

Central Administrative Tribunal
Principal Bench

O.A. No. 1913 of 2000
C.P. No. 363 of 2000

New Delhi, dated this the 16th JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Sunil Kumar,
S/o Shri Pyare Lal
R/o I-651, Mangol Puri,
Delhi-110083.

.. Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Shri B.B. Tandon,
Secretary,
Dept. of Personnel & Training,
New Delhi.
2. Shri K.V. Harniraya,
Secretary,
Ministry of Statistics & Programme
Implementation,
Sardar Patel Bhawan,
New Delhi-110001.
3. Ms. Bharati Dutta,
Under Secretary,
Ministry of Statistics & Programme
Implementation,
Sardar Patel Bhawan,
New Delhi.
4. Shri Jagat Singh,
C/o Respondent No.2 .. Respondents

(By Advocate: Shri J.B. Mudgil)

ORDER

S.R. ADIGE, VC (A)

This order will dispose of O.A. No.
1913/2000 as well as C.P. No. 363/2000.

2. Applicant filed O.A. No. 1913/2000 on
18.9.2000 seeking a direction to respondents to
consider his claim for regular appointment as
Assistant Halwai, for which he ^{asserted he} had nearly four years

experience to the utmost satisfaction of his employer. An ex parte interim direction was also sought not to disengage applicant from his present employment.

18
25

3. The O.A. came up on 18.9.2000 itself, on which date notice was ordered to be issued to respondents to file reply on interim relief within two weeks. The case was ordered to be listed on 29.9.2000 for hearing on interim relief. Till then status quo in respect of applicant was ordered to be maintained.

4. Pleadings reveal that respondent department had issued an advertisement inviting applications for one post of Assistant Halwai in their canteen, in the Employment News dated 24-30.6.2000 (Annexure A-2). The selection process consisted of an interview and a practical test. The interview was held on 1.9.2000 for which 21 candidates were called, 15 turned up and three were found fit. The three who were found fit for being called for the practical test included Respondent No.4 Shri Jagat Singh; applicant himself; and one Shri Sukhpal Singh. The practical test of Shri Jagat Singh was held on 6.9.2000; that of applicant on 7.9.2000 and that of Shri Sukhpal Singh on 8.9.2000. The Canteen Manager who took the practical test submitted his report on 12.9.2000 recommending that Shri Jagat Singh be appointed. The offer of appointment was made to him on 14.9.2000 and he

2

conveyed his acceptance on 18.9.2000. He is stated to have been medically examined at CGHS Dispensary, Pandara Road, New Delhi on 19.9.2000, and joined duty that day itself. (26)

5. Meanwhile, as stated above, applicant filed the present O.A. on 18.9.2000, and when it came up for hearing on that day itself, an ex-parte interim direction was issued to respondents to maintain status quo till the next date i.e. 29.9.2000.

6. Annexure CP-1 to the C.P. shows that CAT Registry issued a copy of order dated 18.9.2000 that day itself, which was received by applicant, according to his own averments, on 20.9.2000, and ^{it was} served on answering Respondent on 20.9.2000.

7. On behalf of applicant, however, it has been asserted on affidavit that his counsel Shri Raval had addressed a letter to Secretary, Ministry of Statistics & Programme Implementation on 18.9.2000 itself (Annexure CP 2) marked most urgent stating that in an O.A. filed by applicant, the Principal Bench of CAT had restrained the Secretary that day (18.9.2000) from filling up the post of Assistant Halwai in the canteen by appointing Shri Jagat Singh to the post, and that the order in original along with copy of the O.A. would be served upon him as early as possible, and soon after the same was received from the Court. It is further asserted on affidavit dated 14.5.2001 that applicant ^{took} ~~took~~ the letter dated 18.9.2000 to the office of respondents

(Mrs. Bharati Dutta, Under Secretary) and gave it to the office of the Respondents (Mrs. Bharati Dutta) on 18.9.2000 itself. (24)

7. A counter affidavit dated 22.5.2001 has been filed by Mrs. Bharati Dutta disputing the aforementioned averments and specifically denying that letter dated 18.9.2000 was received in her office as alleged. It is stated that all communications received in the Ministry are invariably diarised in the Diary Register. Copy of the Diary Registry for the dates 18, 19 and 20.9.2000 in respect of respondent's section have been enclosed with the counter affidavit, and it is stated that no such letter/notice has been diarised during 18 and 19th September, 2000. It is ^{further} stated that it is unbelievable that applicant would leave such an important communication without insisting on its receipt by respondents. It is submitted further that respondents came to know about the O.A. for the first time only on 20.9.2000 when a copy of the same was served on R-2 & 3 by dasti on that date. Reference is invited to the entries made in Annexure R-1 and Annexure R-2 in this connection.

