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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 117/1994 and

Date of order: 27-3-97.

MA Nos. 141/94 and 347/95

Lokendra Sharma, S/o Shri Mohan Lal, resident of 1185, Gyan Gali, Chanakya Marg, Subhash Chowk, Jaipur.

..Applicant

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1. Union of India through Secretary, Ministry of Information & Broadcasting, New Delhi.
2. Station Director, Doordarshan Kendra, Jhalana Doongari, Jaipur.

.. Respondents

Mr. S.K.Jain, Counsel for the applicant

Mr. U.D.Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

This application has been filed by Shri Lokendra Sharma under Section 19 of the Administrative Tribunals Act, 1985, praying that after calling for and perusing the complete selection file for the post of Floor Assistant in Doordarshan Kendra, Jaipur, the Tribunal may direct the respondents to give appointment to the applicant on the post of Floor Assistant with benefits of appointment from the date of declaration of the result, with arrears of pay and allowances and all other benefits from a back date.

2. The OA was filed on 3.3.1994. The respondents have filed their reply to the OA on 15.9.1995. The applicant also moved

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two Misc. Applications. One Misc. Application, No. 141/94, was filed on the same date on which the OA was filed and it sought a direction for production of the file regarding selection on the post of Floor Assistant. Another Misc. Application No. 347/95 was filed on 7.8.1995. It is stated to be under Section 22 (3) (a) and (b) of the Administrative Tribunals Act and Order XIX Rule 2 C.P.C. for permission to cross-examine Smt. Vimla Mittal, Director, Doordarshan Kendra, Jaipur because of non-production of the relevant file inspite of Directions by the Tribunal.

3. The OA and the MAs were listed for admission on various dates. After the case was adjourned on several occasions, it was finally heard on 13.3.1997. The learned counsel for the applicant argued the entire matter arising from the OAs and the MAs at length and prayed that the Misc. Applications filed by him should be allowed. After the learned counsel for the respondents had concluded his oral arguments, the learned counsel for the applicant argued the matter again by way of rejoinder to the points raised by the counsel for the respondents and then stated that he had argued the matter only with regard to the MAs and not regarding the admissibility etc. of the OA. Our understanding, however, was that the learned counsel for the applicant had argued the entire matter including the question of admissibility of the OA. However, in view of this statement of the learned counsel for the applicant, we invited him to argue the matter again on the point of admissibility of the OA. He declined to argue the matter further and simply stated that the question of admissibility of the OA cannot be decided before the question of admissibility of the MAs is decided. Since, however, we have heard the entire matter including the question of admissibility of the OA and that of the MAs, we are disposing of this entire matter by this common order.

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4. The facts of the case, as stated by the applicant in the OA, are as follows. The respondents issued a notification in February, 1989 for filling up various posts in Doordarshan Kendra, Jaipur including the post of Floor Assistant. The applicant appeared for the selection on 16.9.1989 for the post of Floor Assistant and to his knowledge his name appeared at S.No.1 of the list of successful candidates which was sent for approval to the Ministry at Delhi. However, when the respondents did not give appointment to the applicant, he filed an OA, No.462/91, before the Tribunal, which was disposed of on 11.1.1993 alongwith several other OAs on the subject filed by certain other persons. As per para 14 of the decision of the Tribunal, the Tribunal accepted the applicant's OA and directed the respondents that the applicants in the applicant's OA and also in another OA disposed of on the same date who have been selected in 1989, should be given preferential treatment in the matter of appointment and should be appointed immediately against vacancies available. Thereafter, the applicant filed a Contempt Petition which was dismissed by the Tribunal on 6.7.1993, in the absence of the counsel for the petitioner, on a representation of the respondents that the applicant had not been selected in the selection held in 1989. However, no panel was produced before the Tribunal. The respondents issued a letter dated 28.6.1993 wherein directions were given for consideration of appointment of the applicant and another person to the posts of Floor Assistant etc. to avoid contempt proceedings. (This letter which has been reproduced by the applicant in the OA appears to have been issued by the Directorate General of Doordarshan, New Delhi to the local Doordarshan Kendra, Jaipur). In the reply filed to the applicant's OA, No. 462/91, the respondents did not challenge the fact that the name of the applicant appeared at Sl.No.1

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in the panel of successful candidates. The applicant has reproduced various portions of the reply filed by the respondents to the OA No. 462/91 from which he seeks to infer that the respondents had not denied that the applicant's name had appeared at Sl.No.1 in the panel. It was for this reason that while disposing of OA No. 462/91, the Tribunal had directed the respondents to give appointment to the applicant. Subsequently, there appears to have been a manipulation in the panel due to the prejudice caused by filing of the OA and the Contempt Petition referred to above. The applicant has stated that corrections and erasers have also been made in the panel and, therefore, it is necessary for the Tribunal to call for the file of the selection process alongwith the panel so that the correct position can be ascertained by the Tribunal.

