

7

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 01ST DAY OF JUNE 2010)

PRESENT

**HON'BLE MR. GEORGE PARACKEN, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A**

**ORIGINAL APPLICATION NO. 363 OF 2008
(Under Section 19, Administrative Tribunal Act, 1985)**

Sudhir Kumar Mishra son of Shri Anil Kumar Mishra, R/o
Village Lakhanpur, Post office Sadar, District Jaunpur.

.....Applicant

By Advocate: Shri P.N. Tripathi

Versus.

1. Union of India Ministry of Defence, through its Secretary, New Delhi.
2. Director General, Defence Estates, New Delhi.
3. Defence Estates Officer Allahabad, Circle Allahabad, 8 Punappa Road, Nai Chhawani, Allahabad.
4. Manovika Mukherji, D/o D.K. Mukherji, U.D.C. D.G. Defence, Estate 11/61, Moti Bath, New Delhi.

.....Respondents

By Advocate: Shri Ajay Singh

ORDER

DELIVERED BY Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)

This is the second round of litigation by the applicant.

2. Brief facts of the case:

Pursuant to the advertisement issued by the respondent No. 3 in this O.A. in March 2007 for making appointment to the post of Stenographer Grade III, the applicant applied for

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(8)

the same and appeared in the test alongwith others on 05.11.2007. According to the applicant, even though there was a stipulation that there would be an interview before the final selection, yet the respondents, without holding any interview selected the respondent No. 4 (herein) and appointed her. There was also an allegation that respondent NO. 3 in this O.A. has shown undue favour to the respondent NO. 4 and the selection was not held as per rules and in an independent manner. He has, therefore, filed O.A. No. 1265 of 2007 before this Tribunal and it was disposed of by Order dated 07.01.2008 with the direction to the applicant to approach respondent NO. 2 herein with a detailed representation within a period of three weeks and the said respondent to look into the same and to take appropriate decision in this matter.

3. Pursuant to the aforesaid direction of the Tribunal, the applicant has made a representation dated 22.01.2008. His contentions were as follows:-

- (a) *Out of 17 candidates who attended the test on 05.11.2007, good typewriting machines were provided only to 4 to 6 candidates belonging to wards of some departmental employees and inferior quality of typewriters were provided to others.*
- (b) *In the written test held in English, he had written a complete letter, as such he should have been awarded full marks on the same.*

2

(a)

- (c) *The departmental employees were responsible for determination shown to him and undue favour shown to the selected candidates.*
- (d) *Selected candidate namely Manovika Mukherji is the daughter of departmental official.*
- (e) *Ms. Manovika Mukherji was over age and as such she was not liable for selection.*

4. On receipt of aforesaid representation, Director General, Defence Estates considered the same and passed the impugned order dated 4.3.2008 in this O.A. The said Authority has rejected the contentions of the applicant. Therefore, he has approached this Tribunal through this O.A. seeking a direction to quash the aforesaid order dated 4.3.2008. He has also sought a direction to quash the selection conducted by the respondent NO. 3 in making appointment to the post of Stenographer Grade III in pursuance of the impugned advertisement published in Employment News in the month of March 2007 and quash the appointment of respondent NO. 4.

5. According to him, as per advertisement the prescribed age limit was 18 to 25 years but the respondent NO. 4 was admittedly over aged. Hence the selection was based upon extraneous consideration and the same is liable to be quashed. He has further submitted that selected candidate Ms. Manovika Mukherji is the daughter of the employee of the department and she was favoured by the members of the



Selection Committee. Further, he submitted that though there was clear stipulation regarding interview in the advertisement, the respondents published the final result without any such interview being conducted.

5. In the impugned letter dated 4.3.2008, 2nd respondent considered the aforesaid allegations of the applicant. According to the said Authority the typewriters for the test were selected by the candidates themselves. If the typewriters provided to the applicant was damaged or not working properly, he should have demanded another one. He had not done so. As regards the "letter written" by him, the said authority has submitted that he did not write even a single sentence correctly. As regard the allegations of discrimination made by the Applicant, the authority has submitted that the test was conducted under the supervision of a committee consisting of an Army Officer viz, Col. A.K. Singh, Admn. Commandant, Shri Prasad Chavan, Chief Executive Officer and Sonam Yangdol, CEO/DEO Allahabad. As regards the allegations of not holding the interview before the result was published, it has stated that the method of recruitment was through 'Direct Open Competitive Examination' and it was held that under the supervision of a committee including officers from outside the department. It was the prerogative of the Selection Committee to hold interviews as the final selection of a suitable candidate was done by the Competent Authority concerned out of the candidates short-listed by the Selection Committee. Even if the selection committee has

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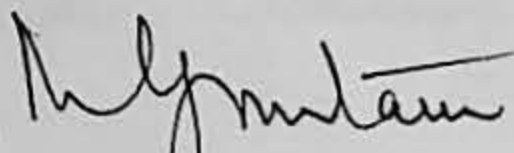
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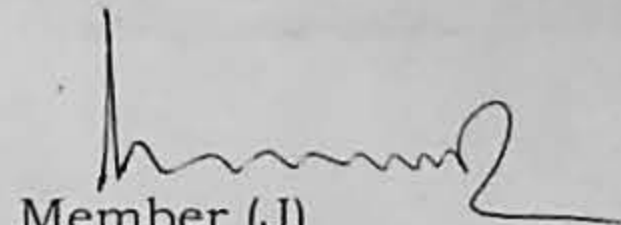
taken a view to hold the interviews after the written test, only the short-listed candidates would have been called for the same and not all the candidates, who appeared in the written test. In the instant case, the applicant's name was not in the 05 candidates short-listed by the Selection Committee. Therefore, the question of holding interview of a non short-listed candidate does not arise. As regards the next allegation that the selected candidate Ms. Manovika Mukherji is a daughter of a departmental officer, the respondents have admitted that she is the daughter of one Shri B.K. Mukherji, U.D.C. a Group 'C' employee of the Department. However, they have submitted that since the method of recruitment was through 'Direct Open Competitive Examination', for all candidates, there was no bar for wards of departmental employees to apply for the post. As such, though contention of applicant was factually correct, it has no bearing on the final selection in the case. As regards the allegations that Ms. Manovika Mukherjee was over aged for the post, they have submitted that as per the Defence Estates Service Stenographer Grade II and Stenographer Grade III (Group 'C' posts) Recruitment Rules, 2007, the age limit was between 18 to 27 for direct recruitment and Ms. Manovika Mukherjee was well within the said age limit.

6. In the absence of learned counsel for the applicant, we could not hear him. However, we have gone through the pleadings thoroughly. We have also heard Shri Ajay Singh, learned counsel for the respondent. On perusing the letter



dated 4th March 2008 by the Director General, Defence Estate issued in pursuance of the direction dated 07.1.2008 in O.A. NO. 1265 of 2007 and also averments made both in the O.A. as well as in the reply affidavit, we are satisfied that there is no merit in the various allegations raised by the applicant. The aforesaid letter dated 04.03.2008 is a self contained and speaking order. All allegations made by the applicant has been considered by the said authority and rejected with reasons. We, also do not find any substance in the allegations of the Applicant. Being devoid of any merit, we dismiss this O.A. with no order as to costs.


Member (A)


Member (J)

Manish/-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH ALLAHABAD.

INDEX

IN

COMPILATION NO. 1

IN

ORIGINAL APPLICATION NO. OF 2008

DISTRICT ALLAHABAD.

Sudhir Kumar Mishra

Applicant.

Versus

Union of India Ministry of Defence through its
Secretary, New Delhi and others. ----- Opposite parties.

Sl.No.	Particular of papers.	Dates	Annexures.	Pages.
1.	Original Application.			1-2
2.	Copy of the order passed by respondent no.2.	4.3.08	1	3-16
3.	Vakalatnama -----			17-22
				23

Dated: 26.3.08

Place: Allahabad.

