUPATIONAL RESEARCH) in CIRTES,
PUSA, NEW DELHI UNDER DIRECTORATE
GENERAL OF EMPLOYMENT AND TRAINING,
MINISTRY OF LABOUR.

QUALIFICATIONS: ESSENTIAL, A.
EDUCATIONAL: Masters degree of a Recognised
University or equivalent.

EXPERIENCE: About seven year's experience in
Occupational analysis or employment market
research.

DUTIES: Planning and conducting research into
occupational world with a view to preparing career
literature, e.g., world of work series job seekers
guideland posters etc. To choose the titles for new
publication and framing of policy revising old
publications. To draft pamphlets/career literature.
To send drafts to publication etc. to experts for
their opinion/suggestions for improvement. To
have discussions with the experts for career
literature. To attend seminars/workshops relating
to subject. To deliver talks in NCERT/STE and
other organizations. Compiling informative
material on self employment opportunities and
entrepreneurship. HQ NEW DELHI, but liable to
serve anywhere in India.

15. (Ref. No.F.1/503/96-R.III/IV) ONE SENIOR
RESEARCH OFFICER (RESEARCH DIVISION)
IN CIRTES, PUSA, NEW DELHI UNDER
DIRECTORATE GENERAL EMPLOYMENT &
TRAINING, MINISTRY OF LABOUR,
QUALIFICATIONS: ESSENTIAL: A.
EDUCATIONAL: Master's degree of a recognized

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University in Statistics/Mathematics/Economics/Commerce/Sociology/Social Work/Physichology or equivalent. B. EXPERIENCE: About seven year's practical experience of employment service operations including about three year's research experience in the fields of Manpower Employment & Unemployment or vocational Guidance or Occupational Studies. DUTIES: Formulating policies with regard to research programmes of CIRTES. Planning the research studies including preparation of research designs. Finalisation of schedules and questionnaires for collection of data. Providing guidance on analysis and interpretation of data. Drafting the research study reports. Convening meetings of the Technical Committee/Sub-Committee on Surveys and Research studies. Co-ordination of Surveys/Research Studies conducted at the State level. Providing guidance/training to officials of the State Directorate of Employment in the methodology and techniques of conducting research studies. HQ: New Delhi, but liable to serve anywhere in India."

3: The applicant and Respondent No.5, besides others, had applied for the same. The selection had been effected and Respondent No.5 had been so selected. The applicant contends that Respondent No.5 was not eligible. He did not fulfil the requisite essential qualifications in terms of the Recruitment Rules and further that material facts had been suppressed pertaining to the penalty imposed upon him from the Union Public Service Commission.

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4. The application is being contested by Respondents No.1 to 4 while private respondent only appeared in person. He had not filed any counter reply. Respondents No.1 to 3 asserted that vigilance clearance in direct recruitment is not called by the Union Public Service Commission (in short 'UPSC'). It is not disputed that Respondent No.5 had suffered the penalty of stoppage of one increment in the year 1995. Respondents contend that it was for a period of one year, which had expired on 30.11.1995. Thus, Respondent No.5 was free from the vigilance angle. Delay in reporting the vacancy by UPSC is stated to have occurred due to implementation of 200 points reservation roster. The selection is stated to have been effected through the UPSC. After Respondent No.5 was selected, the applicant had submitted a representation to the Chairman, UPSC about the irregularities committed. The matter was examined by the UPSC and it was informed that no action can be taken on the representation.

5. We have heard the parties' counsel and have seen the relevant record.

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6. Before proceeding further, it would be appropriate to refer to two interim orders passed by this Tribunal, namely, one on 27.2.2004 and the other on 13.7.2004. The same read:

"27.2.2004:

.....

Heard on MA filed by the applicant seeking production of documents. Counsel for Resp. No.1 to 3 submits that they will be producing the documents at the time of arguments. However, Sh. Raval submits that he needs a copy in advance so that he may examine those documents and may take suitable action. Resp. No.1 to 3 is directed to file the documents on record before the final arguments. MA stands disposed of.

Counsel for Resp. No.4 submits that he has filed the reply and given a copy of the same to the opposite side.

List on 22.3.2004."

"13.7.2004:

.. . . .

