

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JABALPUR BENCH**  
**CIRCUIT SITTINGS:GWALIOR**

**Original Application No.202/00943/2016**

Jabalpur, this Tuesday, the 03<sup>rd</sup> day of March, 2020

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**



Anupam Mishra S/o Shri Ajay Mishra,  
Aged 29 years Occupation Unemployed,  
Resident of Behind Kampoo Idgah,  
Chhatta Ki Bazaria Laskhar  
Gwalior (MP) 474001

**-Applicant**

(By Advocate –**Shri Gaurav Mishra**)

**V e r s u s**

1. Union of India, through the Secretary,  
Ministry of Labour and Employment  
Shram Shakti Bhavan Rafi Marg,  
New Delhi 110001

2. The Director, Central Board for Workers  
Education North Ambazari Marg,  
New VNIT Gate, Nagpur (Maharashtra) 440033

3. The Regional Director,  
Central Board for Workers Education  
C-6 Mahesh Nagar, City Centre  
Gwalior (MP) 474011

**- Respondents**

(By Advocate –**Shri Akshay Jain**)

(Date of reserving the order:-05.02.2019)

## **ORDER**

**By Ramesh Singh Thakur, JM:-**

By way of this Original Application, the applicant is seeking appointment on the post of Audio Visual Assistant cum Librarian (for short 'AVACL'), the result of which has not been declared by the respondents in respect of the applicant.



2. The brief facts of the case are that the applicant had applied for the post of AVACL issued by the respondent No.3 in the year 2007, having all eligibility criteria his application has not been taken into consideration due to the fact that he was the only candidate for the said post. The respondents again issued advertisement for two posts one of LDC and one of AVACL. The applicant again applied for the post of AVACL. Accordingly, call letter dated 17.11.2014 (Annexure A/4) was issued for appearing in the written examination, practical and interview on 21.11.2014. The applicant declared successful in written and practical examination and was permitted to appear in the interview on the same day. The result for the post of LDC was declared and selected candidate was given appointment but the result of



AVACL was not declared. The applicant submitted many applications for declaring the result for the post of AVACL but of no avail. The applicant thereafter sought information through Right to Information Act. In response to that, the applicant was informed that one Shri Ankit Mishra has been appointed on the said post of AVACL in the Allahabad Region in the month of January 2015 arising out of the said selection process. The applicant submitted an application on 20.11.2015 (Annexure A/6) requesting to declare the result of applicant's recruitment process. But the respondents did not intend to declare the result. The applicant sent a detailed representation/application to Ministry of Labour and Employment Government of India on 23.03.2016 on official website, but of no avail and result of applicant's recruitment process for the post of AVACL has not been declared. Hence this Original Application.

**3. The applicant has prayed for the following reliefs:-**

*"8.1 That, the non-applicants may kindly be directed to declare the result of the applicant for the post of AVACL.*

*8.2 That, if the applicant succeed in said recruitment process then non-applicants may kindly be directed to*

*appoint applicant on the post of AVACL in the office of non-applicant No.3.*

*8.3 That, any other suitable writ or direction, as deem fit, may kindly be passed in the interest of justice. Cost may kindly be awarded.”*



4. The respondents in their reply have submitted that according to Article 323A, the Constitution of India, the Central Administrative Tribunal has been established for providing relief in respect of persons appointed to public service and posts in connection with the affairs of the Union or under the other authority under the control of the Government of India or any corporation owned or controlled by the government. The points raised in the O.A. are not related to any compassionate appointment to dependent of the voluntarily retired employee nor the case of a departmental candidate applied against direct recruitment quota under the recruitment rules. More specifically, the subject matter of the Original Application is not associated with the service conditions of an employee of the Board and the applicant seeking relief under the Act is not an employee of the Board. The applicant being general public and seeking relief in



service matter from the Board is inconsistent with the provisions of the Act and the Article 323A. The applicant is out of the purview of the Administrative Tribunals Act, 1985. Thus, O.A. is not maintainable and Section 21 of the Act does not apply to the public grievance of general public and the reply received thereto. It is further submitted by the respondents that the powers of the Governing body on service conditions of the staff prescribed under Rule 9(1) is that the matters connected with the service conditions of staff and creation of posts the maximum of the scale of which exceeds Rs.1200/- (or as revised by the Government from time to time) will be subject to the approval of the Government of India and also subject to observance of the ban orders, economy orders etc., issued by the Government of India from time to time in this regard. The post cannot be filled up by ignoring the conditions of revival granted by the Government of India. Since the period has lapsed, the post could not be filled up and fresh revival of the post was required from the Government. The reply dated 10.09.2015 of the respondent No.2 is in accordance with the standing instructions and Government of India guidelines in the matter. The extract of



