

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 366 of 1998.

Dated this Wednesday the 8th day of March, 2000.

Sujay Sharad Ghag _____ Applicant.

Shri P. A. Prabhakaran, _____ Advocate for
the Applicant.

VERSUS

Union of India & 4 Others, _____ Respondents.

Shri V. G. Rege, _____ Advocate for
the Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A). *Yes*

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other *No*
Benches of the Tribunal ?
- (iii) Library. *No*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Sujay Sharad Ghag,
employed in the
O/o. the Addl. C.I.T.
Range 30, Mumbai;
C-13, Pratyaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051.

... Applicant

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. The Chief Commissioner of Income Tax, Mumbai;
3rd Floor, Aayakar Bhavan,
M. K. Road, Mumbai - 400 020.
2. The Commissioner of Income-Tax,
City-I, Mumbai;
3rd floor, Aayakar Bhavan,
M. K. Road, Mumbai - 400 020.
3. Dy. Commissioner of Income-Tax
(H.Q) Personnel, Mumbai;
3rd Floor, Aayakar Bhavan,
M. K. Road, Mumbai - 400 020.
4. Addl. Commissioner of Income-Tax,
Range-30, Mumbai;
C-13, Pratyaksha Kar Bhavan,
Bandra-Kurla Complex,
Bandra (East),
Mumbai - 400 051.
5. Union of India through
The Secretary,
Ministry of Finance,
North Block, New Delhi-110 001. ... Respondents.

(By Advocate Shri V. G. Rege).

O R D E R

PER.: Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the Learned Counsel appearing on both sides.

2. Most of the facts in this case are admitted and the controversy lies in a narrow campus.

The applicant is a sportsman. He applied for the post of an Inspector in the Income-Tax department in pursuance of an advertisement dated 19.12.1995. Number of candidates had applied. The Selection Committee first conducted field trials and selected certain candidates for different posts like Inspector, U.D.C., L.D.C. and Peons. Then those short listed candidates were called for written examination. In particular, the applicant, though he had applied for the post of an Inspector, was called for written examination for the post of U.D.C. When the applicant attended the examination, he came to know that he had been called only for the post of U.D.C. and there was a common question paper for both - Inspectors and U.D.Cs., but U.D.Cs. had to answer only certain questions, whereas candidates for Inspector post should answer all the questions in the question paper. The applicant wanted to go out of the examination hall but was not allowed to go. Then the applicant answered all the questions like the candidate for Inspector. After the evaluation of the answer paper for written test,

the applicant was given offer of appointment for the post of Inspector. When applicant went to join the post, he was specifically told that by mistake he had been issued the offer of appointment to the post of Inspector but he is selected only for the post of U.D.C. The applicant surrendered his offer of appointment for the post of Inspector and then he was given an offer of appointment for U.D.C. Thereafter the applicant was issued an appointment order to the post of U.D.C. and he joined that post on 28.02.1997.

Then subsequently, the applicant gave an application to the administration requesting that the matter may be reconsidered and he may be given Inspector's post. There was no reply by the administration.

Hence, the applicant has approached this Tribunal for a direction to the respondents to appoint him to the post of Inspector of Income-Tax w.e.f. 01.03.1997 with all consequential benefits.

3. The respondents' case is that the applicant was short-listed for the post of U.D.C. on the basis of field test and since he had answered all the questions in the answer paper which was meant for the post of Inspector, by mistake an offer of appointment for the post of Inspector was issued to the applicant and the mistake was immediately rectified, which has been admitted by the applicant and then the applicant was selected and appointed as U.D.C. and he is not entitled for the reliefs sought for.

4. After having heard lengthy arguments at the bar and perusing the materials on record, we do not find that any case is made out for interfering with the appointment of the applicant and for granting the reliefs prayed for.

Nodoubt, the applicant had applied for the post of Inspector. It was a composite advertisement both for Inspector and U.D.C. The qualification was the same for both the posts, namely - graduation. The question paper was common to both the candidates but candidates for U.D.C. had to answer only certain questions whereas the candidates for Inspector had to answer all the questions. The applicant knew very well that he had been called for the written test only for the post of U.D.C. This is further seen from the notice sent to the applicant for the written examination, which is annexed as A-6 dated 30.12.1997 and the applicant has been specifically called for the post of U.D.C. Therefore, the applicant had no doubt when he received the notice dated 30.12.1997 that he has been selected for the post of U.D.C. and he had to appear for the written test. But however, since the applicant answered all the questions, the administration might have, by mistake, issued an offer of appointment that he is selected for the post of Inspector.

5. It is well settled and there can be no dispute that a mistaken order can always be corrected. In this connection, we may refer to two decisions of the Apex Court. In the case reported in 1998 SCC (L&S) 1191 (Kishorilal Charmakar & Another V/s. Distt. Education Officer & Another) it was found that the appellants before

the Supreme Court had been appointed by mistake in the scheduled tribe vacancies, though they were general candidates. When the mistake was noticed about three years later, their services were terminated. But those officials approached the Tribunal and obtained a stay order and by the time the Supreme Court disposed of the matter they had put in ten years service by virtue of the interim order. The Supreme Court said that the order passed by mistake cannot be allowed to continue and the services have been rightly terminated.

