

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

2/0

ORIGINAL APPLICATION NO. 259/2004

Date of decision: 30.8.2005

Shri Amit Tripathi

...Applicant

**Rep. By Mr. J K Mishra & Mr.B Khan : Counsel for
applicant.**

VERSUS

U.O.I. & Ors

...Respondents.

Mr. Vinit Mathur

Advocate for Respondents No. 1 to 3

Mr. R.K. Soni : Advocate for respondent No. 4

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Hon'ble Mr G.R.Patwardhan, Administrative Member.



1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

(Signature)
(G.R.Patwardhan)

Administrative Member.

(Signature)
(J K Kaushik)

Judicial Member.

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 259/2004

Date of decision: 30th August 2005

Present:

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. G R Patwardhan, Administrative Member.

Amit Tripathi, S/o Shri Shiv Ratan Tripathi, aged about 37 years,
resident of 4th A Road, Sardarpura, Jodhpur (Rajasthan)

; Applicant.

Rep. By Mr. J K Mishra & Mr. B Khan: Counsel for the applicant.

VERSUS

1. Union of India through Secretary to Government of India,
Ministry of defence, Raksha Bhawan, New Delhi.
2. The Air Officer Commanding, Air Force Station, Jodhpur
(Rajasthan)
3. The Board Officer, Selection Board- through its Presiding Officer,
Sqn Ldr. M. Mujeeb Unit Run Canteen, Air Force station,
Jodhpur (Rajasthan)
4. Mr. Raghunath Ram Gora, Accountant, Unit Run Canteen Air
Force Station, Jodhpur (Rajasthan).

: Respondents.

Rep. By Mr. Vinit Mathur and Mr Godara; Counsel for respondents
1 to 3.

Mr. R.K. Soni : Counsel for respondent no. 4

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Amit Tripathi, has filed this O.A under Sec. 19 of the
Administrative Tribunals Act, 1985, wherein the following reliefs
have been sought:

" (i) That the complete selection proceedings (sic processure) held in
pursuance of notification dated 25.04.2004 published in "Dainik Bhaskar"
a daily news paper for the post of Accountant may be declared illegal and
same may be quashed.

(ii) that selection/appointment of respondent No. 4 may also be declared
illegal and the same may be quashed. Further a fair selection may be
ordered to be conducted.

(iii) That alternatively the record of selection proceedings (sic
processure) may be called for and if applicant may be directed to be
appointed if found suitable with all consequential benefits."

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2. We have heard the elaborate arguments advanced on behalf of the contesting parties and considered the submissions, pleadings and the records of this case. Certain records relating to the selection/appointment in question have been made available by the official respondents for our perusal.

3. The factual matrix of this case delineates that the applicant possessed the qualification of B.Com. and passed Post graduate diploma in Cost & Work Accountancy. He has also got 16 years experience as Accountant. There was an advertisement published in the daily news paper Dainik Bhaskar on 25.04.2004, whereby applications were invited for the post of Accountant under the respondents' (canteen) at Air Force Station Jodhpur. The applicant being fully eligible and qualified submitted his application to the competent authority. He was called for the interview held on 02.06.2004. He appeared before the Board of Officers in the interview along with requisite original certificates. His name and his father's name were asked and he was told that he was highly qualified and experienced person and he would receive appointment letter very soon. But he did not receive any communication and in the first week of September 2004 he came to know that respondent No. 4 has been selected and appointed on the post of Accountant on 11.06.2004. The official respondents did not publish any select list. Respondent No.4 possessed qualification of only secondary (sic higher Secondary) having no experience in accountancy. He further gathered information that the interview was a mere formality and the selection of respondent no. 4 was pre-determined. The Original Application has been filed on



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numerous grounds mentioned in para 5 and its sub paras. He also prayed for calling the records pertaining to the selection proceedings, which incidentally were submitted/produced by the respondents.

