

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 186 of 1999

_____ day, this the 1st day of November 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, Member (A)**

Subhash Chandra Pandey Son of Shri Shanker Dutta Pandey,
resident of 532, K.L. Kydganj (Bhartiya Road), District Allahabad.

Applicant

By Advocate Sri B. Tewari

Versus

1. Chairman, Railway Recruitment Board Chandigarh SCO-78-79, Sector 8-C, Chandigarh.
2. Chairman, Railway Board, New Delhi.
3. Secretary, Railway Recruitment Board, SCO 78-79 Sector 8-C, Chandigarh.
4. General Manager, Northern Railway, Baroda House, New Delhi.
5. Shri Prem Vishwakarma, Law Assistant, Divisional Railway Manager, Northern Railway, District Lucknow.

Respondents

By Advocates Sri Amit Sthalekar, } Counsel for
Sri Prashant Mathur, } official respondents
Sri Shyamal Narain, } Counsel for
Sri K.K. Mani } respondent No.5

ORDER

By K.S. Menon, Member (A)

This O.A. is filed against the Order passed by the respondent No.1 dated 27.01.1999 published in Employment News dated 13th-19th February 1999 (Annexure A-1) by which the candidature of the applicant (Roll No. 50670) who was declared



successful provisionally in the selection for the post of Law Assistant category-5, was cancelled as he failed to submit the required documents and in lieu candidate bearing Roll No. 50273 was declared successful provisionally. Being aggrieved by the said order published in the Employment news, the applicant has filed this O.A. and sought from this court the following reliefs: -

- (i) To issue an order direction in the nature of certiorari quashing the impugned order dated 27.01.1999 passed by the respondent No.1.
- (ii) Any other suitable direction which may be found any suitable in the facts and circumstances of the case for which the applicant is found to be entitled.
- (iii) to issue an order direction or writ in the nature of certiorari quashing the appointment dt.16.03.1999 (annexure-10) passed by respondent No.1."

2. The applicant's case in brief is that he applied for the post of Law Assistant in response to an advertisement put out by the respondents on 02.08.1997. On successful completion of the written examination on 06.09.1998 and the interview held on 15.12.1998, the applicant was finally declared successful provisionally on 10.01.1999 by respondent No.1, which was published in the newspaper dated 10.01.1999 (Annexure-3). However, since an essential qualification for getting an appointment as Law Assistant was at least three years experience as a registered lawyer and since he had not submitted such a certificate at the time of his interview, his candidature was provisional and vide a letter dated 12.01.1999, which the applicant claims, he received on 15.01.1999, he was directed to submit the said certificate to the Board latest by 25.01.1999. Accordingly, he obtained the requisite certificates from the District Judge and the President of the Bar Association, and sent the wanting documents by Registered Post on 18.01.1999. Copies of which have been annexed as annexure-7 & 8 of the O.A. He,

however, states that to his utter surprise he read in the Employment News dated 13-19th February 1999 that his candidature was cancelled for non-submission of required documents. Applicant states he was not given a hearing before the impugned Order was passed besides his valuable right which has accrued to him, has been snatched away without basis. He, therefore, moved an amendment application impleading Shri Prem Vishwarkarma, who was appointed in his place on 16.03.1999, as respondent No.5. Applicant submits that action of the respondents is wholly illegal and violative of the principles of natural justice and should be set aside.

3. The respondents have filed their counter affidavit, refuting the contentions of the applicant. Their basic objection is that the cause of action arose in Chandigarh against respondent No.1 who is based in Chandigarh, hence the applicant cannot file this O.A. within the jurisdiction of this Tribunal. The other issue regarding non-challenging the selection of respondent No.5 and non-joinder of necessary parties has been taken care of by the impleadment application and amendment of the relief clause filed by the applicant and allowed by this Tribunal.