8. The letter claimed to have been issued by applicant's counsel Shri Raval on 18.9.2000 addressed to the Secretary, Ministry of Statistics and Programme Implementation (Annexure CP-2) does not bear any seal/signature or ^{endorsement} ~~mark~~ to show that it was delivered to the addressee or anybody in that office

7

on or before 19.9.2000. Applicant has not been able to produce any ^{evidence} ~~substantive~~ to establish that he indeed ^{contended} ~~did~~ serve it upon R-3 as ~~stated~~. As pointed out by R-3, all communications received in the Ministry are invariably diarised in the diary register maintained for the purpose, and relevant extracts of the diary register for the dates 18, 19 and 20.9.2000 ^{as} ~~do~~ not show any such notice ^{as} ~~being~~ having been received and diarised. It ^{is indeed} ~~is~~ difficult to believe that applicant would go away after leaving such an important communication with Respondents, without insisting on its receipt by them.

9. Under the circumstances applicant has not succeeded in satisfying us that Respondents had knowledge of the interim orders passed on 18.9.2000 for maintenance of status quo, before Shri Jagat Singh was appointed as Assistant Halwai w.e.f. 19.9.2000 (AN).

10. Hence no good grounds exist for initiating contempt action against Respondents.

11. As regards the O.A. itself, it is well settled that a candidate has no enforceable legal right to be appointed to any post. He has only a right to be considered for appointment subject to his fulfilling the necessary conditions for eligibility and suitability. In the present case, it is not denied that applicant was considered along with the others, but as a result of the selection procedure, a person who was found more suitable than him was

selected. During the course of hearing applicant's counsel relied upon the contents of Paragraph 2(iv) of the Dept. of Personnel circular dated 22.8.98 (Annexure A-5), which provides that before resorting to direct recruitment, vacancies in non-statutory departmental canteens may be duly considered for filling up by promotion (if so provided in the Recruitment Rules) in the first instance, and the claims of casual/ad hoc employees already borne on the strength of canteens may be considered for regularisation provided they fulfil the conditions enforceable for the employment.

Respondents 2

12. In this connection ~~para~~ ² & 3 in Para 4.5 of their reply filed on 16.11.2000, specifically state that applicant was never appointed as a daily wanger on casual/ad hoc basis in the departmental canteen concerned, and further more he was never paid out of the Consolidated fund of India. It is contended that he was paid a sum of Rs.100/- ^{per day} for supplying prepared articles in the canteen, and payments were made out of canteen fund. It is further pointed out that a daily wage casual labourer is paid Rs.111.60p. per day, but applicant was paid Rs.100/- per day which clearly shows that he was not appointed as a daily wanger. This specific averment of respondents has not been *specifically* denied by applicant in his rejoinder, and even otherwise, it cannot be denied that applicant's claim for regularisation/appointment as Assistant Halwai was considered by competent authority.

2

13. During the course of hearing applicant's counsel asserted that Shri Jagat Singh was appointed as Asst. Halwai because he happened to be the domestic servant of the Secretary, Ministry of Statistics & Programme Implementation and was residing at the latter's residence. It was also asserted that Shri Jagat Singh's medical examination was got done in hot haste at the CGHS Dispensary in Pandara Road, to present the Court with a fait accompli instead of being done in a hospital as required under the rules.

14. From respondents' relevant file No. A-1202/2/95-Ad.II regarding the appointment of canteen staff which we have perused, we find that as far back as 12.9.2000 itself offer of appointment to Shri Jagat Singh had been approved for issue. Indeed the interview letter itself had been sent to him on 4.9.2000 to his address at 604, M Block, J.J. Colony, Shakurpur, New Delhi-110034 and the appointment letter was issued on 14.9.2000 which Shri Jagat Singh accepted on 18.9.2000. Copy of the relevant instructions regarding medical examination at the time of first appointment at Page 260 of Swamy's Establishment and Administration provides that for appointment to Group 'D' post medical examination may be conducted by the Government Medical Officer of the nearest dispensary or hospital. Under the circumstances we see no legal infirmity in Shri Jagat Singh's medical examination being conducted by the CMO of the local CGHS

Dispensary. As mentioned earlier, he was found the most suitable of the three candidates after test, and the Tribunal cannot substitute its own assessment ~~from~~ ^{for} that of the competent authority as to the relative merits of the candidates.

15. In the result the O.A. warrants no interference.

16. To sum up the C.P. and the O.A. are dismissed. Notices in the C.P. are discharged. No costs.

(Dr. A. Vedavalli)
Member (J)

karthik

(S.R. Adige) ✓
Vice Chairman (A)

True & Right
Attested
M. S. S. S.
C.O. / C-II
16/7/2001.