4. The official respondents as well as the private respondent No. 4 have contested the case and have filed their separate counter-replies to the O.A. The official respondents in their reply have mentioned that the applicant has not appeared before the Board on the date of interview. It has been averred that when the applicant came to know about the emoluments and that the person to be selected as Accountant in the Unit Run Canteen (for brevity URC) would have to correspond in English, he expressed his reluctance to appear before the interview Board due to lack of confidence over English language, and that he had been drawing Rs. 9500/- p.m. from his present organisation and he had requested the Presiding Officer to permit him to leave the interview hall. The Presiding Officer accepted his request and an annotation "permitted to leave" was made in his call letter. Therefore, there was no scope selecting him by the Board of Officers for the post of Accountant. The respondent no. 4 was duly selected and appointed on the post of Accountant as having been found most suitable. Since the respondent no. 4 had 20 years experience in accounts while serving in Indian Air Force, it was not fair on the part of applicant to contend that he should be recommended by the Board of Officers. It has been next averred that there were 58 candidates who submitted their applications for the single post of Accountant and out of them



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only 18 candidates were issued call letters. Out of these 18 candidates only 9 appeared for the interview and as the applicant had not participated in the selection process, he had no right to challenge the selection proceedings.

5. In the reply of respondent no. 4 certain preliminary objections were raised. It has been averred that the applicant has not pleaded in specific terms of any alleged irregularity in the selection proceedings. The applicant is guilty of making wilful and deliberate false statement and there is a presumption in law that the official act of selection process by the official respondents has been performed in a regular and correct manner and in accordance with the procedure. The applicant was getting a salary of Rs. 9500/- p.m. and the salary for the post of Accountant is only Rs. 4500/- and of his own will he took a decision not to participate in the interview. His name also does not find a place in the list of candidates who have appeared in the interview. Two affidavits at Annex. R.4/1 and R.4/2 have been filed in support of these averments. These affidavits have been sworn by the individuals (i) by Sgt. S.P. Yadav and the (ii) by JWO. S.K. Srivastava, supervisor/Manager URC 32 wherein they have averred the discussions with them by the applicant/private respondent. It has been averred that Respondent No. 4 was promoted to the rank of Sgt. in the trade of Clerk Equipment Accounts after having passed necessary examination (Education and Professional) which is to be treated as equivalent to graduation as per Annex. R-4/5. It cannot be therefore said that respondent no. 4 is not qualified for the post in question and a



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misstatement of fact has been made in this regard by the applicant. The applicant has not disclosed from where he gathered the information of pre-determination of appointment of R.4 as Accountant and it might be from his personal knowledge. There are certain repetition of facts and the grounds raised in the O.A have generally been denied.

6. The learned counsel for the contesting parties have reiterated the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has submitted that as far as the question of pre-determination of mind to give appointment to the respondent No. 4 is concerned the same would be evident from the relevant records and the selection proceedings. He has laid great emphasis on the annotation made on his call letter "permitted to leave". He asserted that the applicant had very much appeared in the interview and the said annotation was made only after the interview was over. It has been contended that the respondent No. 4 does not possess even the requisite qualification as mentioned in the advertisement in as much as the respondent no. 4 has no commerce back ground but still he has been selected.



7. On the other hand the learned counsel for the official respondents has submitted that the selection proceedings itself would go to show that the respondents have followed the due procedure and the private respondent no. 4 has been appointed well in accordance with the rules. He has also contended that that the applicant should thank himself for not attending the interview on his own volition and such a person could have no

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right to challenge the selection. When a query was made to him as to whether there is any recruitment rule or instructions for recruitment to the post of Accountant in URC and as to whether there is any qualification and minimum/ maximum age prescribed for the same, the learned counsel for the official respondents made available to us a copy of the rules and regulations, terms and conditions for the employees of URCs paid out of non-public fund. However, it was pointed out that in a case of **Dharma Nand V. Union of India 2004 SCC (L&S) 1034**, the so called Rules and Regulations have been held to be of no consequence since they have been prepared as if the canteen employees are not Government servants. On this point the learned counsel for the respondents submitted that some review has been filed in that case but no details were forthcoming. However, he could not point out on any specific rule prescribing recruitment qualifications for the post of accountant.



8. From the side of respondent No. 4 the matter was argued very elaborately. The complete pleadings from the reply of respondent no. 4 were read out in the court. Great emphasis was laid that a person against whom mala fide has been alleged should have been impleaded as a party respondent but that has not been done by the applicant in this case. It was contended that the applicant has not appeared in the selection and for that purpose two affidavits have been filed. He has also submitted that as per Annex. R-4/5, respondent no. 4 possessed the qualification of graduation and for satisfying the clause of commerce back ground, the respondent No. 4 has passed

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matriculation examination with commerce as one of the subjects. He has next contended that Respondent No. 4 has vast experience in as much as he has served in the Indian Air Force for 20 long years. He was found most suitable person for the post in question and he has been rightly selected and appointed. He has elaborately discussed his case and emphasised that the applicant did not appear in the interview. Certain judgements have been quoted in regard to the mala fide, fraud and misuse of power, presumption of official acts and judicial review in respect of selection committee and challenge of selection proceedings by the candidates, who appeared in the interview. These judgements we shall deal a little later. There were lot of repetitions of facts and grounds.



9. We have considered the rival submissions put forth on behalf of all the contesting parties. As far as the factual aspect of the matter is concerned, there is dispute over the fact as to whether the applicant had appeared before the interview board for the selection or not. From the records and pleadings of the parties, it is a fact that the applicant presented himself for the interview. He has definitely visited the Presiding Officer, but his name does not find place in Annex. R/1, which is the list of candidates arrived for the interview. The applicant has admittedly arrived for the interview. He was one of the candidates who had definitely arrived for the interview, therefore it is not clear as to how and why his name has not been included in the said list. We would make it clear that there is a distinction between the candidates who arrived for the the interview and the candidates actually interviewed. We

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find from the records that it is the list of candidates who arrived for the interview and there is no list of candidates who had been actually interviewed. It would have been indicated against the names of candidates as to whether one has undertaken the interview or withdrawn from the interview of left or went back etc. But such course of action has not been adopted. We are also not impressed with the defence of the official respondents that the applicant changed his mind only after knowing that the pay scale which he would be getting on appointment as Accountant is much less than what he is drawing in the private sector. The applicant is an educated person and fully knows the contents of the very advertisement, where the pay scale of the post in question has been clearly mentioned and knowing fully well the various comparative factors he might have applied and even attended the interview. We fail to understand as to how drawing higher pay in a private sector could be compared with government service in as much as there is no job security in the private sector but the same is fully available to the Government servant. The theory of fixed pay is also falsified from the facts that even certain bonus has been paid to the URC employees including the accountant. The advertisement does not make such mention. It appears perplexing that one who did not appear in the interview should choose to file a case before a court of law.



10. Now, coming to the specific affidavits filed by the respondent No. 4, firstly we are little surprised as to the necessity for respondent No. 4 to obtain and produce such affidavits. The official respondents' pleadings and their records

would explain the position. Moreover, those affidavits are in the nature of hearsay evidence. Sgt. Yadav, who has given the affidavit R-4/1 seems to be a chance witness and may be knowing respondent No. 4 and JWO S.K. Srivastava, who had given the affidavit R-4/2 is the person under whom the respondent No. 4 had been already deployed on contract basis. The later is the version of the very respondent no. 4. We have, otherwise also, certain reservations on the presence of JWO S.K. Srivastava, who has been employed as the Manager/supervisor of the URC and our comment on this would find a place in the later part of this order. It is perhaps the lie which needs the support and truth can stand itself. In this view of the matter we find these affidavits are not relevant. It is therefore difficult to disbelieve the version of the applicant that he appeared and undertook the interview on the scheduled date.



11. Before proceeding further we may ascertain the status of the employees in URCs, who have been held to be government servants in unequivocal terms as per the verdict of the Apex Court in the case of **Union of India and ors. vs. Md. Aslam and others** [2001SCC (L&S) 302]. In that case, their Lordships were pleased to direct the respondents to frame the rules for regulating the services of the employees who are employed in the URCs. The departmental authorities did frame certain rules and regulations but the same have been held to be as of no consequence because these were found to have been framed as if the employees were not government servants. This observation was made by the Apex Court in the case of

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Dharma Nand V. Union of India 2004 SCC (L&S) 1034.

Incidentally, we have not been shown any rules or regulations and therefore, it can be presumed that there are no rules and regulations for regulating the terms and conditions of service in respect of employees of URCs.

12. From the perusal of the official records produced before us, we do not find that the competent authority has issued any instruction prescribing the qualifications for the post of Accountant. It is not clear as to from where the qualifications mentioned in the advertisement were taken. For example, the advertisement did not contain any minimum/ maximum age and the words in the advertisement are quite vague i.e. candidates with commerce background and having two or three years experience. The words 'commerce background' have not been explained.

13. Existence of statutory Rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Art. 162, the State can create civil posts and fill them up according to executive instructions consistent with Arts. 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law. (AIR 1994 SC 1808 **J. and K. Public Service Commission, etc., v. Dr.**

Narinder Mohan and others etc. etc. refers.). In the present



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case, neither there exists any recruitment rule nor any instructions have been issued by the appointing authority. We fail to undersatnd as to how the qualifications and other requirements have been put in the advertisement that too without indicating any maximum age for filling up a govrnment post.

14. The post has been advertised in the news paper and the vacancy has not been notified to the employment exchange. The same in not in consonance with the instructions issued by the Government of India vide OM No. 14024/2/96-Estt. D dated 18.05.98 and therefore, cannot be sustained in law, on this count alone. The relevant extracts of the same are as under:



"2. The scheme of employment exchange procedure came under the judicial scrutiny of the Supreme Court in the matter of Excise Superintendent, Malkapatnam Krishna District, Andhra Pradesh vs. K B N Vishweshwara Rao and others. [1996 (6) Scale 676] The Supreme Court inter-alia directed as follows:

" It should be mandatory for the requisitioning authority / establishment to intimate the employment exchange and employment exchange should sponsor the names of the candidates to the requisitioning Department for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and then consider cases of all the candidates who have applied"

3. Accordingly, it is clarified that in addition to notifying the vacancies for the relevant categories(excluding those filled through the Union Public Service Commission/ the Staff Selection Commission) to the Employment Exchange, the requisitioning authority/establishment may keeping in view administrative/budgetary convenience , arrange for the publication of the recruitment notice for such categories in the "Employment News" published by the publications Division of the Ministry of Information and Broadcasting, Government of India and then consider the cases of all the candidates who have applied. In addition to the above, such recruitment notices should be displayed on the office notice boards also for wider publicity."

15. Now, turning to the very vital factor involved in this case, is regarding the constitution of the Board. We have noticed from the records of selection proceedings that the competent

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authority has approved the suggestion, wherein it was recommended that the departmental committee comprises of Dy C. Admn, Officer i/c of canteen and one independent officer to be formed for recruitment to the post of Accountant after the advertisement was approved on 07.04.2004. But said approval was given a go by and the selection board was constituted consisting of Presiding Officer one Sqn Ldr. TBD/CO/ ATS/Sqn. Member-Fg Offr. N. Subramanian-27804 /T Accts. And another Member- 298200-H. B D Biswas, Cl. Accounts. This is done by Officer i/c Canteen who was supposed to be one of the member on the selection Board. This is clear from the copy of SRO placed in file. On the other hand as per Form IAF 28, the actual board consisted of the following Officers: Sqn. Ldr. M. Muzeeb 19228 H Adm. Presiding Officer, Member Fg. Offr. B. Nitya 27804 -T Accts, Warrant Officer. B.D. Biswas 298200-H Clerk Accts. (even different from the one as Per SRO). The very Selection Board has not been constituted as per the orders of the competent authority and in this view of the matter, the selection cannot be said to be in order. The fate of recommendations of such selection board is axiomatic and shall have to be treated as a nullity.



16. We also find that a total of 58 candidates have applied and only 18 candidates have been called for the selection. It is not clear as to what criteria has been adopted for short listing the candidates. We find that the persons who have not been called are quite highly educated and have requisite experience. We are of the view that the short listing had not been done correctly. Even the second Member B Nitya has not signed the

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proceedings at page 3 p.8 of P 28 and signature of another member seems to be different on the various lists prepared by the Board than the one the appearing on P 28. The findings of the board indicate that none of the 8 candidates were found acceptable because they had studied in Hindi Medium and they were neither able to speak nor correspond in English language and the private respondent no. 4 was found suitable. It is strange that this was not the requirement in the advertisement. If this was the criteria the same should have been disclosed before hand. There is nothing in the records to suggest that any criterion was laid by the Board also. No details of any marking or other method of grading adopted by the members of the Board have been disclosed. We may incidentally mention that respondent No. 4 who held to be expert in speaking and corresponding in English language, had passed matriculation examination where he took English as one of the compulsory subjects; failed in the paper and was passed with grace marks.



