

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.428/2008

This the ^{12th} day of February, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P.Singh, Member (A)

Mithilesh Kumar Mall aged about 39 years son of Sri Bidhi Mall, resident of C-4/ Type II, Forensic Science Laboratory Colony, Mahanagar , Lucknow working as Senior Scientific Assistant in the Office of the Forensic Science Laboratory, U.P., Mahanagar, Lucknow

Applicant

By Advocate: Applicant in Person

Versus

1. Union of India through the Secretary for the Ministry of Mines, Central Secretariat, New Delhi.
2. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi through its Secretary.
3. Joint Secretary (R-II) and First Appellate Authority, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
4. Director General, Geological Survey of India, Ministry of Mines, Shastri Bhawan, new Delhi.

Opposite Parties

By advocate: Sri Pankaj Awasthi for Sri A.K.Chaturvedi

(Reserved on 24.1.2012)

ORDER (RESERVE)

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) for the appointment of the applicant on the post of Mineralogists Senior in Geological Survey of India, Ministry of Mines in the pay scale of Rs. 10,000-325-15,200/- (Group 'A' Gazetted) by quashing the order dated 17.8.2007, 5.10.2007 , 20.6.2008 and 26.9.2008 as contained in Annexures No.1,2,3 and 4 respectively compilation No.1.
 - ii) Summons of records of marks obtained by the schedule castes and backward class candidates.
2. In respect of aforesaid relief No.2, it may be mentioned that the marks obtained by the Schedule Caste and Backward Class candidates have been now brought on record and therefore, this relief has become in-fructuous.
 3. The case of the applicant is that he is working in Forensic Science Laboratory, U.P., Mahanagar, Lucknow on the post of Senior Scientific

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Assistant. An advertisement was made by the opposite parties in the employment news dated 14-20.1.2006 in Lucknow for the appointment on the post of Mineralogists Senior in Geological Survey of India, Ministry of Mines in the pay scale of Rs. 10,000-325-15,200/- (Group 'A' Gazetted) (Annexure - 5). There were 9 posts to be filled. Out of that, two posts were reserved for backward classes and one post was reserved for Schedule Caste candidate. The applicant being Kurmi (Mall), applied for the post as backward class candidate along with the caste certificate and thereupon he was issued admit card, calling for the interview on 25.6.2007. He appeared in the interview on the schedule date. But after that he could not know about the result of the interview. It is further pleaded that at the time of interview, he was called with Schedule caste candidates and therefore, became suspicious that his case as backward class candidate would not be considered. When he did not get any response from the opposite parties, he obtained information under the Right to Information Act which was to the effect that his case was not recommended for the said post. Then he sought marks obtained by him but the same were not furnished. He therefore, moved representation to the President of India from where it was marked to the Under Secretary, UPSC. Then vide order dated 20.6.2008, he was informed that his case was considered as the case of schedule caste candidate. He therefore made another complaint to the President of India. Thereafter, vide another letter dated 26.9.2008, he was informed that word 'Schedule caste' may be read as 'Backward' candidate. The contention of the applicant is that his case was considered wrongly as scheduled caste candidate and this act of UPSC is illegal, arbitrary and malafide. Further, contention is that refusal of to disclosure of marks obtained by the schedule caste candidates and backward class candidates was also illegal and malafide. Hence this O.A.

4. The claim of the applicant has been contested by the respondents 2 and 3 i.e. UPSC and its Joint Secretary, by filing a common counter reply. The pleadings have been admitted regarding advertisement for 9 posts on the relevant date showing reservation of one post in favour of schedule caste

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candidate and two posts in favour of backward class candidates. The remaining 6 posts were remained unreserved. In response to the advertisement, 70 applications were received. After scrutinizing all the applications, 29 candidates (5-SC, 8- OBC and 16- General) were short listed to be called for interview scheduled from 25.6.2007 to 27.6.2007. The applicant (Roll No.3 (OBC) was also short listed as he was meeting the criteria. The interview Board recommended 8 candidates (1- SC, 2-OBC and 5- General). But the applicant's name was not recommended. Recruitment for one general post became in-fructuous because no body was found fit. On 15.7.2007, the applicant sought certain information from UPSC who sent reply on 17.8.2007 stating that UPSC can not share the marks obtained by the candidates not selected. Similarly, the marks obtained by two selected candidates under OBC category were also refused to be furnished saying that disclosure of this information is exempted under Section 8(1)(e) and 8(1) (j) of RTI Act, 2005. Against that order, applicant made an appeal to the President of India with a copy to first Appellate Authority in the Commission on 1.9.2007, making allegation of mal- practices in the selection and requesting for a written examination which was refused by letter dated 20.6.2008 (Annexure R-5). It was however, clarified to the applicant vide letter dated 26.9.2008 (Annexure R-6) that word "schedule caste" candidate mentioned in the letter dated 20.6.2008 may be read as 'Backward class' candidate. In C.A. also, it has been further clarified that as per schedule of the interview, 12 candidates were to be called on the first date, i.e. on 25.6.2007. In the schedule caste category, only 5 candidates were short listed who were to be called for interview and as such along with 5 schedule caste category candidates, 7 Other backward class candidates with roll numbers in ascending order were also called for interview on the same date i.e. on 25.6.2007. The applicant having roll number 3 was one of them. He was called for interview as OBC candidate.