In the case of Mitrangshu Roy Choudhary & Others V/s. Union Of India and Others reported in 1999 (3) SLJ 173 (SC) the Apex Court held that since the appointments were made in Group 'C' by mistake instead of Group 'D', the administration was ^{just & fair} perfect in cancelling the order, since it was a bonafide mistake. Similarly, in the present case, we find from the original file produced by the respondents that the Select Committee with the help of expert sports people, on the basis of field test and on the basis of different discipline, selected certain officials for the post of Inspector and certain officials, including the applicant, for the post of U.D.C., etc. This is much prior to the date of written test. Para 3 and 4 of the minutes of the Select Committee held on 27.09.1996 reads as follows :

"3. Field trials were conducted on 26.09.1996 and 27.09.96 at various grounds across Mumbai of sports persons who had already been short-listed by the Administration. Eminent sports persons of each discipline were invited to assist the

Selection Committee during the field trials. Assistance was also taken of the office bearers of the Income-tax Sports & Recreation Club, Mumbai.

4. Based on the disciplines, it was decided by the Selection Committee to propose the following names -

I. Discipline - Volley ball.

Not relevant for our present purpose.

II. Discipline - Kabbaddi.

Not relevant for our present purpose.

III. Discipline - Athletics

Not relevant for our present purpose.

IV. Discipline - Body Building.

1. Shri Vivek M. Angane - U.D.C.
2. Shri Sujay Ghag - U.D.C.
3. Shri Rajendra M. Gawde - Peon.
4. Shri Shyam S. Rahate - Peon."

The person at sl. no. 2, Shri Sujay Ghag, is the present applicant before us.

On the basis of field test the applicant has been short-listed by the Selection Committee for the post of U.D.C. subject to his passing the written test. He has passed the written test, therefore, he should have been given offer of appointment for the post of U.D.C. but by mistake he was issued the offer of appointment for the post of Inspector, which has been corrected later. The mistake has been corrected before issuing the order of appointment. Further, this is a fact which is admitted by the applicant.

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6. The applicant's own letter, in his own handwriting dated 28.02.1997 is in the office file. We have perused that original letter which reads as follows :-

"To
D.C. (H.Q),
Personnel,
Mumbai.

Sir,

I had applied for the post of UDC/Inspector under Sports Quota with reference to adv. However, I was called for the written examination for the post of UDC. While answering the papers I solved all the question which were not meant for UDC. Under the circumstances, it seems I was given offer for the post of Inspector.

Since I was called for the written test for UDC I am ready to accept the post of UDC. I return herewith the original offer of inspector which was issued.

Inconvenience caused due to my post is regretted.

Thanking you,

Yours faithfully,
sd/-
Sujay Ghag."

The above letter shows that applicant admits that he knew very well that he was called for the written examination for the post of U.D.C. He also admits that he ^{not} answered all the questions which were ~~meant~~ for U.D.C. and therefore, returned the offer of appointment for the post of Inspector. This is clearly an admission on the part of the applicant that he knew about the mistake committed by the Department and he has given acceptance for the post of U.D.C. and accordingly, on the same date, namely - 28.02.1997 he was issued an offer of appointment



to the post of U.D.C. and later on the same date he joined the post of U.D.C. Now the applicant cannot turn round and say that he should have been given the post of Inspector.

7. Then we have one more letter written by the applicant to the administration, which is also in the original file. It is dated 06.03.1997, which means, he has written it one week after joining the post of U.D.C. We have seen the original letter in the office file and in fact, copy of which the applicant himself has produced as Annexure A-13 at page 27 of the paper book. He admits in this letter that he was called for written examination for the post of U.D.C. He admits, having been issued an offer of appointment for Inspector and later withdrawn and he was actually appointed as U.D.C. Then in the last para he says that now he has learnt that there is a vacancy for the post of Inspector and he has requested the administration to reconsider his case and give him the job of Inspector. It may be that the administration has not accepted his representation. But atleast, the applicant knew very well that some mistake had occurred presumably because he had answered all the questions in the question paper which were not meant for the U.D.Cs.

After going through the materials on record ^{and} in the office file, we are satisfied that applicant had been selected for the post of U.D.C. but by mistake he was issued an offer of appointment for the post of Inspector and the mistake has been corrected before issuing the regular appointment order. Hence, the applicant cannot have any

grievance against the administration. Therefore, in the facts and circumstances of the case, no case is made out for granting any relief to the applicant.

8. Before parting with the case, we only observe that if and when the next recruitment takes place for the post of Inspector, if the applicant is eligible for the same, then the applicant may again apply for the said post and administration may consider whether he can be given that job as per his discipline and merits.

9. In the result, the application is rejected at the admission stage. No order as to costs.

B.N.Bahadur
(B. N. BAHADUR)
MEMBER (A).

R.G.Vaidyanatha
8.3.2000
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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