the relevant page of Rule 9 of Powers of the Government body under the rules and regulations of the Central Board for workers education are annexed at Annexure R/1. It is submitted by the respondents that there should be at three candidates for a particular post. However, the applicant himself, has stated that he was the only candidate for the post of AVACL and as such his candidature has not been considered. The organization of DTNBWED is a tripartite body and all activities should conform to the Government guidelines and Rules of Board and the Board believes that the person with doubtful integrity can never work at the interest of workers of the country. It is further submitted that due to administrative constraints and other factors it could not be possible to fill up the said post before the expiry of the scheduled time. Since the post was lying vacant for more than a year the same was lapsed vide Ministry of Finance O.M. dated 09.09.2003. It is pertinent to mention that the Board has initiated action to fill up the vacant posts in various Regional Directorates. The Board has initiated action with regard to fill up the vacant post so far through revival of posts under concurrence of the Ministry of Finance



Department of Expenditure and there is also proposal to engage outside agency for the purpose of fair selection/recruitment. The Government of India undertaking M/s EdCIL, Noida has submitted its estimate in this regard which is under examination. It is incorrect on the part of the applicant to avoid appearing in written examination on all India basis and rushing to the Tribunal and adopting short cut method to ensure his appointment. The performance standard of the applicant will be judged at all India written examination properly. It is pertinent to mention that the post of Lower Division Clerk for which the written examination etc. was conducted cannot be filled up since the validity period of one year had already expired since its revival. The respondents submitted that as per letter dated 17.11.2014 (Annexure A/4) the Regional Director Gwalior while inviting applications for the post of AVACL clearly mentioned the following information:-

*“4. Central Board for Workers Education will not enter into correspondence with the candidates about reasons for their non selection, or any other matter.*

*5. Canvassing in any form will disqualify a candidate.”*

5. In view of the above, it is submitted that the Board has every right to cancel the process of selection of AVACL and other posts wherever the same are found to be contrary to Government instructions and rules of Board or any other reason. It is further submitted by the respondents that the applicant is having experience of projection and he used to work as Cinema Projector Operator and having valid certificate/license of cinema operator as issued by the Executive Engineer (Electric safety) and Divisional Electricity Inspector, Division Gwalior, State of Madhya Pradesh which was the only basis and essential criteria for the post of AVACL and the applicant is the holder of the said basis and essential criteria are admitted. The respondents have submitted that the applicant has made party to the Union of India Secretary Ministry of Labour and Employment. Moreover, the applicant is not a government employee and the Secretary Ministry of Labour and Employment respondent No.1 is neither the appointing authority nor the cadre controlling authority in respect of the applicant.







6. The applicant has filed rejoinder to the reply filed by the respondents wherein it has been submitted that the Secretary Ministry of Labour and Employment represents the Union of India and is a necessary part for just and proper adjudication of the issue in O.A. the Central Board for worker's education functions under the control and supervision of Ministry of Labour Union of India, and therefore, Union of India is a necessary party which is represented by Secretary. Question of appointing authority or cadre controlling authority has no relevance in view of the main contention in the reply of respondents. It is further submitted by the applicant that after process of selection getting over the applicant is having legitimate expectation that the result of the selection process will be declared and in case he is selected, he will be offered appointment within a reasonable time. Thus, the matter falls within the meaning of service matter being related to the process of selection and appointment. Comparison with compassionate appointment or any other related matter is not relevant because the very nature of dispute relates to a service matter. It is submitted by the applicant that in the same selection



process, the respondents have given the appointment to the person on the post of LDC on the basis of same selection process and at the same time appointed one Shri Ankit Mishra on the post of Audio-visual Assistant-cum-Librarian, the same post on which applicant contested. Thus the action of respondents is arbitrary, discriminatory and without authority of law. It is further submitted by the applicant that in 2014 there were five applicants in all for the post of AVACL and out of those five candidates, only applicant was found eligible and meritorious and he secured 85% marks out of 100 in the selection process as reflected from Annexure R-7 and the selection committee clearly recommended for the selection of applicant on the aforesaid post. The respondents have not explained what were the administrative constraints and other factors for not appointing the applicant within the reasonable time. The right of the board to cancel the selection process is not an absolute right, but it is subject to judicial review when it is exercised in an arbitrary and illegal manner. Hon'ble Supreme Court in a number of cases has held that even the administrative decisions are required to be non-arbitrary,