5. The applicant filed a Rejoinder Reply on 4.11.2009 denying the pleadings contained in the C.A. and reiterating his own pleadings. He also filed a Rejoinder Reply in reply to the C.A. filed by the respondents No. 1 and

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4 on 6.1.2010, repeating the same pleadings. Similarly, another Supple. Reply in reply to the C.A. filed by the UPSC was filed by the applicant on the same date i.e. on 6.1.2010.

6. An application for interim relief and for summoning some records, supported by an affidavit has also been filed in this case on 27.10.2007. Along with this affidavit, the marks obtained by all the 8 candidates as contained in Annexure -8 have also been brought on record. As against this, the respondents 2 and 3 also filed a written objection. Then again the applicant filed a reply against these objections enclosing therewith certain papers.

7. In furtherance of this Tribunal's order, the applicant has also filed written arguments in this case.

8. We have heard the learned counsel for the parties and perused the material on record thoroughly, including the written arguments submitted by the applicant.

9. In para 6 of the C.A., it has been averred that 29 candidates were short listed and out of them, 5 were schedule caste, 8 were OBC and 16 candidates belonging to general category. Interviews were scheduled to be held from 25.6.2007 to 27.6.2007. In para 15 of the C.A., it has been said that on 25.6.2007, 5 schedule caste and 7 OBC (out of 8) candidates were called for. The applicant submitted that thus there was a clear contradiction in both the averments and there is no explanation of one OBC candidate. He further submitted that seemingly he was that one missing OBC candidate. We regret in not accepting this argument because we do not find any discrepancy or contradiction in the pleadings contained in para 6 vis-à-vis para 15 of the CA. In para 6 of the CA. it has been pleaded that after scrutinizing all the 70 applications which were received, finally 29 candidates were short listed for interview which were to be held from 25th June 2007 to 27th June, 2007 (for three consecutive days). The break-up of these 29 candidates have also been indicated as 5- SC, 8-OBC and 16- General. This is one aspect of the matter. In para 15 of the C.A., the details of the total number and category of candidates who were called for interview which were fixed for 3 days have been given

saying that as per schedule of the interview, 12 candidates were required to be called on the first date i.e. on 15.6.2007. Since in the schedule caste category, only 5 candidates were short listed, therefore, 7 OBC candidates were also called on that date making a total of 12 and the applicant was one of them. Thus, we do not find any contradiction or ambiguity in the aforesaid pleadings. Therefore on that basis, no adverse inference can be drawn as desired by the applicant that there was a missing OBC candidate and it was he. In the same sequence, it may also be mentioned that initially the applicant sought the details of marks obtained by each selected candidates of all the three categories and also his own marks, which were not provided. On account of this, he also got suspicion and rushed to this Tribunal to file O.A. contending this point also in his pleadings. But mere suspicion, how strong it may be, cannot take place of a fact which is duly proved and established. As stated above, now the entire result showing the names of all the 8 selected candidates and marks obtained in their category has come on record, which is as under:-

Sl.No.	Roll No. & Community	Name	Marks obtained
1	18 (General)	Dr. Johny T. Abraham	60
2	50 (General)	Shri Joy Mukherjee	58
3	31 (S.C.)	Sri Bhupesh Tulshiram Borkar	55
4	02 (General)	Dr. (Mrs.) Sujata Chakroborty	55
5	57 (General)	Shri Vachaspati Srivastava	55
6	55 (General)	Mrs. Sushma Deovrat Marathe	52
7	52 (OBC)	Shri Abdullah Mohd. Asim Ansari,	50
8	28 (OBC)	Shri Vivek Daulataro Bhole	45

10. The recruitment result are also contained in Annexure 6 and 7 of one of the replies filed by the applicant on 30.11.2011. Its perusal shows that a note has also been appended just below the 8 selected candidate saying that none was found suitable for one unreserved post. That makes the entire thing crystal clear.

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11. It is also relevant to mention here that in reply to the query made by the applicant now an information has also been furnished by the UPSC to him (page 23 of the written arguments) that the applicant has secured only 25 marks in the interview held for the post in question on 25th June, 2007. The above final result chart shows that the lowest cut off in the aforesaid result was 45 marks obtained by candidate belonging to OBC shown at Sl. No. 8 and 55 marks obtained by S.C. candidate at Sl. No.3. On the other hand the applicant could secure only 25 marks i.e. about half the marks. Therefore, he did not stand even any remote chance from any angle under any category.

