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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2313/2000 xxx

DATE OF DECISION : 20.03.2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Jagbir Singh

... Applicant(s)

-Versus-

Secy. Min. of Law & Justice & anr.

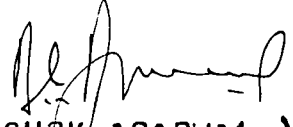
... Respondent(s)

Advocates :

Mr./~~Ms.~~ K.C. MITTAL, with Sh. Harvir Singh for Applicant(s)

Mr./~~Ms.~~ M.K. Gupta, proxy for Mr. Madhav Panikar & Sh. K.R. Sachdeva for Respondent(s)

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2313/2000
M.A. NO. 469/2001

New Delhi this the 20th day of March, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Jagbir Singh S/O Kishan Singh.
R/O House No.2612, Jawahar Colony,
NIT, Faridabad.

... Applicant

(By Shri K.C.Mittal with Shri Harvir Singh, Adv.)

-versus-

V 1. Secretary,
Ministry of Law & Justice,
Government of India,
Shastri Bhawan, New Delhi.

2. Secretary,
U.P.S.C., Dholpur House,
Shahjahan Road,
New Delhi.

... Respondents

(Respondent No.1 by Shri M.K.Gupta for Shri Madhav
Panikar, Advocate. Respondent No.2 by Shri K.R.
Sachdeva, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

By the present OA applicant seeks to impugn an order passed by the Union Public Service Commission (UPSC), respondent No.2 herein, on 17.10.2000, whereby his candidature for the post of Central Government Advocate has been cancelled. Short facts leading to the filing of the present OA may be stated.

2. Respondent No.2 issued an advertisement in the Employment News of 12-18th June, 1999 inviting applications for the aforesaid posts of Central Government Advocates. In all, 40 applications had been received. Applicant vide his application of

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16.6.1999 applied for the post. As many as 18 candidates were short-listed. Applicant was one of the candidates. 13 out of the short-listed candidates reported. On 14.2.2000 applicant submitted his attestation form. On 23.2.2000 interviews were conducted. By an intimation of 29.2.2000, applicant was informed of his having been selected. After the case of applicant for appointment was scrutinised it was found that he had suppressed certain material fact in his application form as also in the attestation form. This fact was informed by the Ministry of Law and Justice, respondent No.1 herein to UPSC respondent No.2 herein by its communication of 9.6.2000. Based on the aforesaid information, a show cause notice was issued by respondent No.2 to applicant on 10.6.2000. Applicant submitted his reply on 27.8.2000. By the impugned order passed by respondent No.2 on 17.10.2000 applicant's candidature for the post of Central Government Advocate has been cancelled and he has also been debarred for selection to any post for a period of five years. Aforesaid order, as already stated, is impugned in the present OA.

3. We have heard the learned counsel appearing for the contending parties at considerable length.

4. The material which the applicant has suppressed, and this is not disputed, is in respect of his having been employed as a Senior Public Prosecutor for the CBI for the period 22.3.1999 to 24.4.2000. Whereas it has been strenuously contended by Shri

Mittal, the learned counsel appearing on behalf of applicant that the aforesaid fact does not and cannot form a material fact affecting his selection as applicant has had gained no advantage by the aforesaid suppression; Shri Sachdeva, the learned counsel appearing on behalf of respondent No.2 and Shri Gupta, the learned counsel appearing on behalf of respondent No.1, have with equal vehemence contended that aforesaid suppression is in respect of a material fact which has adversely affected the selection process.

5. We have perused the relevant record pertaining to the selection of the applicant as also the record leading to his disqualification. The advertisement in response to which applicant had applied clearly mentions that making statements which are incorrect or false or suppressing material information would lead to disqualification of the candidate or would also debar him either permanently or for a specified period. As far as the advertisement in question is concerned, the eligibility criteria prescribed is as follows :

"QUALIFICATIONS: ESSENTIAL: (i) Should be an Advocate as defined in Advocates Act, 1961 (25 of 1961) who has practiced as such for 12 years including the period during which he had practised as Solicitor/ Attorney of the High Court of Bombay or Calcutta prior to 1.1.1977..."