reasonable and confirming to the principle of reasonableness. Particularly in the case of *M/s Kranti Associates Pvt. Ltd. vs. Masood Ahmad Khan* (2010) 9 SCC 498, it has been held that even in administrative decisions, recording of reasons is must if such decision affects anyone prejudicially. It has been held that recording of reasons is meant to serve the wider principle of justice that justice must not only be done but it must also appear to be done. In the present case, neither any reason has been recorded nor the same has been communicated to the applicant. The applicant has relied upon the judgment passed by the Hon'ble High Court of M.P. in the case of *Chanchal Modi vs. State of M.P.*, 2014 (3) MPLJ 84 that in such cases candidate is entitled for compensation. Any decision not to appoint the applicant ever after recommended by the selection committee has to be based on sound, rational and conscious application of mind.

7. The respondents have filed their additional reply to the rejoinder filed by the applicant. It is submitted by the respondents that the post of AVACL now has been redesignated/renamed as Lower Division Clerk as per the order dated 10.11.2016 issued by



Government of India (Annexure R-8) and amendments of recruitment rules for the post of AVACL to LDC [(i.e. Rule 28 of Recruitment rules (Service Conditions)] is annexed at Annexure R-9. Hence the post of AVACL which is in question before this Tribunal has no ground to maintain/sustain as per law in consonance to the order dated 10.11.2016 and no post of AVACL remain with the respondents.

8. The respondents have relied upon the judgments passed by Hon'ble Apex Court in the matters of ***Dr. N.C. Singhal vs. Union of India and Others*** (1980) 3 SCC 29, ***M. Ramanatha Pillai vs. State of Kerala*** AIR 1973 SC 2641, ***Union of India and others vs. Kali Das Batish and another***, 2006 SCC (L&S) 225, ***East Coast Railway and another vs. Mohadev Appa Rao and others*** (2010) 7 SCC 678 wherein Hon'ble Apex Court has held that the candidates do not have an indefeasible right to claim an appointment against the advertised posts.

9. We have heard the learned counsel for both the parties and have also gone through the documents and pleadings annexed with the O.A.



10. From the pleadings it is clear that the applicant had applied to the post of AVACL being eligible candidate in the year 2007. The respondents again issued advertisement for two posts one of LDC and one of AVACL. The applicant again applied for the post of AVACL, call letter was issued dated 17.11.2014 (Annexure A/4) for appearing in the written examination, practical and interview on 21.11.2014. It is also admitted fact that the applicant declared successful in written and practical examination and was permitted to appear in the interview on the same day. The result for the post of LDC was declared and selected candidate was given appointment but the result of AVACL was not declared. Thereafter the applicant sought information through Right to Information Act and the applicant was informed that one Shri Ankit Mishra has been appointed on the said post of AVACL in the Allahabad Region in the month of January 2015 arising out of the said selection process. The applicant sent a detailed representation/application to Ministry of Labour and Employment Government of India, but there was no avail and result of the

applicant's recruitment process for the post of AVACL has not been declared.

**11.** In the reply of the respondents, it is submitted by the replying respondents that the powers of the Governing body on service conditions of the staff prescribed under Rule 9(1) is that the matters connected with the service conditions of staff and creation of posts the maximum of the scale of which exceeds Rs.1200/- (or as revised by the Government from time to time) will be subject to the approval of the Government of India. The post cannot be filled up by ignoring the conditions of revival granted by the Government of India. Since the period has lapsed, the post could not be filled up and fresh revival of the post was required from the Government. According to the standing instructions and Government of India guidelines which are annexed as Annexure R/1, the post could be filled up only if the fresh revival of the post is to be there and there should be atleast three candidates for a particular post. The applicant was the only candidate for the post of AVACL and as such his candidature has not been considered. The organization of DTNBWED is a tripartite body and all activities



should conform to the Government guidelines and Rules of Board. Due to administrative constraints and other factors it could not be possible to fill up the said post before the expiry of the scheduled time. Since the post was lying vacant for more than a year the same was lapsed vide Ministry of Finance O.M. dated 09.09.2003.



