

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00508/2016

Date of order :07.02.2020

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Jai Shankar Kumar, son of Sri Mani Lal Singh, resident of Village –
Tikaitpur, PO – Newra, P.S. – Bihta, District – Patna [Bihar].

Applicant.

By advocate : Shri J.K. Karn

Vs.

1. The Union of India through the Comptroller and Auditor General of India, New Delhi.
2. The Comptroller and Auditor General of India, 9 Deen Dayal Upadhyay Marg, New Delhi – 110124.
3. The Principal Accountant General [Audit], Bihar.
4. The Accountant General [A&E], Bihar, Birchand Patel Marg, Patna – 800001.
5. The Senior Deputy Accountant General [Administration], Bihar, Patna.

Respondents.

By advocate : Shri S.K. Tiwari.

O R D E R [oral]

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the present OA for quashing and setting aside the order no. Admn.[Au]/CC/OA No.775 of 2013/Jai Shankar Kumar/601 dated 09.03.2016 [Annexure[A/1] and for a direction upon the respondents to consider his case and appoint him on an appropriate post of Multi-Tasking Staff.

2. This is the second round of litigation. Earlier the applicant had filed OA No.775/2013 seeking consideration of his appointment to the post of MTS. The aforesaid OA was disposed of, vide order dated 21.04.2015



[Annexure-A/3] with direction to the Respondent No.3, i.e. the Principal Accountant General [Audit], Bihar, Birchand Patel Marg, Patna to consider the representation dated 25.10.2013 along with OA, treating his representation as part of it and passé reasoned and speaking order. The respondents authorities did not comply with the order passed by this Tribunal, therefore, the applicant filed a contempt petition Bearing No.CP/050/00014/2016, which was dropped, vide order dated 04.05.2016 [Annexure-A/2] on the ground that since the respondent authorities have complied with the order passed by the Tribunal in the aforesaid OA.



3. The applicant submitted that he had worked under the Respondent No.4 in A.G. Office which is evident from Annexure-A/10 [Annexed along with MA 317/2016] wherein his name figures at Sl. No.40.

4. The applicant further contended that he filed a representation dated 19.05.2015 to the Principal Accountant General [Audit], Bihar, Patna and in response thereto, the respondents have issued a letter to the applicant, vide Annexure-A/4 dated 12.05.2015 to produce any evidence/documents/testimonials under whom he had worked in the Department. The applicant filed an application before the Respondent No.4, Senior Accountant Examination Officer [Confidential Section] on 19.05.015 [Annexure-A/5] along with document/certificate of two senior officers of the Department under whom he had worked. However, he did not receive any response from the department.

5. It is submitted that the reasoned assigned in the impugned order is not correct. The applicant submitted that similarly placed other persons were not initially considered for their appointment to the post of MTS. However, they have filed the OA before this Tribunal and on direction, the respondents have re-considered their case and appointed to the post of MTS [Annexure-A/7 referred]. It is further submitted that the applicant belongs to OBC category and he had applied under the said category for the post of MTS though many other candidates who had worked only 100-200 days under OBC category have been appointed to the post of MTS. As per his knowledge who had worked for 167 days has been offered appointment to the post of MTS. It is stated that still there are several vacancies for the post of MTS, therefore, the claim of the applicant still persists and required to be considered on the ground of equity and legitimacy. The applicant has been deprived of fair opportunity for the appointment to the post of MTS. The impugned action of the respondents for rejecting his claim, vide impugned order is discriminatory in nature, unreasonable and the same is required to be quashed and set aside.



6. On the hand, the respondents have filed their written statement and contested the case. They submitted that the Office of the Accountant General [A&E], Bihar, Patna vide letter dated 19.04.2010 provided a list of 1408 casual labourers, out of which only 56 casual labourers had details of DOB and EQ and the remaining had no details.

The applicant was one of those whose details, like DOB & EQ were not provided.



The respondents further contended that the Office of Accountant General [A&E], Bihar, Patna vide letter dated 12.02.2015 intimated that one Shri Jai Shankar Kumar had worked in the office as Casual Labour for the period from 2004 to 2008 for 670 days. However, the AG [A&E] vide its letter dated 09.04.2015 communicated this office that there is no records available to ascertain that the applicant is the same person who had filed OA in Central Administrative Tribunal, Patna Bench, Patna, and worked for the period from 2004 to 2008, therefore, the applicant was not awarded the weightage of casual labour by the Office of A.G. [Audit], Bihar, Patna and accordingly he was not considered eligible for selection to the post of Multi-Tasking Staff [MTS]. It is further submitted that the documents submitted by the applicant with respect to his work experience more particularly the certificate issued by the retired Accounts Officer in which engagement of the applicant for period from 2004 to 2008 as Peon was again verified but no record whatsoever has been found in the office of respondents which can establish the engagement of the applicant as Peon for the period from 2004 to 2008. Even the retired officer who had issued the certificate about the applicant's engagement had also stated that the engagement of the applicant for the said period be verified from the office record. Therefore, the exercise undertaken but office record substantiate the claim of the applicant of his engagement during 2004 to 2008. Therefore,

the respondents could not found the applicant eligible and accordingly, the claim of the applicant has been regretted. As such, the applicant do not have any indefensible right to claim for appointment to the post of MTS.

