

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 18/2011 with MA 22/2011

Reserved on : 20.03.2015

Jodhpur, this the 1 day of April, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Jitendra Singh S/o Shri Pratap Singh, aged about 49 years, resident of H. No. 11, New Colony, Satyanagar, Jhotwara, Jaipur, at present employed on the post of Hindi Officer, DRM Office, Jaipur Division Jaipur, North Western Raiway.

.....Applicants

By Advocate: Mr. J.K. Mishra.

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager (P) (CPO), Northern Railway, Baroda House, New Delhi.

.....Respondents

By Advocate : Mr Kamal Dave.

ORDER

Per Justice K.C. Joshi

The present Original Application has been preferred by Shri Jitendra Singh (applicant) challenging the order Annex. A/1 dated 17.10.2008 by which it is informed that Hon'ble High Court did not direct to empanel him and order Annex. A/2 dated 07.01.2009

take him on the panel of Hindi Superintendent in place of Shri Harish Chandra Srivastava has been rejected.

2. The necessary facts to adjudicate the matter are that the applicant was appointed to the post of Rajbhasha Sahayak Grade II on 07.07.1989 in Western Railway through RRB, Ajmer and was subsequently transferred to Northern Railway and promoted to the post of Rajbhasha Sahayak Grade I in March 1995, to the post of Hindi Superintendent in the year 2003 and he is presently holding the post of Hindi Officer in DRM Office, NWR at Jaipur.

A selection was organized by the respondent No. 2 for empanelling 9 candidates for the post of Hindi Superintendent in the grade of Rs 2000-3200 vide notification dated 20.03.1996 and the applicant was placed at S.No. 12 in the list (Annex. A/3) and 18 candidates including the applicant were qualified in written test and appeared in viva voce vide letter dated 20.05.1996 (Annex. A/4). A select panel of 7 candidates was promulgated vide letter dated 13.11.1996 and subsequently the respondents issued order for holding second supplementary written test in respect of one Shri Harish Chandra Srivastava. The last candidate selected, against unreserved posts, was Shri Ram Dular Pal at S.No. 6 of the panel and the applicant was immediate senior to be considered next. Thus by empanelling Shri Srivastava who was senior to the

..... of the applicant were weak, therefore, the

was dismissed by this Tribunal vide order dated 18.11.1998 (Annex. A/5). During the pendency of the aforesaid OA, Shri Srivastava was empanelled vide letter dated 14.05.1998 and his name was inserted at S.No. 1 of the selection panel dated 13.11.1996 (Annex. A/6) and therefore, 8 candidates were placed in the select panel including one against ST reserved category under relaxed standard and all of them were also promoted. One post of ST category remained vacant against two points reserved for ST category candidates. The applicant preferred D.B.C.W.P. No. 782/1999 in which respondents were directed to produce the relevant records but the same were not produced before the Hon'ble High Court and consequently the High Court set aside the order passed by the Tribunal in OA No. 12/97 and the second supplementary test conducted for Shri Harish Chandra Srivastava was quashed with all consequence. The applicant submitted representation dated 14.11.2008 (Annex. A/8) to the respondents that his name ought to have been empanelled as consequence of deletion of name of Shri Harish Chandra Srivastava from the list but the respondent informed that the applicant did not qualify in viva voce vide letter dated 07.01.2009 (Annex. A/2), therefore, his claim is baseless. The applicant has inter alia averred that he strived hard to get the information regarding the marks obtained by him in the viva voce test in Hindi Superintendent selection process vide

under RTI Act, was forwarded to concerned officer vide letter dated 15.10.2009 (Annex. A/9) but he had to prefer an appeal since the requisite information was not made available to him and the appeal came to be decided vide order dated 15.02.2010 with a direction to the concerned authority to furnish information within ten days (Annex. A/10) but the matter is still kept pending on the pretext that relevant file was with their learned counsel Shri Ravi Bhansali. The applicant further averred that had the file/records been with their counsel, the same would have been produced before the Hon'ble High Court and if the record is with the counsel who appeared on behalf of respondents in High Court then how could respondents able to inform that the applicant did not qualify *viva voce* test and at least while handing over original official records to the counsels invariably the certified copy of such record is kept in the office. Thus, the applicant has averred that the respondents have been deliberately concealing the records on one pretext or the other just to deprive the applicant from his legitimate dues and being compelled to enter into repeated litigations as well, therefore, the applicant has filed present OA under Section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That impugned order dated 17.10.02008 (Annex. A/1) and 07.01.2009 (Annex. A/2), passed by the 2nd respondent, to the extent of denying his due

against the vacancy caused due to cancellation of candidature of Shri Srivastava), may be declared illegal and the same may be quashed. The respondents may be directed to promote the applicant to above the post of Hindi Superintendent on the basis of adverse inference drawn by the Hon'ble High Court in favour of the applicant from due date and allow all consequential benefits including pay fixation, seniority etc., and the payment of arrears of difference of pay along with interest at market rate.

- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application be awarded.

3. The applicant filed MA No. 22/2011 for condonation of delay under Section 21 of Administrative Tribunals Act, 1985. The applicant has averred in MA that initial cause of action arose to the applicant on 17.10.2008 (Annex. A/1) and his representation came to be rejected on 07.01.2009 (Annex. A/2) and there is delay of one year and two weeks as the OA has been filed in the 3rd week of January, 2011. The applicant has averred that he has remained in doldrums regarding his result of viva voce test and he was striving hard to get the requisite information regarding the same but the respondents have not so far furnished the required details despite lot of correspondence as averred in the OA itself on the ground that relevant file being with their counsel. Therefore, there is no

has been diligently pursuing his case and has been quite vigilant.

Thus, he has prayed to condone the delay in filing the OA.

4. The respondents have filed reply to the MA No. 22/2011 and have averred that the first panel for selection to the post of Hindi Superintendent Grade 200-3200 was declared on 13.11.1996 empanelling 6 Unreserved and 1 ST candidate and one post remained unfilled for Unreserved and ST. If the applicant felt that he qualified the viva voce he ought to have raised his grievance when the panel was declared on 13.11.1996 or in the OA No. 12/97 but he failed to raise the same and question of passing viva voce has no relevancy with the second supplementary test conducted exclusively for on Shri Harish Chand Srivastava. Thus, the respondents have prayed that MA as well as OA may be dismissed.

5. The respondents have filed reply and while replying to para No. 2 of the OA with regard to jurisdiction, have stated that the applicant has no jurisdiction to approach the Jodhpur Bench of Central Administrative Tribunal as the question of jurisdiction is to be decided keeping in view the provisions under the Central Administrative Tribunal Act 1985 which does not provide for filing of the application by serving employee at a place other than the place of present posting. The respondents in their reply have raised preliminary objections that the OA filed by the applicant is ~~handicapped~~ time barred and it is preferred in misuse of judicial

applicant's placement in the panel and the applicant never felt aggrieved of first panel dated 13.11.1996 wherein he was not included. Further, the name included as result of second supplementary test stand quashed and no benefit can be derived by the applicant out of quashing of promotion of Shri Harish Chand Srivastava. While replying to the facts of the case as averred by the applicant, the respondents have inter-alia stated that the present controversy raised by the applicant relates to process of selection initiated by the Head Quarters Office Baroda House to fill 9 vacancies (7 UR and 2 ST) of Hindi Superintendent Grade 2000-3200. In the process of selection written test and supplementary written test was conducted on 20.04.1996 and 20.06.1996 followed by viva voce on 20.07.1996. The applicant was found qualified in the written test amongst 18 candidates and hence he was called to appear for interview held on 02.07.1996 and 7 candidates were empanelled as outcome of interview vide notice dated 13.11.1996 (Annex. A/6). The applicant preferred OA 12/97 assailing the second supplementary written test conducted for which one Shri Harish Chand Srivastava was permitted being the senior most and failed to appear with the approval of competent authority i.e. Chief Personnel Officer. Shri Harish Chand Srivastava qualified the selection and was placed on the panel vide order dated 14.05.1998 for Hindi Superintendent Grade 2000-3200 in the earlier panel

for scrutiny of the judgment by approaching the Hon'ble High Court in writ petition No. 782/99 and the Hon'ble High Court vide its judgment dated 25.02.2008 (Annex. A/7) quashed the second supplementary test conducted for Shri Harish Chandra Srivastava the private respondent. Consequent to the judgment of Hon'ble High Court Shri Harish Chandra Srivastava was de-panelled and reverted to his original post of Hindi Assistant w.e.f. 02.06.1998 vide notice dated 17.10.2008 (Annex. A/1). The applicant represented seeking consideration of his candidature for empanelment against vacancy caused as a result of reversion of Shri Harish Chandra Srivastava and the applicant was suitably replied vide communication dated 07.01.2009 that he was never placed on panel and also that other three senior candidates i.e. Md. Ushman, Smt. Divita Srivastava and Shri Jagdish Chandra were amongst the written qualified candidates who had also not been placed on panel. The applicant who failed even to be placed in the panel for Hindi Superintendent Grade 2000-3200 cannot derive any benefit arising out of reversion in compliance of judgment of Hon'ble High Court. The respondents have also averred that the observation of Hon'ble Tribunal as well as Hon'ble High Court are admittedly relevant as far as Shri Harish Chandra Srivastava is concerned who was reverted being de-panelled but these cannot have any effect of empanelment of the applicant who failed even to

averred in the reply that the original proceeding file was sent to representing Railway Advocate in High Court for its perusal by the Hon'ble High Court but the respondents have not received back the same from their advocate. Therefore, in view of these circumstances the record is not available now. Thus, respondents have prayed to dismiss the OA with exemplary costs.

6. By way of rejoinder the applicant reiterated the facts as averred in the OA.

7. Heard both the parties. Counsel for respondents contended that before hearing the matter on merit preliminary objections regarding maintainability of the OA for want of jurisdiction by CAT Jodhpur Bench may be addressed. In support of his arguments, counsel for respondents referred to order passed by Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 23391/2010 arising out of judgment dated 02.08.2010 in DBCWP No. 6701/2010 passed by Hon'ble Supreme Court which is as under :

“Accordingly, having heard learned counsel for the parties, we set aside the interim order and direct the High Court to consider the question of maintainability of the writ petition alongwith the writ application, on 14th September, 2010, when the matter is said to be listed for final disposal.”

In this context, counsel for respondents has argued that Annex A/1 dated 17.10.2008, information sought under RTI Act by

Hon'ble High Court did not direct to empanel the applicant for Hindi Superintendent in the Grade of Rs 2000-3200 and Annex. A/2 dated 07.01.2009 by which the claim of the applicant was rejected, has been challenged by the applicant in this OA and this communication was also issued by the Head Quarter Office, New Delhi. Further, the applicant himself was posted in Jaipur office at the time of filing of the OA and he is still there which is evident from his address mentioned in the Original Application. Therefore, CAT Jodhpur Bench does not have any jurisdiction to hear this matter.

8. Per contra, counsel for applicant contended that the applicant earlier challenged the illegal selection of Shri Harish Chandra Srivastava in OA No. 12/97 before this Bench and the same was dismissed. The applicant preferred writ petition No. 782/99 before Hon'ble High Court at Jodhpur and the Hon'ble High Court vide its judgment dated 25.02.2008 (Annex. A/7) allowed the writ petition filed by the applicant and set aside the order dated 18.11.1998 passed by this Tribunal in OA No. 12/97. Consequently, the second supplementary test conducted for the private respondent (Shri Harish Chandra Srivastava) was quashed, with all consequence, therefore, the applicant has sought relief of promotion to the post of Hindi Superintendent vice Shri Srivastava as consequence of quashing of supplementary test. The aforesaid

emanate from the same, have not been granted to the applicant, therefore, the subject matter of present OA is an off-shoot of earlier litigation entered into by the applicant. Thus, substantial cause of action has arisen within the jurisdiction of this Hon'ble Tribunal and this Bench of the Hon'ble Tribunal has jurisdiction to entertain this OA.

9. Per contra, counsel for respondents further contended that the applicant has no jurisdiction to approach the Jodhpur Bench of Central Administrative Tribunal as the question of jurisdiction is to be decided keeping in view the provisions under the Central Administrative Tribunal Act 1985 which does not provide for filing of the application by serving employee at a place other than the place of present posting. He further argued that neither the orders Annex. A/1 to Annex. A/2 annexed and challenged by the applicant have been issued by any office which falls under the jurisdiction of CAT Jodhpur Bench nor the applicant has been posted at Jodhpur at the time of filing the OA. He referred to the observation of this Tribunal as well as the Honble High Court and contended that Shri Harish Chandra Srivastava was reverted and de-panelled but this cannot have any effect of empanelment of the applicant who did not qualify viva voce and more so when the incumbents who are senior to him and qualified written examination were available. Therefore, this OA is arising out of

respondent-department and it is not an off-shoot of aforesaid litigation. Therefore, OA filed by the applicant miserably lacks jurisdiction of the Bench and is not maintainable for want of jurisdiction and jurisdiction should be decided prior to hearing further arguments on the point of limitation and merit. Thus, counsel for respondents vehemently argued on the maintainability of the OA for want of jurisdiction.

10. We have heard arguments advanced by both the counsel and also perused the record. We have perused the Central Administrative Tribunal (Procedure) Rules, 1987 which is as under :

“6. Place of filing application – (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction:-

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

We have also perused the judgments passed by this Tribunal in OA No. 12/97 (Annex. A/5) and Hon'ble High Court in Writ Petition No. 782/99 (Annex. A/7). In our considered view, CAT Jodhpur Bench lacks jurisdiction to entertain the original application of the applicant because applicant was neither posted in Jodhpur at the time of filing the OA and is not posted even now, nor in our considered view, any cause of action wholly or in part has arisen out of the judgment passed by the Hon'ble High Court (Annex. A/7). We find force in the contentions of counsel for respondents that the present OA is not an off-shoot of earlier litigation as fresh cause of action arose to the applicant when Annex. A/1 and A/2 challenged by the applicant seems to have been issued. Therefore, in our considered view, CAT Jodhpur Bench lacks jurisdiction to adjudicate the matter on merit and OA No. 18/2011 alongwith MA No. 22/2011 for condonation of delay, is dismissed as not maintainable for want of jurisdiction.

11. Accordingly, the Original Application alongwith MA filed by the applicant be returned back to him by the Registry after making appropriate endorsement for the same, as per rules.

[Signature]
[Meenakshi Hooja]
Administrative Member

[Signature]
[Justice K.C. Joshi]
Judicial Member

R/C Part B of MA
R/C 2.0/4/15

R/C
8/4/15