4. On the merits of the case, the respondents say that in their letter dated 25.11.1998 calling the applicant for an interview on 15.12.1998, it had clearly been indicated that candidates were required to bring with them for the interview all original documents alongwith copies duly attested. One such document was the enrolment certificate to establish the fact that he has 3 years standing as a pleader at the Bar. Note (2) below para-2 of the said letter indicated that candidates who fail to bring the original documents as called for would be rejected. Since the applicant did not produce the said Enrolment Certificate, he was allowed 15 days time to produce the same. The applicant failed to produce the said certificate. The respondents again took a lenient view and issued a letter dated 12.01.1999 asking him to produce the certificate latest by 25.01.1999. Respondents say that the Original Enrolment Certificate reached the answering



respondent only after the corrigendum was published in the Employment News on 27.01.1999 and the new panel prepared was sent to respondent No.4 on 29.01.1999. In the new panel respondent No.5 Sri Prem Vishwakarma, O.B.C. candidate (Roll No. 50273) was selected in lieu of the applicant who though declared successfully originally, failed to submit the original certificates. The respondents refute the applicant's claim that the Original Certificates mailed by him on 18.01.1999 was received in the respondents' Office on 20.01.1999 as indicated in Annexure-1 to the Supplementary Affidavit purported to have been written by Sub Post Master, Chandigarh to S.S.P.O., Allahabad on 09.09.1999. Respondents in turn submit that no registered article No. 3372 was ever received by respondent No.1 or by his office on 20.01.1999 (Annexure R-7). In support they have annexed carbon copy of the list of Registered letters/Speed Post letters delivered to Railway Recruitment Board, Chandigarh on 20.01.1999 by the Post Office in which the said Registered letter No.3372 does not find a place in the Receipt Register of the Railway Recruitment Board. They are of the view that the letter dated 19.05.1999 at Annexure-1 of the Supplementary Affidavit was procured by the applicant subsequently and has been issued without reference to the records.

5. In paragraph No.5 of their reply to the Supplementary Affidavit, the respondents submit that the applicant's provisional selection was cancelled for non-production of Original Enrolment Certificate. The factual position is that the applicant was provisionally selected by mistake. There were only two vacancies for General candidates and Shri Samarjeet Singh (Roll No. 50931-General Candidate) had more marks than Shri Prem Vishwakarma (Roll No. 50273 OBC candidate) so the first vacancy of General category went to Shri Samarjeet Singh while the second vacancy went to Shri Devinder Singh (Roll No. 50368), an O.B.C. candidate. Respondent No.5 Shri Prem Vishwakarma had more marks than the applicant (General candidate), hence Shri Vishwakarma as an O.B.C. candidate ought to have been selected against the second General Category vacancy, meaning thereby



that even otherwise the applicant could not have been selected at all. In view of this, they contend that the O.A. being without merits is liable to be dismissed. This O.A. was once allowed by this Tribunal vide its Order dated 29.05.2002, the operative portion of the said Order is as under: -

"8. In the circumstances the O.A. is allowed, the impugned notification dated 27.1.99 (Annexure-I) is quashed. The appointment of respondent no.5 in lieu of applicant is also quashed. The respondents are directed to appoint the applicant to the post of Law Assistant w.e.f. from the date respondent no.5 was appointed. He should get all consequential benefits of seniority etc. and also be paid 50% of the backwages. We also feel that this is a fit case to award costs as the applicant has been unnecessarily harassed. We award him costs of Rs.2000/-. The implementation of these orders should be carried out within two months from the date of filing of a copy of this order before the respondents."

The above Order of the Tribunal was challenged by the Respondent No.1 in Writ Petition No. 28083 of 2002 and by respondent No.5 in Writ Petition No. 12671 of 2003 before the Allahabad High Court. Extract of the relevant portion of the High Court's Order dated 18.02.2005 is reproduced below: -

"In the result both the writ petitions succeed. The impugned order passed by the Tribunal dated 29.5.2002 is set aside. The matter will be considered by the Central Administrative Tribunal afresh. The original record has been returned to the Railway Counsel for being produced before the Tribunal as and when required."