12. After performing the entire exercise, including interview, the final result was declared in accordance with the advertisement in question. There is no averment of the applicant to the effect that the interview and the follow up exercise was not conducted in accordance with the advertisement.

13. Moreover, the law is settled on the point that if a candidate has taken a chance to appear in an interview then having remained unsuccessful, he cannot turn round and challenge the method of selection as being illegal. He is estopped to question the correctness of the selection. This principle was laid down by Hon'ble Apex Court in the case of **Madan Lal & Ors. V. State of J&K & Ors. (1995 (3) SCC 486)**, which was followed in the case of **Raj Kumar & Others Versus Shakti Raj & Others reported in (1997) 9 SCC-527** and also in the oft quoted case of **Chandra Prakash Tiwari & Others Vs. Shakuntala Shukla & Others reported in 2002 (2) SCSLJ -140**. In the present case also the applicant having appeared in the interview, being remained unsuccessful, cannot be permitted to turn round and challenge the method of selection. He is estopped from questioning the correctness of the selection.

14. Besides both the relief's claimed by the applicant are not tenable otherwise also. As already mentioned in Page-2 of this judgment, relief no.2 has become infructuous because, the marks obtained by S.C. and B.O.C. have now been furnished by the UPSC, which have been brought on record. Now we come to relief no.1. Under this relief appointment of the applicant on the post in question has been sought by quashing orders dated 17.08.2007, 05.10.207,

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20.6.2008 and 26.09.2008. First of all the law is settled on this point also that even if the candidate gets selected he cannot claim posting /appointment as a matter of right. But in the case of the applicant he could secure about half the marks of the last candidate in all the categories who were selected as has been already mentioned hereinbefore. Out of the nine vacancies, eight persons have already been selected. They must be working on those posts. Neither their selection has been challenged nor they have been made as party in this case. The ninth vacancy belonging to the general category could not be filled because, no candidate was found suitable. The selection has been made in accordance with the advertisement in question. Therefore, the matter ends there. Now we come to all the four annexures i.e. Annexure No.1 to 4, have been claimed to be orders and have been sought to be quashed. But in fact, all these four annexures are the informations furnished under Right to Information Act either by the Central Public Information Officer or by the Appellate Authority. Under Right to Information Act a separate forum has been provided. Those matters cannot be brought to this Tribunal or to any other forum. Those information's which have been furnished under Right to Information Act cannot be construed as order as described under the Administrative Tribunal Act, 1985. The relevant provisions of Administrative Tribunal Act provide that if a person is aggrieved by any order then he can move to this Tribunal. But, the above information cannot be termed as order as described in the Administrative Tribunal Act. Otherwise also in all the four informations, which have been furnished, there is nothing wrong or against any law. The first letter as contained in Annexure-1 dated 17.08.2007 speaks about the acceptance of O.B.C. certificate furnished by the applicant and also an information that the applicant has not been recommended for the post. As regards furnishing of marks obtained by the candidate not selected and the marks and other information of the two selected candidates under OBC candidate, it has been informed that as per the policy invogue at that time the U.P.S.C. was not supposed to share such information and therefore, exemption was claimed under Section 8 (1) (e) and 8 (1) (j) of Right to Information Act, 2005. But, as

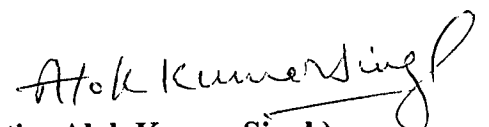
already said now this information have been furnished under Right to Information Act. An appeal was filed under Right to Information act, which, after consideration, was rejected vide order dated 05.10.2007 by the first Appellate Authority under Right to Information Act, as contained in (Annexure-2). Similarly, Annexure-3 dated 20.06.2008 is the information furnished by Under Secretary, U.P.S.C. saying that there is no possibility for holding written test (as desired by the applicant). Of course, in one of the paragraphs, it is mentioned that the applicant was called for interview as he fulfilled the short listed criterion adopted for S.C. candidate. But, this was duly corrected by another letter dated 26.09.2008 issued by Under Secretary, U.P.S.C. (Annexure-4) saying that word 'S.C. candidate' may be read as 'O.B.C. candidate'. In other words, the applicant was short listed for interview on the basis of the criterion adopted for S.C. candidate. Copy of this letter has also been sent to President Secreteriat (Right to Information Section). Therefore relief no.1 as discussed above, cannot be granted.

15. Before parting with the case, we would like to add that the pleadings of this O.A. appears to be little confused and based on certain doubts, apprehension and surmises. The applicant could not be able to prove and substantiate any case in his favour. Even if the pleadings are taken to be proved, then also no relief can be given to the applicant in view of the above facts and circumstances of the case and also having regard to the settled preposition of law on the point in question as already discussed.

16. Therefore, this O.A. is dismissed. No order as to costs.



(S.P.Singh)
Member (A)



(Justice Alok Kumar Singh)
Member (J) 1.2.12

HLS/-