

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1643/97

New Delhi this the 25<sup>th</sup> Day of July 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Shri N.K. Srivastava,  
Son of Shri Pratap Bahadur,  
Resident of B-212, Sector 31,  
NOIDA,  
Ghaziabad (UP)

Petitioner

(Applicant in person)

-Versus-

1. Union of India,  
through Secretary,  
Ministry of Education,  
Shastri Bhavan,  
New Delhi.
2. Secretary (Education),  
Dte. of Education,  
Govt. of N.C.T. of Delhi,  
Old Secretariat,  
Delhi.
3. Joint Secretary (Education),  
Cum-Director (Archives),  
Govt. of N.C.T. of Delhi,  
Old Secretariat,  
Delhi.
4. Shri D.R. Tamta,  
A.D.M Tis Hazari,  
Delhi.
5. Shri V.K. Sharma,  
Asstt. Director (Archives),  
Govt. of N.C.T. of Delhi Respondents
6. Shri Sanjay Garg,  
Son of Shri Mahesh Chand Garg,  
C/o Shri G.B. Bhandari,  
Advocate,  
JP-51 Maurya Enclave,  
New Delhi-110 034. Contesting  
Respondent

(By Advocate: Shri Vijay Pandita for Res.1 to 5  
(By Advocate: Shri G.D. Bhandari Respondent 6)

## ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was appointed as Zerox Operator and being a man with hard working habits passed his post graduate degree in History though not with very bright colours, and a Diploma in Archival Studies. It was stated that he continued to work as Zerox Operator in the Archive Department of Delhi Administration and at the same time he has also been partly performing the duties of the Assistant Archivist Grade II. Since there was no promotional channel for a Zerox Operator he was awaiting announcement of recruitment to the post of Archivist Grade II and the advertisement in this regard appeared in the Daily Newspaper sometime in the year 1993. The post of Assistant Archivist, Grade II, the single post now being advertised was then in the pay scale of Rs. 1400-2300 a Class III non-gazetted post. The essential qualifications were Master's degree in History with diploma in Archives keeping from the National Archives of India. The desirable qualification included two years experience in an Archive Office and knowledge of Urdu/Persian. The petitioner applied for the said post and he was not selected by Selection Board rather Respondent No. 6 viz., Shri Sanjay Kumar Garg was appointed.

2. The petitioner approached this Court by this OA vide OA 1643/94 on 16.8.1994 finding that his name was not cleared against the available single post rather the Respondent No. 6 Shri Sanjay Kumar Garg was selected. But in the original OA the person selected, i.e. Shri Garg was not made a party. This Court by an order dated

16.2.1995 allowed the petition on the ground <sup>26A</sup> that the respondents have not conducted the selection procedure by applying a definite criteria to judge the merit and assess the suitability of the candidate for interview. It was also considered that the consideration of the Selection Board was also not in order.

3. After the said order was passed, the Respondent No. 6 Shri Sanjay Kumar Garg filed a Review Application stating that the order passed in the OA has directly affected his appointment and since he has not been made party, the order of this Court may be set aside and the petition may be reheard. The said Review Petition came up before a Division Bench of this Court on 2.5.1996 and after citing a number of Supreme Court decisions, this Court recalled its early decision dated 16.2.1995 and allowed the review petition.

4. Aggrieved by the said order, the petitioner filed an appeal to Hon'ble Supreme Court vide Civil Appeal No. 1539/97 and a Division Bench of the said Court by an Order dated February 21, 1997 set aside the above said order in review, stating that the Tribunal was not justified in setting aside the order dated 16.2.1995 in exercise of its jurisdiction to review. The Supreme Court set aside the order dated 16.2.1995 and directed that Shri Sanjay Kumar Garg may be impleaded as a party in the OA and he also may be heard by this Tribunal, in accordance with law. It is under these circumstances this matter came up before us, which was directed to be disposed of within six months from the date of receipt of the copy of that Order.

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5. We have heard the parties, as well as gone through the additional affidavits filed by them as permitted by the Hon'ble Supreme Court and we are of the opinion that this petition merits dismissal.

6. The selection made for the post of Archivist Grade II in the pay scale of Rs. 1400-2300 by the Selection Board has now been challenged only on the ground that the petitioner is having much more wider experience than the Respondent No. 3. We are afraid that the experience being only a desirable qualification, and the experience now said to have been earned by the petitioner is only when he was holding the post of Zerox Operator, and the post being not promotional post rather the post to be filled on direct recruitment, the question whether weightage for long years of experience is to be given to the petitioner or not, is totally within the discretion of the Selection Board. In the absence of an allegation of malafide or any extraneous extraneous consideration, against the Selection Board, we are afraid that the decision of the Selection Board would remain unassailable. In case the respondents decides in accordance with the rules, that the petitioner is entitled to obtain weightage, with regard to his long years of experience, the respondents shall reconsider the case of all the candidates, who fall within the zone of consideration, in accordance with law.

7. The petitioner also contended that subsequently in pursuance to an order of this Tribunal, the said post of Archivist Grade II has been upgraded as

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Assistant Archivist Grade I in the pay scale of Rs. 1600/- and in the circumstances the recruitment rules applicable to the upgraded post should have been the one that was prevalent for filling up the post of Assistant Archivist. Grade I. We cannot agree with this contention for the reason that the rule applicable to a particular post would be the one which is prevalent at the time when the vacancy arose and the subsequent change in the rules cannot vitiate the selection already made prior to change was effected in the recruitment rules. This was so stated in a number of decisions of the Hon'ble Supreme Court including that of Y.V. Rangyya Vs. State of Andhra Pradesh.

8. In the circumstances this OA merits dismissal, no order as to costs.

  
(S.P. Biswas)  
Member (A)

  
(Dr. Jose P. Verghese)  
Vice Chairman (J)

\*Mittal\*