6. The applicant then filed an S.L.P. in the Supreme Court, which was dismissed by the Supreme Court vide Order dated 25.01.2007. Thereafter, the applicant relying on the Judgment of the Allahabad High Court dated 18.02.2005 directing this Tribunal to consider the case afresh has filed M.A. No. 1336 of 2007 on 08.06.2007 praying for the case to be heard on merits and for summoning the Original records mentioned in paragraph No.5 of the Civil Misc. Petition, pertaining to the selection of Law Assistant, for deciding the case in accordance with law.



7. The respondents have produced the original documents which were produced before the High Court for examination by this Tribunal.

8. Heard, Shri B. Tiwari, Counsel for the applicant and S/Shri Amit Sthalekar, Prashant Mathur, Shyamal Narain and K.K. Mani for the respondents and perused the pleadings on record and documents produced before Court during arguments.

9. There are three issues before this Court, which are as under: -

- (i) Determine whether the applicant submitted his Original Enrolment Certificate in time as directed by the respondents?
- (ii) Whether the applicant secured more marks than respondent No.5?
- (iii) Whether the applicant is eligible for selection and appointment based on marks and roster points.

10. It is an admitted fact that the essential qualification for getting an appointment as a Law Assistant is a least three years experience as a registered lawyer. This Certificate in Original was to be submitted by the applicant at the time of interview on 15.12.1998. The applicant did not produce the same at the time of interview, the reasons for which have not been brought on record. It is strange that the applicant who was enrolled and practicing as a lawyer since 19.07.1992 did not possess his Original Enrolment Certificate so that it could be produced at the time of the interview. The respondents were at liberty to cancel his candidature when he did not produce the said certificate at the time of the interview. They however directed him to produce it within 15 days. Applicant failed to comply with the direction even though he was aware that the said document was very important and essential for his candidature to be considered. Respondents state that as a matter of further grace, the applicant was informed vide letter dated 12.01.1999 to send the certificates latest by 25.01.1999. The applicant's contention that the letter dated 12.01.1999 reached him only on 15.01.1999 and he



managed to get the certificates and post them by registered post on 18.01.1999 to the respondents does not appear to be convincing. The certificate should have been with him even at the time of initial application, even if he did not possess it at that time (which is highly unlikely as he was enrolled in 1992, as mentioned earlier), he could have easily procured it when he got the interview letter which clearly stipulated that the certificates were to be produced at the time of the interview. The applicant in his Supplementary Affidavit has annexed a letter dated 19.05.1999 from the Sub Post Master, Sector-18, Chandigarh, addressed to S.S.P.O., Allahabad Division, indicating that the registered letter No. 3372 dated 18.01.1999 posted from Allahabad was delivered to the addressee on 20.01.1999. By this letter, he says the certificates in question were submitted & received by the respondents before the stipulated date of 25.01.1999, therefore, the respondents had no right to cancel his candidature in favour of respondent No.5. The respondents (1 to 3) in their reply to the applicant's Supplementary Affidavit deny that the answering respondents ever received any registered letter on 20.01.1999, alleged to have been sent under Postal receipt No.3372 from the applicant. This claim is supported by a copy of the list of Registered letters/Speed Post letters delivered on 20.01.1999 by the Post Office to the Railway Recruitment Board, Chandigarh, which runs into 24 pages (Annexure R-7) and the alleged registered letter No. 3372 does not find a place in this list. It is difficult to say at this point in time whether the letter submitted by the applicant or the respondents is genuine. However, the list of registered letters/Speed Post letters delivered to the respondent on 20.01.1999 running into 24 pages appears to be more authentic as it is the Post Office's basic record of all incoming registered/speed post letters received and delivered to the respondents, ^{then} the simple letter from Sub Post Master, Chandigarh to S.S.P.O. Allahabad to say the said registered letter No. 3372 dated 18.01.1999 was delivered to the respondent on 20.01.1999, more so as this letter appears to have been issued without reference to the records. Besides it appears highly unlikely that a Registered letter could reach Chandigarh from

Allahabad and get delivered within two days. In view of this the preponderance of evidence lies in favour of the respondent, and has to be given credence over that furnished by the applicant.

