

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 999 of 1998

New Delhi, this the 6th day of January, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

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Shri Bhagat Ram  
S/o Late Shri Bal Kishan  
Village Bharthal,  
Near Old Holli Ka Chowk,  
P.O. Palam, New Delhi.

APPLICANT

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through  
the Secretary,  
Ministry of Law and Justice,  
Shastri Bhawan,  
New Delhi.
2. The Dy. Secretary (Admn.)  
Legislative Department,  
Vidhi Sahitya Prakashan,  
Ministry of Law & Justice,  
Room No. 411, A Wing,  
Shastri Bhawan, New Delhi.
3. Shri Babu Lal  
Dy. Secretary to be served  
through the Dy. Secretary (Admn.)  
Legislative Department,  
Ministry of Law and Justice,  
Shastri Bhawan,  
New Delhi.

-RESPONDENTS

(By Advocate: Shri N.S. Mehta)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA whereby he has challenged Annexure A-I vide which a communication was issued by the respondents to the applicant informing him that no candidate who appeared for the test has qualified the skilled test, therefore, a fresh exercise will be undertaken to fill up the vacancies.

2. The facts in brief are that in the respondents

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department for recruitment to the post of Stenographers as per Recruitment Rules the post could be filled up by transfer on deputation failing which by direct recruitment.

3. After the department failed to find out suitable candidates for selection on deputation for the post of Stenographers, vacancies were reported to the Staff Selection Commission for direct recruitment. One vacancy was reserved for SC candidate. Even the Staff Selection Commission could not nominate any suitable candidate for the reserved post. Accordingly the post was advertised and in response to that, certain applications were received and after scrutiny, 13 candidates including the applicant was called for proficiency test.

4. Applicant earlier filed an OA for non-declaration of the result. OA was disposed of with a direction to the respondents to dispose of applicant's representation by detailed speaking order. Pursuant to the said order, this impugned letter has been issued wherein it has been stated that the file relating to the recruitment was put up to the Deputy Secretary (Admn.) but was not received back from him being untraceable, so the result could not be declared.

5. In the impugned letter it was also mentioned that "no candidate who had appeared for the test had qualified the skilled test" so the applicant had prayed for quashing of this order and had also sought a direction to the respondents to appoint him against the

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post of Stenographer. In the grounds he had again taken a plea that the respondents had manipulated the entire show and they had tried to change the test paper, so he alleges certain mala fides on the part of the respondents.

6. The respondents contested the OA. The respondents admitted that applications were invited for direct recruitment of Stenographers against Scheduled Caste vacancies in which the applicant had also appeared. The respondents in their counter-affidavit categorically stated that on the basis of the test conducted it was found that no candidate had qualified both in Hindi Stenography and English typewriting as per the standard prescribed in the Recruitment Rules. It is also admitted that the file relating to the recruitment to the post of Stenographers was submitted to the then Deputy Secretary (Admn.) but the file was not received back and the same is not traceable, so it has been decided to treat the entire exercise of conducting the test as infructuous and fill the post by the primary mode of recruitment prescribed in the Recruitment Rules, i.e., by transfer on deputation.

7. The case was taken up for hearing before the Division Bench but both the learned Members of the Division Bench comprising Hon'ble S.R. Adige, Vice Chariman(A) (as he then was) and Hon'ble Dr. A. Vedavalli, Member (J). They recorded their separate judgments.

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8. The Learned Vice-Chairman was of the view that even if the applicant had come high up in the merit list as contended by him, mere empanelment itself gives him no enforceable legal right to be appointed, so the learned Vice-Chairman (A) was unable to issue any direction in favour of applicant for recruitment.

9. On the contrary the learned Judicial Member was of the view that an adverse inference should be drawn against the respondents as per the provisions of the Illustration (g) to Section 114 of the Evidence Act which is reproduced for ready reference:-

" The evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it".

10. The learned Judicial Member then relied upon a judgment of the Apex Court in H.D. Singh (Supra) and held that the case of the applicant is true.

11. Since both the Members disagreed on the matter was referred to a Third Member and that is how the matter has come up before me.

12. I have heard the learned counsel for the parties and gone through the records of the case.

13. The learned Judicial Member has relied upon a judgment in the case of H.D. Singh Vs. RBI and Others and has quoted certain portion of the judgment in the order itself. The perusal of the extracts, as reproduced by the learned Judicial Member, would go to show that in case the appellant had already been working and the

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dispute was whether the appellant had qualified himself to sustain his claim to the benefits of Section 25 of the Industrial Disputes Act. The question of qualifying test for recruitment was not in dispute.

14. In this case the department has categorically stated that no person had qualified the proficiency test though the file was misplaced at the level of the then Deputy Secretary (Admn.) but they have categorically denied the fact that noone had qualified the proficiency test, so in these circumstances such like adverse inference cannot be drawn to the effect that the applicant must have qualified and he must have topped the list as well so it appears that the adverse inference as drawn by the learned Judicial Member has not been properly drawn when the circumstances pertaining to the misplacement of the file had been duly explained.

15. The illustration to Section 114 simply says that the evidence which is in the possession of the party if not produced then an adverse inference can be drawn against them to the effect that the evidence if produced would go against the party who withholds it. But in this case there is no satisfactory evidence that the file was available with the department and they have intentionally withheld the same and not produced before the court. On the contrary the affidavit filed by the department categorically says that the file has been misplaced and no person has qualified the test which has not been controverted by the applicant.

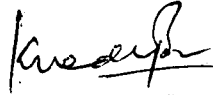
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16. Thus I am of the considered opinion that the judgment recorded by the learned Judicial Member cannot prevail.

17. Assuming for the sake of argument that the applicant might have qualified the proficiency test as claimed by him but that also does not give him a right to be appointed until the results of the panel is declared. So the learned Vice-Chairman (A) has rightly observed that no directions can be issued to the respondents directing them to appoint the applicant. Hence I agree with the opinion recorded by learned Vice Chairman (A) and in my view also the OA should be dismissed as no directions can be given to the respondents giving appointment to the applicant.

18. OA stands ~~disposed of~~ <sup>dismissed</sup> with the above directions. No costs.

  
( KULDIP SINGH ) 6.1.2003  
MEMBER(JUDL)

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