Sudhir Kumar Mishra
Signature of the Applicant.

P.N. Tripathi
(P.N.Tripathi)

Advocate,
Counsel for the Applicant.

Chamber No.97, High Court,
Allahabad.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

BENCH ALLAHABAD.

DATE & EVENTS.

IN

ORIGINAL APPLICATION NO.

OF 2008

DISTRICT ALLAHABAD.

Sudhir Kumar Mishra

Applicant.

Versus

Union of India and others.

Opposite parties.

Dates

Events.

1. March,07. The applications were invited by the respondent no.2 in Rojgar Samachar in the month of March 2007 for making appointment to the post of Stenographer grade III in the Officer of Defence Estates Officers Allahabad.
2. 21.3.07. The applicant also made an application for being appointed to said post.
3. The petitioner passed High School Examination in Second Division and Intermediate Examination in Second Division.
4. The petitioner also passed his B.A.IIIrd year Examination in the year 2006.
5. The applicant has also obtained experience of typing test and Computer training certificate.
6. The petitioner was also called for written test /interview which was scheduled to be held on 5.11.07.

Prasanna
AC

23/11/07 *ajm* *Don*

7. The applicant alongwith other 16 candidates appeared in Typing test where in the performance of the petitioner was very well.
8. The letter writing test, typing test, no interview could be held by the respondent no.2 and on the basis of extraneous consideration ignoring the merit of the petitioner the respondent no.4 who was ward of an employee of the Department whose father was holding highest post was declared as successful.
9. The applicant challenge the selection proceeding by filing O.A.No.1265 of 2007 before this Hon'ble Tribunal.
10. 7.1.2008. This Hon'ble Tribunal vide its order dated 7.1.08 disposed of the original application with a direction to the Director General Defence New Delhi to look into the matter and decide the same within a period of 2 months provided the petitioner make a representation to the respondent no.4 within a period of three weeks from the passing of the date of order.
11. 22.1.08 The petitioner made a representation alongwith order dated 7.1.08 passed by this Hon'ble Tribunal.
12. 4.3.08. This respondent no.2 rejected the representation of the petitioner.

Hence this O.A.

Dt/- 26.3.08
Place:Allahabad.

P.N. Tripathi
Signature of the Applicant.
(P.N.Tripathi)
Advocate,
Counsel for the Applicant.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

BENCH ALLAHABAD.

ORIGINAL APPLICATION NO. 363 OF 2008

(Under Section 19 of the Central Administrative Tribunal Act, 1985).

DISTRICT ALLAHABAD.

Sudhir Kumar Mishra son of Sri Anil Kumar Mishra,

R/O Village Lakhanpur, Post Office Sadar, District

Jaunpur.

----- Applicant.

Versus

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Secretary, New Delhi.

2. Director General, Defence Estates, New Delhi.

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Allahabad, 8 Punappa Road, Nai Chhawani, Allahabad.

4. Manovika Mukherji, D/O D.K. Mukherji, U.D.C.D.G. Defence
Estate 11/61, Moti Bath, New Delhi.

----- Opposite Parties.

Noties.. 36/08
ate of Service of Notice. 27/3/08
to be moved on 27/3/08
for respondent Nos. 1 to 4

For SAUMITRA SINGH
Senior Standing Counsel
Govt. of India (C.A.T.) Allahabad

1. DETAIL OF THE APPLICATION:

1. Particulars of the order against which the application is made.

This application is being filed challenging the impugned order dated 4 March 2008 passed by the respondent no.2 by which the representation made by the applicant in

For Saumitra Singh
Senior Standing Counsel
Govt. of India (C.A.T.) Allahabad

27/3/08 gml/ma

pursuance of the judgment and order dated 7.1.2008 passed by this Hon'ble Tribunal in O.A.No.1265 of 2007. A photostat copy of the impugned order dated 4.3.2008 passed by the respondent no.2 is being filed herewith and marked as Annexure-1 to the Compilation No.1.

2. JURISDICTION OF THE TRIBUNAL:

That since the impugned order dated 4.3.2008 have been passed by the respondent no.2 by which the selection held by the respondent no.2 whose office is situated within territorial jurisdiction of the present Administrative Tribunal has been upheld, hence the Tribunal situated at Allahabad is having jurisdiction to entertain the present application.

3. LIMITATION:

That since the impugned order has been passed on 4.3.2008 which is under challenge in the present petition, hence the present application is well within limitation.

4. FACT OF THE CASE:

(i). That what happened that applications were invited by the respondent no.2 in Rojgar Samachar in the month of

*Amrinder
Ad.*

*23/12/2007
Amrinder*

March 2007 for making appointment to the post of Stenographer grade III in the Office of Defence Estates Officers Allahabad where one post was lying vacant. A photostat copy of the profarma of the application is being filed herewith and marked as Annexure-1 to the Compilation No.2.

(ii). That in pursuance of the aforesaid advertisement the applicant also made an application on 21.3.2007 for being appointed to the said post. A photostat copy of the application dated 21.3.2007 made by the applicant is being filed herewith and marked as Annexure-2 to the Compilation No.2.

(iii). That the applicant passed his High School Examination in the year 2001 in Second Division. A photostat copy of the High School Marksheet is being filed herewith and marked as Annexure-3 to the Compilation No.2.

(iv). That according to High School certificate of the applicant his date of birth is 15.6.1986. A photostat copy of the High School certificate of the applicant is being filed herewith and marked as Annexure-4 to the Compilation No.2.

*For/Secy
Att*

23/2/2008

(v). That the applicant also passed his Intermediate Examination in the year 2003 in Second Division. A photostat copy of his Marksheet of Intermediate is being filed herewith and marked as Annexure-5 to the Compilation No.2.

(vi). That the applicant also passed his B.A.IIIrd year Examination in the year 2006 from Raja Sri Krishna Dutt Post Graduate College Jaunpur affiliated to Purvanchal University. A photostat copy of his Marksheet of B.A.IIIrd year Examination is being filed herewith and marked as Annexure-6 to the Compilation No.2.

(vii). That the applicant has also experience of typing test. A photostat copy of the Certificate issued by the Typing Institute is being filed herewith and marked as Annexure-7 to the Compilation No.2.

(viii). That the applicant has also got computer training from Mishra Institute of Computer Technology. A photostat copy of the his Marksheet given by Director Mishra Institute of Technology is being filed herewith and marked as Annexure-8 to the Compilation No.2.

Dr. Shaili
ACI.

(ix). That the applicant has also got 'C' Certificate

22/12 04/12 12/12

of M.C.C. Photostat copies of the 'S' Certificate and 'C' Certificate of the applicant are being filed herewith and marked as Annexures-9 and 10 to the Compilation No.2.

(x). That the applicant have also got experience certificate of Computer Operator from Bhushan Steel and strip Ltd. Company is being filed herewith and marked as Annexure-11 to the Compilation No.2.

(xi). That the applicant was also called for written Test/interview which was scheduled to be held on 5 November, 2007 through letter dated 17 October, 2007. A photostat copy of the letter dated 17 October, 2007 is being filed herewith and marked as Annexure-12 to the Comilation No.2.

(xii). That in pursuance of the letter/order dated 17.10.2007, the applicant alongwith other 16 candidates appeared in Typing test where in the performance of the applicant was very well.

(xiii). That it is further stated that before typing test every candidate were directed to write a letter accordingly even in the letter writing the applicant performance was better than all other candidates.

Amal K. Ad.

23rd June 1991

(xiv). That after the letter writing test typing test, no onterview could be held by the respondent no.2 and on the basis of extraneous consideration ignoring the merit of the applicant the respondent no.4 who was ward of an employee of the Department whose father was holding highest post was declared as successful.

(xv). That it is further stated that the respondent no.2 also discriminated in providing typing Machine between the candidates who were ward of employees of the department and the candidates who were out-sider.