11. Coming to the second issue regarding the marks obtained by the respondent No.5 vis-à-vis the applicant, we find that respondent No.1 and respondent No.5 filed Writ Petitions in the Allahabad High Court challenging the order of this Tribunal dated 29.05.2002, by which the cancellation of the applicant's candidature and appointment of respondent No.5 as Law Assistant in lieu thereof was set aside. The respondents had produced documents in the High Court in support of their argument that the selection of Shri Subhas Chandra Pandey on provisional basis was a mistake as Shri Pandey had obtained less mark than the respondent No.5 in this O.A. Shri Prem Vishwakarma. The High Court, however, left the examination of genuineness of the documents to this Tribunal and asked for the case to be considered afresh on merits. Applicant filed an S.L.P. in the Supreme Court which dismissed the same while upholding the order of the High Court. Thereafter, the applicant while seeking consideration of the case a fresh sought certain documents which the respondents were relying on in support of their argument for respondent No.5's selection. The document i.e. "Assessment Sheet Cat.05 (1) 97) Law Assistant-^{Interview} on 15.12.1998" of the Railway Recruitment Board, Chandigarh produced in Court by the respondents was examined by us. The assessment sheet clearly shows that respondent No.5 Shri Prem Vishwakarma has obtained 59 marks in the Written Test and Viva Voce put together while the applicant has obtained 58 marks. It is seen that there are no cuttings, overwriting, alterations or any other form of tampering as far as the assessment sheet is concerned, hence the doubt of the applicant regarding its veracity is ill founded.

12. The assessment sheet also reveals that the break up of six vacancies were S.C. =0, S.T. =2, OBC=1, Ex.S.M. =01 (ST) and Gen. =02 and selections were made as under: -

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- (i) Shri Samarjeet Singh - 70 marks General
- (ii) Shri Devinder Singh - 60 marks OBC against General
- (iii) Shri Prem Vishwakarma - 59 marks OBC
- (iv) Shri Mukteshwar Prasad - 43 marks ST

From the above, it would be seen that the two seats of General Category if the break up of vacancies category wise shown above is correct have been filled up on the basis of marks, hence the applicant a General Candidate with 58 marks would not have been considered for selection, even if we presume that the certificates sent by him were received before the due date specified.

13. The private respondent No.5 in his Counter avers that his selection is justified on the basis of his marks in the selection. Besides, he has been discharging his work as a Law Assistant ^{and he} was even given the D.R.M. award. He has drawn our attention to the fact that he has been in service since 16.03.1999 and as such, he has acquired a legal right to the service and is a permanent Law Assistant. He further states that it is a settled law that once a candidate is selected/appointed by virtue of a prescribed selection procedure and has also crossed the probation period, he acquires an indefeasible right which he cannot subsequently be deprived of.

14. The applicant submits that the corrigendum published in the Employment News dated 13-19 February 1999 by which the provisional selection of the applicant was cancelled was done without issuing him a show cause notice or an opportunity of being heard. Respondents refute this claim stating that the applicant was fully aware about the requirement of producing the Original Enrolment Certificate at the time of interview besides adequate opportunity was afforded to him to produce the same, but he failed to do so, hence his provisional candidature was cancelled. They maintain their action was well within the rules prescribed and was taken after affording the applicant a more than reasonable opportunity, hence there is nothing illegal about their action. The other issue raised by the applicant is that the

reason given in the Press notification for canceling his candidature is different from the new reasons now given in the Counter and Supplementary Counter regarding the marks obtained by the applicant vis-à-vis the respondent No.5 and the ineligibility of the applicant for the General Category roster point. The applicant has relied on the following case laws in support of his argument: -

- (i) CMW No. 23453 of 1990 Surya Kumar Dikshit & Others Vs. DIOS Jalaun & Others.
- (ii) AIR 1978 SC P. 51.