7. The applicant has filed rejoinder to the written statement and contended that in pursuance of Circular No.232-NGE/2010 No.1024-NGE [App] 30-2009 dated 27.08.2010, issued under the signature of Asstt. Comptroller and Auditor General [N], Office of the Comptroller & Auditor General of India whereby marking of candidates was required to be made. The applicant further contended that the stand taken by the respondents is wholly erroneous since he has already provided all the documents regarding his working as well as educational certificates before the authority, vide Annexure-III.



8. The applicant further contended that several posts in the same panel are lying vacant on account of non-joining of some of the candidates and on termination of three candidates on account of non-fulfilment of educational criteria. Therefore, his grievance can be considered in accordance with law to the post of MTS since his denial of selection and appointment is wholly erroneous and incorrect.

9. The Id. Counsel for the respondent reiterated their submissions and additionally submitted that there is no material on record or in the office record which can substantiate the claim of the applicant about having work experience of 670 days, therefore, the respondents have granted any weightage marks to the applicant. So, the applicant became

ineligible for consideration and the impugned speaking order is just and proper .

10. Heard the learned counsel for the parties and gone through the materials on record.

11. It is noticed that in pursuance of order passed by this Tribunal in OA No.775/2013, the respondents have considered the case of the applicant with respect to appointment to the post of MTS in PB-I, vide order dated 09.03.2016 which is impugned herein.



12. It is further noticed that the Comptroller and Auditor General of India, vide their letter dated 27.08.2010 fixed the eligibility criteria for short-listing of candidates for requirement to the vacant Group-‘C’ post in PB-I. According to it, it was decided that the eligible candidate be short-listed on the basis of the respective educational qualification and past work experience as a casual worker in the Central Government Ministry/ Department by assigning weightage of 40 marks and 45 marks respectively and for final selection for appointment shall depend upon the total aggregate marks obtained on the basis of educational qualification, work experience and the interview. It is further noticed that a list of 1408 casual labourers had submitted their applications out of which only 56 casual labourers had details of date of birth and educational qualification and remaining had no detail at all.

The applicant namely Shri Jai Shankar Kumar who was one of those whose details like date of birth and educational qualification was not provided. It is also noticed from the impugned orders that the office

of Accountant General [A&E] Bihar, Patna vide their letter dated 22.02.2015 intimated to the competent authority that one Jai Shankar Kumar had worked in the said office as Casual Labour for the period from 2004 to 2008 for 670 days. However, the office of Accountant General [A&E], Bihar Patna, vide letter dated 09.04.2015 informed the Accountant General [Audit], Bihar, Patna that there is no record available to ascertain that said Shri Jai Shankar Kumar is the same person who had earlier filed OA No.775/2013 had worked as Casual Labour in the Office.



It is further noticed that in this regard, the respondents, vide letter dated 12.05.2015 informed the applicant to submit documents/evidence which can certify that you are the same person, i.e. Jai Shakar son of Manil Lal Singh having date of birth 03.02.1983 had worked 690 days as Casual Labour in the office of Accountant General, Bihar, Patna. In response to it, the applicant had submitted two certificates authored by retired Sr. Accounts Officer certifying that Jai Shankar Kumar had worked as contingent worker for the period from 2004 to 2008. The respondents again verified the office record but did not found any record in the office about engagement of the applicant as contingent worker as stated by the retired Sr. Account Officer. Under this circumstances, the respondents vide impugned order dated 09.03.2016 rejected the representation of the applicant.

13. In view of above factual matrix of the present case, we are of the considered opinion that to select and appoint any candidate as per the criteria fixed by the employer is sole domain of the said employer. In the

present case, since the work experience of 670 days as casual labour as claimed by the applicant, has not been found correct by the respondents on verification of office record. In absence of any other material contrary to the said facts, the respondents have not granted any weightage under the head of work experience to the candidature of the applicant and treated him ineligible. Even otherwise, the applicant do not have any indefensible right to be appointed, more particularly in absence of not meeting with the requisite eligibility criteria as fixed by the respondents.



Under the circumstances, we do not find any infirmity in the impugned order.

14. In view of the aforesaid discussions, we do not find any merit in the instant case. Accordingly, the same is dismissed with no orders as to costs.

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps.