

RESERVED ON 13.3.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 21 DAY OF March , 2012)

Present

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Original Application No.337 OF 2007

(U/S 19, Administrative Tribunal Act, 1985)

Guru Bachan, S/o Sri Soman R/o Village-Jhalkatiya,
Post-Manjhariya Vikram, District-Basti.

.....Applicant

V E R S U S

1. Union of India through its Secretary Defence, Ministry of Defense, New Delhi.
2. Chief of Air Staff Air Force Head Quarter (Vayu Bhavan) New Delhi.
3. Air Officer Commanding in Chief Central Air Command IAF Bamrauli, Allahabad.
4. Station Commander Air Force Station Memora Lucknow.
5. Sri S.K. Lal Stenographer Grade-III(C), in office of the Station Commander Air Force Station Memora Lucknow.
6. Sri Amar Singh, Cook, in office of the Station Commander Air Force Station Memora Lucknow.

.....Respondents

Advocates for the Applicant:-

Mr. P.C. Singh

Advocate for the Respondents:-

Mr. P. Srivastava brief holder of
Mr. Saurabh Srivastava
Mr. Sunil

ORDER

Delivered By Hon'ble Mr. Sanjeev Kaushik, Member (J)

By means of the instant original application filed under section 19 of the Administrative Tribunals Act 1985, the applicant seeks quashing of order dated 21.12.2006 (Annexure A-1) by which the representation of the applicant has been rejected, with further prayer to direct the respondents

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to cancel the selection proceedings made in pursuance to advertisement dated 6/12.12.2003 for filling up the civilian post in Group 'C' and 'D' in Indian Airforce, with further direction to the respondents to cancel the appointment of respondent nos.5 and 6 to the post of steno III and cook with further direction to respondents to appoint the applicant on the post of cook group 'C' in station commander A.F. Memora, Lucknow.

2. The brief facts of the case as canvass are that the respondent no.3 issued an advertisement in employment news on 6/12.12.2003, inviting applications for filling up civilian posts i.e. one post of steno-III in group 'C' for general, one post of cook in group 'C' reserved for scheduled caste candidate for Station Commander Air Force Station Memora, Lucknow. The last date for submission of application was 19.1.2004. The interview was scheduled to be held on 10.2.2004 (Annexure A-2). The applicant being fully eligible for the post of cook applied. He was appeared in interview on 10.2.2004. It is submitted that without declaring the result appointment letters were issued on 19.10.2004 in favour of respondent nos.5 and 6. The applicant came to know about the appointment of respondent nos.5 and 6 only in the month of June 2005. It is thereafter the applicant made several applications through proper channel to the respondents i.e. on 11.6.2005, 20.9.2005, 17.12.2005 and on 6.3.2006 against illegal appointment of private respondent. It is averred that the appointment of respondent no.5 as steno III is illegal as he did not fill up the experience. It is further alleged that the respondent no.5 even did not have the requisite qualification for appointment on cut of date; therefore, he is not eligible to be considered for appointment. When the grievance of the applicant was not considered by the respondents then the applicant approached this Tribunal by way of OA No.1032/2006, which was decided

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on 10.10.2006 directing the respondent no.3 to decide the pending representation of the applicant. Hence, the OA.

3. Pursuance to the notice the respondents appeared and resisted the claim of the applicant by filing detailed counter affidavit. In the written statement filed by the official respondents, the respondents have denied the allegations levelled in the original application. It is averred that the result was informed only to selected candidate. The appointment letters were issued to respondent no.5 and 6, who joined on 19.10.2004 and 5.10.2004 respectively. It is averred that on the representation made by the applicant an independent officer was deputed to investigate the matter, who submitted his report on 24.2.2005. Thereafter the representation of the applicant was considered and was rejected by passing detailed speaking order on 21.12.2006. It is further averred that the applicant was a candidate for seeking appointment on the post of cook, therefore, he cannot challenge the appointment of respondent no.5 who was appointed as Steno III. It is further averred that the respondent no.5 was appointed after having no objection certificate from the earlier employer. With regard to respondent no.6 it is submitted in para no.15 in reply to para no.4(xiii) of the Original application "that the respondent no.6 is having all required qualification/experience called for the said post and entitled for the post of Group 'C' cook/". The private respondents whose selection was challenged have also filed separate reply. More or less they have taken the same stand as taken by the official respondents except that the applicant cannot challenge the selection of stenographer grade III for which he was not a candidate.

4. The applicant has also filed rejoinder affidavit in which he has contradicted the averment.

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5. We have heard Shri P.C. Singh, learned counsel for the applicant and Shri Pankaj Srivastava for official respondents and Shri Sunil for private respondents.

6. Shri Singh, learned counsel for the applicant vehemently argued that the impugned selection is in frequent violation of well established norms for appointment as no result was declared and straight way appointment letters have been issued in faour of respondent nos.5 and 6. In absence of declaration of result the impugned selection is bad in the eye of law. Secondly he argued that since the names of the private respondents were not registered with the employment exchange and they were given appointment therefore, also their appointment is against the employment exchange (compulsory notification of vacancy) rules 1960. He further argued that the appointment of respondent no.5 as stenographer Grade III is bad in law as he does not have the requisite experience on the cut of date. On the other hand, Shri P. Srivastava appearing for official respondents challenged the locus of the applicant in challenging the appointment of respondent no.5. To substantiate his arguments he argued that the applicant was not the candidate for the post of stenographer Grade III, therefore, he cannot challenge the selection of respondent no.5 as stenographer in the instant original application as he is not an aggrieved person. He urged that public interest litigation is not maintainable before this Tribunal. Reliance has been placed by him upon

(i) R.K. Jain v. Union of India, 1993 (4) SCC 119; (ii) Janta Dal v. H.S.

Chaudhary, 1992 (4) SCC 305; (iii) Rajniti Prasad v. Union of India,

2000 (9) SCC 313; (iv) Charanjit Singh and Ors. Vs. Harinder Sharma

and Ors., 2002 (9) SCC 732; (v) Gurvayoor Devosam Managing

Committee and Anr. v. C.K. Rajan and Ors., 2003 (7) SCC 546 and

(vi) Dr. B. Singh v. Union of India, 2004 (3) SCC 363. With regard to

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appointment of respondent no.6, he argued that the respondent no.6 was appointed as he was found suitable by the selection committee amongst the candidates who applied in pursuance to the advertisement. Shri Sunil appearing on behalf of respondents adopted the arguments of official respondents, to supplement the arguments he argued that the respondent no.5 fulfill the requisite qualification as prescribed in the advertisement, after evaluating his suitability the committee recommended his name for appointment and being at merit no.1, he was offered appointment and ultimately he joined.

7. We have considered the rival submissions and have gone through the record as well as the judgments. Nowhere in the original application the applicant had alleged malafide against the respondents for not selecting him or rejecting his candidature being biased. Highlighted that the concept PIL is basically pre-pondered to protect the interest of the poor, deprived, illiterate, unorganised labour sector and those who are handicapped by ignorance, indigenous and illiteracy and/or being downtrodden have no excess to justice. In service matters, there are always competing candidates who would be available to question the selection process. An "oblique motive" has also been sought to be attributed to the applicant on the plea that he has chosen to question the recruitment of respondent no 5. The arguments of the respondents regarding locus standi of the applicant has been answered by the Hon'ble supreme court *In Jasbhai Motibhai Desai v. Roshan Kumar Haji*

Bashir Ahmed reported in AIR 1976 SC 578, the Apex Court has held that only a person who is aggrieved by an order, can maintain a writ petition. The expression "aggrieved person" has been explained by the Apex Court observing that such a person must show that he has more particular or peculiar interest on his own beyond that of general public in

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seeing that the law is properly administered. Subsequently in case of M.S.