"Shri N.S. Mehta, learned counsel for respondent No.4, i.e., UPSC filed an affidavit dated 9.2.2004 on behalf of the Chairman, UPSC claiming privilege on documents sought for production by the applicant. Shri Mehta pointed out that UPSC had requisitioned C.R. Dossier of the candidate. The C.R. Dossier of the applicant Shri S.C.Sharma was not made available by the Government. While the C.R. Dossiers of other



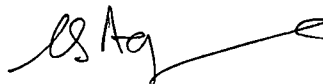
candidates that were made available were considered by the Interview Board, those of Shri S.C.Sharma could not be considered. He further stated that documents on the basis of which penalty was imposed upon the applicant were also not produced by the Government before the Commission. So the aspect of major penalty/recovery imposed upon the respondents was also not considered by the Commission.

Shri Sudan, learned counsel for respondents 1 to 3 stated that he has to seek instructions on the contentions made in the affidavit filed by the Chairman, UPSC. Shri Raval, learned counsel of applicant stated that production of these documents is crucial for adjudication of the matter. While respondent No.4 is directed to produce documents for perusal of the court to ascertain how the interview board has awarded marks to the candidates including Shri S.C.Sharma at the time of final hearing in the case, respondent No.1 to 3 are directed to produce the service record of Mr. S.C.Sharma as well as documents relating to major penalty/recovery imposed against the respondents. They shall also produce correspondence between the UPSC and the Government in regard to the selection under consideration.

Case be listed for final hearing on 18.8.2004 when the respondents shall produce the aforesaid records.

Let a copy of this order be given to both the parties."

7. The relevant files had been made available to us even at the time of arguments.



8. The settled principle in law is that the Tribunal can always go deep into the facts if there is suppression of facts. The Court can tear off the mask and see the real face of the transaction. If the facts are deliberately suppressed or smokescreen is setup, the doctrine of lifting the veil will come into play. In this backdrop, it is the duty of the Tribunal to clear the mist.

9. As is apparent from the perusal of the orders passed by this Tribunal, on behalf of the UPSC, it had been conceded that while Confidential Report dossiers of other candidates were made available, those of Respondent No.5 were not considered. The documents, on which penalty was imposed, were not produced by the Government before the UPSC. So the aspect of ~~major~~ penalty/recovery was also not considered by the UPSC.

10. We have gone through the relevant file. Perusal of the same shows that the UPSC was informed that the Confidential Report dossiers of Respondent No.5 were not available. On our query, we were informed that CR dossiers had been locked in Almirah and the Director concerned had died in 1999. Therefore, they were not made available.

11. We are of the considered opinion that the said explanation is totally false and cannot be accepted. In all other cases, the CR dossiers were sent. It is difficult to digest that if the record was in the Almirah, it would be kept for more than three years and nobody would open the Almirah. The date, when the Almirah was opened, also is anybody's guess. It appears that respondents have put a deliberate attempt to keep the truth under the weight of the files and did not let the UPSC know as to Respondent No.5 having suffered a penalty in the year 1995.

12. It is not in dispute that in the year 1995, Respondent No.5 had suffered a penalty of withholding of one increment for a period of one year. So far as the subsequent imposition of fine is concerned, it was after the selection had been made. But the fact remains that proper facts had not been brought before the UPSC. They were deliberately suppressed in the concerned Department/Ministry to prevent the proper consideration of the candidatures.

13. It is true that as per the instructions, if the CR dossiers are not available, the UPSC would conduct the

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selection but when, as already referred to above, they have been withheld and the explanation, that is forthcoming, is totally incorrect, it is obvious that the UPSC was also kept in dark and material facts had been suppressed. Thus, there was no proper consideration. Resultantly, the selection for the said post must be quashed.

14. Director General of Employment and Training, Shram Shakti Bhawan (Respondent No.2) would conduct a fact finding inquiry as to the manner in which the ACRs of Respondent No.5 were not made available to the UPSC. He may either hold the inquiry himself or get it conducted through any senior officer, not below the rank of Joint Secretary to the Government of India, and thereafter take appropriate action.

15. So far as the prayer that the applicant should be taken to have been so selected, we need not dwell into it because, as already referred to above, we are concluding that there was suppression of facts and proper selection was not effected. Resultantly, on the other question about the eligibility of Respondent No.5 also, we are not dwelling into the same.

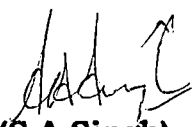



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16. For these reasons, we allow the present application and direct:

- a) The selection of private respondent No.5 is quashed.
- b) Further action should be taken in accordance with law.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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