In both these above citations it has been held that "*Reasons given in the order totally different from the reasons on which the order being justified by Standing Counsel-Held respondent cannot be allowed to justify the order by taking new additional reasons*". Respondents in paragraph 5 of their reply to the Supplementary Affidavit admit that the reason given in the Corrigendum published in the Press, was shown as non production of original document however the factual position is that the applicant secured less marks than respondent No.5 who being an OBC candidate was adjusted against the OBC vacancy while Sri Devinder Singh another OBC candidate was adjusted against the second General category seat on the basis of his marks hence the applicant a General category candidate had to lose out. Scrutiny of the original assessment sheet clearly indicates that respondent No.5 did secure more marks than the applicant. The stand taken by the respondents is therefore correct and even if the reason given in the corrigendum published showed the reason as non production of original records, it cannot be faulted as that is a fact and the position emerging from the assessment sheet cannot be wished away and if ignored would tantamount to miscarriage of justice as far as respondent No.5 is concerned.

15. Shri Tiwari is of the view that even as far as the roster point is concerned, the respondents have violated the provisions of D.O.P.T. Memorandum dated 22.10.1993 which lays down that the reservations provided for SC/ST & OBCs put together should not exceed 50% of vacancies arising in a year. He contents that

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out of the six vacancies announced the posts for general candidates should have been three and for SC/ST/OBC three, however, only two general vacancies have been shown in the break up, which have been filled, hence one vacancy in General category is yet to be filled. The break up of vacancies shown (annexure R-1) are ST (2), OBC (1), Ex.S.M.(1-ST), Gen. (2)-Total 6. He says that as per this four posts are for SC/ST/OBC and only two for General, whereas the Ex.S.M. (ST) vacancy should have been a part of the two vacancies shown under ST and not as an additional post. The respondents have tried to explain this by stating that these are carry forward vacancies which is permitted hence the slight imbalance in favour of the SC/ST/OBC categories. A general reading of the D.O.P.T. Memorandum dated 22.10.1993 would indicate that in a year at any cost the percentage of vacancies between reserved and General categories has to be in the ratio of 50:50, therefore the break up of vacancies should rightfully be as follows: -

| | | |
|---------|---|---------------------------|
| General | - | 3 |
| OBC | - | 1 |
| SC | - | — |
| ST | - | 2 (including one for ESM) |

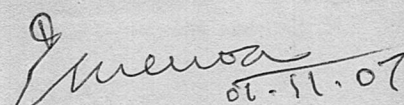
This contention also finds support in the 200 point roster, copy annexed with D.O.P.T.'s O.M. No. 36012/22/93-Estt (SCT) dated 22.10.1993 submitted by the applicant's counsel. If this be so then one General vacancy is yet to be filled and in all fairness to the applicant, if he is otherwise eligible, it should go to him and he ought to be appointed in this available slot on the basis of his marks and the provisional selection made on 10.01.1999. It is not the case of the applicant that he is not qualified or eligible for the post in question, he has lost out on a technicality and perhaps an error in determining the category wise vacancies hence his case deserves to be reconsidered.

16. In view of the above, we direct the respondents to rework out the availability of the roster point under General category and if it is available, appoint the applicant against that roster point as Law Assistant w.e.f. the date respondent No.5 was appointed i.e.



on 16.03.1999 with benefit of seniority. Applicant will however not be entitled to any back wages. The implementation of this order should be carried out within a period of three months from the date of receipt of a certified copy of this Order.

17. The O.A. is disposed of with the above directions. No order as to costs.


01.11.07
Member (A)


01.11.07
Vice Chairman

/M.M./