**12.** It has been further submitted by the replying respondents that the Board has initiated action to fill up the vacant posts in various Regional Directorates through revival of posts under concurrence of the Ministry of Finance, Department of Expenditure and there is also proposal to engage outside agency for the purpose of fair selection/recruitment. The performance standard of the applicant will be judged at all India written examination properly. The post of Lower Division Clerk for which the written examination etc. was conducted cannot be filled up since the validity period of one year had already expired since its revival. Vide letter dated 17.11.2014 (Annexure A/4) the Regional Director Gwalior while inviting applications for the post of AVACL clearly mentioned the following information:-

*“4. Central Board for Workers Education will not enter into correspondence with the candidates about reasons for their non selection, or any other matter.*

*5. Canvassing in any form will disqualify a candidate.”*



13. Further, it has been specifically submitted by the replying respondents that the Board has every right to cancel the process of selection of AVACL and other posts wherever the same was found to be contrary to Government instructions and rules of Board or any other reasons. Though the applicant is having experience of projection, he used to work as Cinema Projector Operator and having valid certificate/license of cinema operator as issued by the Executive Engineer (Electric safety) and Divisional Electricity Inspector, Division Gwalior, State of Madhya Pradesh which was the only basis and essential criteria for the post of AVACL.

14. On the other side, the argument of learned counsel for the applicant is that the Central Board for worker's education functions under the control and supervision of Ministry of Labour Union of India, and the applicant has a legitimate expectation that the result of the selection process will be declared and in case he is selected, he will be offered appointment within a reasonable time.





So, the action of respondents is arbitrary, discriminatory and without authority of law. In 2014 there were five applicants in all for the post of AVACL and out of those five candidates, only applicant was found eligible and meritorious and secured 85% marks out of 100 in the selection process as reflected from Annexure R-7 and the selection committee clearly recommended for the selection of applicant on the aforesaid post. The respondents have no right to cancel the selection process as it is not an absolute right. The counsel for the applicant has relied upon the case of *M/s Kranti Associates Pvt. Ltd.* (supra) where it has been held that even in administrative decisions, recording of reasons is must if such decision affects anyone prejudicially. The applicant has also relied upon the judgment passed by Hon'ble High Court of M.P. in the case of *Chanchal Modi* (supra) that in such cases candidate is entitled for compensation.

**15.** The respondent-department in their additional reply has submitted that the post of AVACL now has been redesignated/renamed as Lower Division Clerk as per the order dated 10.11.2016 issued by Government of India (Annexure R-8)



and the amendment of recruitment rules for the post of AVACL to LDC [(i.e. Rule 28 of Recruitment rules (Service Conditions)] which is annexed at Annexure R-9. The respondents have relied upon the judgment passed by Hon'ble Apex Court in the matters of ***Harprasad Das*** (supra) (Para 8) has held that “Tribunal/Court directing the govt. to make appointments for the sake of efficiency of Public administration held at exceeded jurisdictions.” It has been further relied upon by the replying respondents that the ***Dr. N.C. Singhal*** (supra) it has been held that “no jurisdiction over creations/abolition of posts”. Thus, it was held that creations, continuation and abolition of the post are all decided by the Government in the interest of administration general public, [(***M. Ramanatha Pillai*** (supra)]. Further in the matters ***Kali Das Batish*** (supra) had held that “mere inclusion of the name of the candidate in the select list gives no right to him to demand appointment.” The Hon'ble Apex Court taking similar view in catena of cases such as ***Mohadev Appa Rao and others*** (supra) it has been held that no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place



in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. But in the instant case the selection process could not be completed due to the fact that firstly there was only one candidate as per instructions of the Government there should have been at least three candidates and further there was no revival of posts for which the permission from the competent authority after reviving the posts should have been there but in the present case there was no such promotion to fill up the posts of revival.

**16.** It is true that when the posts are advertised for selection to a particular post the selection process should be completed. But from the reply of the respondent-department to the fact that in 2007 there was only one candidate (applicant) and as per instructions there should have been at least three applicants/candidates for a particular posts. So due to this fact the selection process could not be completed and further it has come in the record that since the posts is lying vacant for more than a year the same was lapsed as

per Ministry of Finance O.M. dated 09.09.2003. Despite that the Board has initiated action to fill up the vacant post through revival of posts under concurrence of the Ministry of Finance Department of Expenditure. So the selection to fill up the post within a period of one year has expired. The respondents have submitted letter dated 17.11.2014 (Annexure A/4) will inviting the application for the post of AVACL. The respondent-department has clearly submitted that the Board due to non revival of the posts the selection process could not be completed.



**17.** In view of the above, we are of the view that there is no ambiguity or illegality in the action of the respondent-department and the respondent-department has explained their conduct for not fulfilling the posts.

**18.** Resultantly, this Original Application is dismissed. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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