(xvi). That it is relevant to state here that no interview was held by the respondent no.2 on 5.11.2007 and without holding any interview the whole selection was finialized and the whole selection proceeding to the post of Stenographer adopted by the respondent no.2 is liable to be quashed.

(xvii). That the applicant was the better candidate amongst all other candidate who have participated in the selection proceeding. But since whole selection proceeding was based upon extraneous consideration and was based upon unfairness it is liable to be quashed.

(xviii). That the performance of the applicant in

3rd 12 04/12/2007

letter writing, as well as in typing test was better than all other candidates.

(xix). That the applicant challenge the selection proceeding by filing O.A.No.1265 of 2007 before this Hon'ble Tribunal. This Hon'ble Tribunal vide its order dated 7.1.08 disposed of the original Application with a direction to the Director General Defence New Delhi to look into the matter and decide the same within a period of 2 months provided the applicant make a representation to the respondent no.4 within a period of three weeks from the ^{date of} passing of the order. A photostat copy of the order dated 7.1.2008 passed by this Tribunal is being filed herewith and marked as Annexure-13 to the Compilation No.2.

(xx). That in pursuance of the judgment and order dated 7.1.2008 passed by this Hon'ble Tribunal the applicant make a representation before the respondent no.2 on 22.1.08 through registered post .A photostat copy of the representation dated 22.1.2008 is being filed herewith and marked as Annexure-14 to the Compilation No.2.

(xxi). That the respondent no.2 vide impugned order dated 4.3.2008 rejected the representation of the applicant on baseless ground though the whole allegation made by the

Pratap Singh
ACR

23/12/08 gml

petitioner in his representation was absolutely correct.

(xxii) That from the perusal of the advertisement which has been filed as Annexure-2 to compilation no.2 it is very much clear that the age limit given in the advertisement was 18 to 25 years but the respondent no.4 was admittedly overage as per advertisement, hence her selection is based upon extraneous consideration and is liable to be quashed.

(xxiii). That the second allegation made by the petitioner that the respondent no.4 is daughter of an employee of the department hence she was favoured by the members of the Selection Committee is also found to be correct.

(xxiv). That the respondent no.2 has not met the point while passing the impugned order dated 4.3.2008 that no interview was held though the correct fact is that interview was required but it was not held and the respondent no.4 have illegally been declared selected without interview.

(xxv). That the allegation made by the petitioner that typing Machine given by the respondent to the applicant was not properly inworking order was also found to be correct

For Special A.C. and the defence taken by the respondent no.2 that Sri Mishra (applicant) out to have demanded fresh typing

25/12/2012

Machine is also baseless.

(xxvi). That all the allegations made by the applicant in his representation were found to be correct hence the impugned selection held by the respondent no.2 is liable to be quashed and the applicant is entitled to be selected.

5. GROUND OF RELIEF WITH LEGAL PROVISIONS:

(a). Because the ^{from} perusal of the advertisement which has been filed as Annexure-2 to compilation no.2 it is very much clear that the age limit given in the advertisement was 18 to 25 years but the respondent no.4 was admittedly over-age as per advertisement, hence her selection is based upon extraneous consideration and is liable to be quashed.

(b) Because the second allegation made by the petitioner that the respondent no.4 is daughter of an employee of the department hence she was favoured by the members of the Section Committee is also found to be correct.

(c) Because the respondent no.2 has not met the point while passing the impugned order dated 4.3.2008 that no interview was held though the correct fact is that interview was required but it was not held and the respondent no.4 have illegally been declared selected without interview.

Pratap Kumar
ACI

By order of

(d) Because the allegation made by the petitioner that typing Machine given by the respondents to the applicant was not properly inworking order was also found to be correct and the defence taken by the respondent no.2 that Sri Mishra (applicant) out to have demanded fresh typing Machine is also baseless.

(e) Because all the allegations made by the applicant in his representation were found to be correct hence the impugned selection held by the respondent no.2 is liable to quashed and the applicant is entitled to be selected.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant has not filed any other petition except the present petition which is being filed herewith for the present case.

7. MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT.

That as stated above that the applicant has not filed any writ petition before any other court except the present petition which is being filed herewith.

8. RELIEF SOUGHT:

In view of the facts and circumstances stated

*Prakash
A.C.*

23/12/2011

above the applicant prays for following relief:

- (a) That this Hon'ble Court may be pleased to quash the impugned order dated 4.3.2008 passed by respondent no.2.
- (b) To quash the whole selection proceeding conducted by the respondent no.3 in making appointment to to the post of Stenographer Grade III in pursuance of the impugned advertisement published in Employment News in the month of March 2007.
- (c) That the respondent no.3 may be further directed to produce all the documents for perusal of this Hon'ble Court pertaining to appointment to the post of Stenographer in pursuance of the advertisement made by the respondent no.3 in the month of March 2007 in Employment News.
- (d) That this Hon'ble Tribunal may be pleased to quash the appointment of respondent no.3 or if any, ~~done by the~~ in pursuance of the impugned advertisement to the post of Stenographer Grade III in the Office of Defence Estates Officers Allahabad.
- (e) To provide any other relief to the applicant which this Hon'ble Tribunal deems and proper in the circumstances of the case.

Ambarshi Ad

23rd 2nd 2nd

(f) award cost to the applicant.

9. INTERIM RELIEF:

That pending disposal of this application the respondents may be directed not to provide any appointment to the post of Stenographer Grade III in the office of respondent no.3 in pursuance of the impugned advertisement issued by the respondent no.3 published in Employment News in the month of March 2007.

10. NOT APPLICATION IN PETITIONER'S CASE:

11. PARTICULARS OF POSTAL ORDER IN RESPECT OF APPLICATION FEE:

Indian Postal Order No. 375, 071473 for Rs. 50/- dated 26-3-08 issued by the ^{Post office} High Court Clerk, payable to the Registrar Central Administrative Tribunal Allahabad.

12. LIST OF ENCLOSURES:

- (i) Copy of the proforma of the application.
- (ii) Copy of the application dated 21.3.07.
- (iii) Copy of the Marksheet of High School of the petitioner.
- (iv). Copy of the Certificate of the High School of the petitioner.
- (v) Copy of the Marksheet of Intermediate of the

Final order
Ad.

23.02.2008

petitioner.

(vi) Copy of the Marksheet of B.A.IIIrd year Examination of the petitioner.

(vii). Copy of the certificate issued by the Typing institute.

(viii) Copy of the Marksheet given by Director Mishra Institute of Technology.

(ix) Copy of the Certificate and C Certificate of the petitioner.

(x) Copy of the experience certificate of Computer Operator from Bhushan Steel and Stript Ltd. Company.

(xi) Copy of the letter dated 17 October, 2007 issued by the respondent.

(xii) Photocopy of the order dated 7.1.08.

(Xiii) Photocopy of the representation dated 22.1.08 made by the petitioner.

(xiv) Copy of the order dated 4.3.08 passed by respondent no.2.

V E R I F I C T I O N .

I, Sudhir Kumar Mishra aged about 29 years, son of Sri Anil Kumar Mishra Resident of Village Lakhanpur,

for Special AD Post Office Sadar, District Jaunpur do hereby verify that

23/12 2012

-14-

the contents of paragraphs. 4 (xi) to 4 (xviii), 4 (xix) to 4 (xxv) 5 (a),
 6, 7, 8, 9, 10 — are true to my personal knowledge and those
 of contents of paragraphs. 1, 4 (a) to 4 (xi), 4 (xix), 4 (xx), 11, 12 —
 are based on perusal of records and those of contents of
 paragraphs. 2, 3, 5 (b) — of the
 application are based on legal advice and that I have not
 suppressed any material fact.

Dated: 26.3.08
 Place: Allahabad.

[Handwritten Signature]
 Signature of the Applicant.

[Handwritten Signature]
 (P.N.Tripathi)

Advocate,
 Counsel for the Applicant.