Jayaraj v. Commissioner of Excise, Kerala and Ors. Reported in

(2000) 7 SCC 552. The Hon'ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments including the Chairman, Railway Board v. Chandrimadas (2000) 7 SCC 465; and held that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose as what is the legal injury suffered by him.

8. **In B. Srinivasa Reddy v. Karnataka Urban Water Supply**

& others; Drainage Board Employees' Association and others,

reported in (2006) 11 SCC 731 (I), the Apex Court held that in service matters only the non-appointees can assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action.

9. With regard to second argument of maintainability of Public Interest

Litigation in service matter is concern; we are guided by judgment of

Hon'ble Supreme Court in the case

of R. K. Jain v. Union of India and Ors. 1993 (4) SCC 119, the Apex

Court observed that it was for the aggrieved person to assail the illegality

of the offending action and no third party has a locus standi to canvass

the legality or correctness of the action. Similarly, in **Mohammed Anis v.**

Union of India and Ors. 1994 (Supp) 1 SCC 145, the Apex Court has

held that a case should not be entertained unless the petitioner points out

that his legal rights have been infringed.

Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra reported in (1998) 7

SCC 273 has observed as follows:-

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"18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. Section 3(b) defines the word "application" as an application made under Section 19. The latter section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated."

In Ashok Kumar Pandey vs. State of W.B., (2004) 3 SCC 349, the Apex Court held:

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases."

The same principles have been reiterated in the subsequent decisions, namely, Dr. B. Singh vs. Union of India and Others, (2004) 3 SCC 363, Dattaraj Nathuji Thaware vs. State of Maharashtra and Others, (2005) 1 SCC 590 and Gurpal Singh vs. State of Punjab and Others, (2005) 5 SCC 136. In a recent decision of Hon'ble Supreme Court delivered on 30.8.2010, in Hari Bansh Lal v. Sahodar Prasad Mahto

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and others, (MANU/SC/9654/2010), reported as 2010(9) SCC 655 it

has been held that except in a case for a writ of 'Quo Warranto', PIL in a service matter is not maintainable.

The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters. Therefore, we are not looking qua the validity of appointment of respondent no.5 as stenographer on the instance of the applicant who is stranger. With regard to respondent no.6 is concern as many as names of 18 candidates have been shown in the list of candidates for selection of civilian cook examination held on 19.2.2004 at 505 SU AF. The name of the applicant stood mentioned at serial no.7. The final list of selected candidates signed by the committee, recommended names of three candidates namely Amar Singh, Srinivas and Lalit Mohan Verma, respondent no.6 secured 73 marks to whom the appointment was given subsequently. It is not that the respondent no.6 was lacking qualification for the post in question rather in the impugned order dated 21.12.2006 the respondents given a detail which reads as under:-

"(g)Shri Amar Singh was also selected pursuant to the recommendation of Board of Officers and was possessing the requisite qualification and experience certificate desired for the post of Cook. He was registered with the employment exchange. Shri Amar Singh had applied for the post of "cook" as per the Advertisement published in the Employment News. The Employment Exchange registration number (Ex-U/ 12303/ 98 dated 07 Sep 98) was duly mentioned in the application received from the individual.

(h)The results were intimated only to the selected candidates in order to complete the necessary formalities before joining the subject post."

10. The result of a selection is required to be published or made public, but non publication of result or only giving intimation or appointment letter to a selected candidate in absence of malafide can be termed as

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irregularity and not illegality. The respondent no.6 is also working since 2004.

11. In view of the above, we cannot hold that the appointment of respondent no.6 is illegal. As far as respondent no.5 is concerned, we are not recording any finding on the instance of the applicant. If any aggrieved person will approach then the matter be looked into as per law.

12. In view of the above, the OA is dismissed. No Costs.

T.Chandre
Member-A

Chauhan,
Member-J

/ns/