6. As far as the applicant is concerned, he had served as a Senior Public Prosecutor for the CBI during the period 22.3.1999 to 24.4.2000 and this fact

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applicant has suppressed both in his application form as also in the attestation form. As far as the attestation form is concerned, column 11(a) and (b) thereof requires the candidates to furnish information pertaining to holding of any employment under the Central or State Governments which column the applicant has filled up as "N.A.". In addition, applicant has submitted two certificates issued by the District Bar Association, Faridabad, one of 10.6.1999 and the other of 3.1.2000, which certify that he has been practising as an Advocate in District and Sessions Court, Faridabad since 28.9.1980 till the date of issue of the certificates. As far as the applicant is concerned, he in reply to the show cause notice has conceded that he has suppressed furnishing the aforesaid material. According to him he was persuaded to suppress the same as he would have had difficulty in getting himself relieved from the CBI on his being selected as a Central Government Advocate.

7. Short question, which arises for our consideration is whether the fact of applicant's employment as a Senior Public Prosecutor for the CBI was a material fact suppression whereof could expose him to the penalty which has been imposed upon him by respondent No.2. In our judgment, aforesaid question has been considered by respondents and they have found that aforesaid fact is a material fact which has rendered applicant ineligible for selection to the post. As already stated, the fact that applicant has been guilty of the aforesaid suppression is not

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disputed. Two reasons have been assigned for the suppression - one, that applicant might have found himself in a difficult position to get himself relieved from the CBI on his being selected as a Central Government Advocate; and, two, that the appointment with the CBI was of a temporary nature and applicant had already resigned in December, 1999 prior to his having been selected, though later to his having applied. In this regard, columns 11(a) and (b) of the attestation form are vital. The same require a candidate to furnish information regarding his employment with the Central or State Governments. Applicant has omitted to furnish the aforesaid information which is required. Clause 8 of the advertisement makes it clear that in case of suppression of material information a candidate is liable to be disqualified or is liable to be debarred. In our view, aforesaid information was a material information as had the same been furnished by the applicant the same would have led the members of the selection committee to ask questions to the applicant in respect of his performance during his tenure of Senior Public Prosecutor for the CBI; this, the selection committee, on account of suppression, has been deprived of. In the circumstances, we have no hesitation in holding that the decision of the respondent No.2 disqualifying the applicant for the aforesaid post cannot be successfully assailed.

8. Shri Mittal has, however, gone on to contend that under terms of the advertisement, respondent No.2

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could have imposed one of the two penalties, namely, of disqualifying the applicant from the selection for the post or debar him either permanently or for a specified period, but not both. In support of his submission, he has drawn our attention to the following recitals to be found in clause 8 of the advertisement. The same insofar as is relevant provides as under :

"A candidate who is or has been declared by the Commission to be guilty of:-

xxx xxx xxx

(v) making statements which are incorrect or false or suppressing any material information or,

xxx xxx xxx

(xi)may, in addition to rendering himself liable to criminal prosecution be liable :-

(a) to be disqualified by the Commission from selection for which he is a candidate; or

(b) to be debarred either permanently or for a specified period....."

Based on the aforesaid recital, it is strenuously contended by Shri Mittal that the impugned order insofar as it imposes both the aforesaid penalties cannot be sustained. In our view, a narrow construction which is sought to be given by Shri Mittal to the aforesaid clauses cannot be sustained. The use of the word "or" in between clauses (a) and (b) cannot be literally applied so as to exclude one penalty from the other. Aforesaid clause appears in an advertisement. The same does not form part of a

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statutory provision. The same cannot, therefore, be made a subject of judicial interpretation as in the case of a statutory provision. The same has to be given a fair and logical construction and not a literal/legalistic interpretation in the strict sense. The clause enumerates several acts and omissions of misconduct enumerated in clauses (i) to (xi). The same thereafter proceeds to provide for various penalties for misconduct. Said penalties are provided in addition to being liable for criminal prosecution. If a proper and harmonious interpretation is to be given to the aforesaid clauses, we are inclined to hold that the word "or" ought to be read as "and/or". Aforesaid contention of Shri Mittal, in the circumstances, is rejected.

9. For the foregoing reasons we find that the present OA is devoid of merit. The same is accordingly dismissed, with no order as to costs.

(Govindan S. Tampi)
Member (A)

(Ashok Agarwal)
Chairman

/as/