

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 14.9.94

CA 633/92
(CA 450/89)

OM PRAKASH VERMA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.
HON'BLE MISS USHA SEN, MEMBER (A).

For the Applicant ... SHRI J.N. KAUSHIK.

For the Respondents ... SHRI MANISH BHANDARI.

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

Heard learned counsel for the parties. The applicant was Hospital Attendant and he was promoted as Typist vide order Annexure A-3 dated 21.3.79 on officiating and adhoc basis. A written test was conducted on 9.2.79 and the applicant was invited to appear in the typing and viva test on 21.5.79 vide Annexure A-4. This invitation was extended only to the persons who have passed in the written test. The applicant was again invited vide Annexure A-5 to clear the examination in English and Hindi, as vide Annexure A-1 only one examination was conducted. Vide Annexure A-9 dated 30.3.89, the respondents allowed the applicant to cross the Efficiency Bar.

2. It is a very serious matter that the adhoc or temporary employee has been allowed to cross the Efficiency Bar. Efficiency Bar is allowed only when there is nothing adverse against the officer. We agree with Mr. Manish Bhandari on this point that the Efficiency Bar only indicates that there was nothing adverse against the applicant. Inefficiency is adverse, so while allowing the EB the respondents held that the applicant was efficient. There was no adverse material against the applicant on any account and there was everything going on well and in normal way, so the applicant was allowed to cross the EB.

3. The respondents have not come fairly before the court.

Mr. N.L. Sunderam, Divisional Personnel Officer, Western Railway, Ajmer, has verified on oath that the contents made in the reply are true. In para-12 of the reply, the respondents have mentioned that, "it is quite incorrect that he had passed the selection for the post of typist in 1979. He failed even in written examination and that is why he was not called for viva-voce, hence his version is not acceptable". Mr. Manish Bhandari wants to defend an undefendable person by saying that ~~1979~~ ^{The year} may be 1989 and ~~1979~~ ¹⁹⁸⁹ may be a typographical error. Mr. Bhandari could not convince the court and the court is also not happy with the statement of Mr. Bhandari. In such matters; particularly when the respondents are giving the reply of para 4(ii) of the petition and in this paragraph they have mentioned ^{The year} as 1979. Para 4(ii) of the petition also refers to 1979. So, the argument of Mr. Bhandari is only an eye-wash to defend the officer who has made a statement either intentionally or unintentionally in the reply which is prima-facie false. A licence cannot be given to the officers to depose untrue facts before the court and they should feel that the courts are there to watch and to arrive at the correct conclusion. If the Government servants do not narrate ^{the} true facts before the court, the court should be very strict in dealing with them. It is a case in which notice should be issued to the officer, who has made a false statement before the court, that why he should not be prosecuted for making a false statement before the court. The respondents have held that the applicant is efficient by giving a Efficiency Bar increment vide Annexure A-9. If the question of failure comes in the way then it should need examination by the respondents that how they gave him an Efficiency Bar increment. If the Efficiency Bar increment has been given correctly then it is a matter which needs consideration by the respondents in the matter of regularisation of the services of the applicant. It is for the respondents to consider; the court is not going to issue any

direction but only make an observation that inconsistent position should not be allowed to continue in the facts and circumstances of the case.

4. As far as the applicant is concerned, he is working on this post since 21.3.79 and admittedly he has been allowed to cross the Efficiency Bar but he has failed in 1982 and 1989. The process of selection is a regular process and unless the person is selected he cannot claim as a right that he should be allowed to continue on the post which he is holding. We cannot direct the respondents to allow the applicant to continue on this post for an indefinite period.

5. In the result, the OA is accepted in part. We direct the respondents that the applicant should be allowed to continue on the post which he is holding till the regularly selected person is available. If any regularly selected person is available, the applicant is liable to be reverted. However, we direct the respondents also to consider the case of regularisation of the applicant taking into consideration the fact that the applicant has been allowed to cross the Efficiency Bar. This direction does not mean that he should be regularised but only his case should be considered taking into this fact that his efficiency bar has been sanctioned and he has been declared as efficient person by allowing him to cross the efficiency bar.

6. We further direct that the show-cause notice be issued to Mr. N.L. Sunderam, Divisional Personnel Officer, Ajmer, that why he should not be prosecuted for giving a false affidavit before this Tribunal. He should be asked to appear before this Tribunal on 1.11.94. With these directions, this OA stands disposed of, with no order as to costs.

7. A separate Misc. File may be opened on the basis of the order relating to the show-cause notice.

Usha
(USHA SEN)
MEMBER (A)

D.L. MEHTA
VICE CHAIRMAN