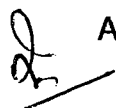
17. Now regarding the eligibility of respondent No. 4. Respondent no. 4 mentioned his qualification as Graduation [Sgt-Education] and in support of this he produced R-4/5, wherein it has been provided that an ex-service man who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to any reserved vacancy in group (C) post for which the essential qualification is graduation and where experience of technical and professional nature is not essential. Admittedly, the post in question was not reserved for ex-servicemen and the essential

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qualification is also not graduation and therefore it is not understood how respondent No. 4 claimed himself to be a graduate and the authorities have accepted the same without any demur or applying their mind. The applicant is only a matriculate and even if he had one optional subject as Commerce, that would hardly enable him to be called as a person having commerce back ground. In military organisations no commercial activities are carried out and it is difficult to believe as to how respondent No. 4 could be stated to have fulfilled the condition of having commerce back ground and his having 20 years of experience in commerce and accounts is therefore nothing but farce. The decisions cited on behalf of respondents No. 4, are distinguishable on facts and have no application to the facts of instant case.



18. Now we advert to the contention of the applicant that the official respondents were pre-determined to appoint private respondent No.4 only and rest all were formalities. From a perusal of the records, it is seen that respondent No. 4 was engaged as Accountant on contract basis with effect from 01.02.2002 on a fixed pay of Rs. 3200/- per month. A step was taken as per N. 34, for increasing the contractual payment to him to Rs. 4500/- p.m. The same was turned down by concerned authority specifically mentioning that there was no provision for contractual service for accounting duties and as such a suitable candidate may be appointed. Thereafter, as per note 35, it was recommended by the officer in charge that respondent No. 4 should only be appointed to the post of Accountant. It is also indicated that bringing in a new person



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at this stage would totally hamper the accounts service of this URC. It is quite strange that despite there being no authority, the respondent No. 4 was engaged on contract basis and even continued after this being pointed out. The selection Board was constituted in contravention to the orders of higher authority and that too by officers of lower ranks than that of officer I/C canteen who wanted to appoint only the fourth respondent and the final result is before us. A coherent analysis of the various events and a conjoint reading of the same makes it evident that there is substance in the submission of the learned counsel for the applicant that the official respondents were pre-determined to appoint respondent no. 4. We also observed that during arguments the learned counsel for the respondent No. 4 was arguing in a way as if he was representing the very selection board and the respondent No. 4 had an access to functioning of the Board of officers.



19. We may also point out that selecting an ineligible person gives rise to multiple complications and in this regard we would refer to verdict of apex court in case of **District Collector & Chairman, V S R S S V. M Tripura Sundri Devi** 1990 SCC (L&S) 520 When as advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualification mentioned in the advertisement. It amounts to fraud on public to appoint person

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with inferior qualification in such circumstances unless it is clearly stated that the qualifications are variable. The selection of the respondent No. 4 can by no stretch of imagination be said to be in order.

20. Before parting with this case, we would like to point out that it has come to our notice as indicated above that the service personnel are being employed as manager/supervisor in URCs. Such practice is against the very Air Force Order No. 204 dated 2.7.1977 as was pointed out in case of **Rajendra Jaggarwal and Ors Vs. Union of India and Ors** 1996(1) ATJ CAT 376 in para 14, by this very bench of the Tribunal. The official respondents would do well to take judicial notice of the same and act so as to adhere to the rule of law. The competent authority may also resort to framing the recruitment rules for the post in question or at least issue specific instructions so as to have requisite transparency as well as ensure fair play.



21. The upshot of the aforesaid discussion leads us to an inescapable conclusion that there is ample force in this Original Application and the same stands allowed accordingly. The complete selection proceedings including the appointment thereof of the respondent No. 4 to the post of Accountant are hereby held as illegal and quashed. Costs made easy.

(G R Patwardhan)
Administrative Member

(J K Kaushik)
Judicial Member

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