5. As already stated above, alongwith this OA the applicant has also filed a Misc. Application, No. 141/94 praying that the complete selection file alongwith the marks given by the Selection Committee to the candidates on the post of Floor Assistant be ordered to be produced before the Tribunal.

6. In their reply to the present OA, the respondents have stated that the applicant had not been selected for the post of Floor Assistant and his name has not appeared either in the main list or in the reserve list. Therefore, his assumption that his name had appeared at Sl.No.1 in the list of successful candidates is based on his own assumption. The question of giving appointment to the applicant could arise only if his name had appeared in the list of selected candidates. As regards the reply of the respondents to OA No. 462/91, they have stated that the respondents had denied the averment of the applicant regarding his name being at Sl.No.1 in the list of successful candidates and had added that the panel of the selected candidates had not been approved by the

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competent authority by that time and that appointment would be given to the selected candidates after the said panel was approved by the competent authority. As regards para 14 of the order of the Tribunal dated 11.1.1993 passed in OA No. 462/91, the respondents have stated that the Tribunal had directed that the applicants who had been selected in 1989 should be given preferential appointments against vacancies available but the Tribunal had not declared that the applicant in the said OA and another applicant who had also filed an OA which was disposed of by the same order, had been selected and should be given appointment. The Contempt Petition filed by the applicant before the Tribunal for non-implementation of the directions contained in the order dated 11.1.1993 had been dismissed by the Tribunal. There was no question of producing the panel before the Tribunal at the time of hearing of the Contempt Petition because a copy of the order dated 6.7.1993 by which the applicant had been informed about his non-selection had been placed before the Tribunal, on the basis of which the Contempt Petition had been dismissed. Another advocate had appeared as Briefholder for the learned counsel for the petitioner in whose presence the Contempt Petition was dismissed. A copy of the communication dated 6.7.1993 (Ann.R2) had also been given to the said Briefholder by the counsel for the respondents. The communication dated 28.6.1993 received from the Director General, Doordarshan, New Delhi to Doordarshan Kendra Jaipur is a confidential document and its copy had not been given to the applicant. The applicant had, therefore, obtained its copy by illegal means. Further, this letter has been sent to Doordarshan Kendra on the consideration that the persons who had been selected for appointment to various posts should be given appointment in case they had been selected for the said post. This suggestion had been given to Doordarshan Kendra,

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Jaipur (respondent No.2) with a view to avoiding the contempt proceedings. The said communication did not indicate, in any manner, that the applicant had been selected for appointment. The contents of this letter cannot be read in isolation but have to be read in the context of the correspondence entered into between the Director General, Doordarshan, New Delhi and the Doordarshan Kendra, Jaipur. They have denied that the selection panel prepared by the Selection Committee has been tampered with in any manner. The record relating to the selection for the post of Floor Assistant had been placed before the Tribunal.

7. As regards the Misc. Application, No. 141/94, filed by the applicant for calling for records, it has been stated on behalf of respondent No.2 in an affidavit filed on 16.8.1994 that the final selection list as prepared by the Selection Committee was produced before the Tribunal but the Tribunal had directed the respondents to produce the entire record relating to the selection process. However, a thorough search was made by the respondents in the office of Doordarshan Kendra, Jaipur about the records pertaining to the selection in question but except for the final selection list which contains the signature of the members of the Selection Committee, no other authenticated record duly signed by the members of the Selection Committee could be located in the office of Director, Doordarshan Kendra, Jaipur, although some unauthenticated records not bearing the signatures of the members of the Selection Committee are available. This affidavit was sworn by Smt. Vimla Mittal, who was then Director, Doordarshan Kendra, Jaipur.

8. The applicant has filed reply to the affidavit stating that the affidavit is wrong and vague. No particulars have been disclosed about when the search was made, who was the authority to make search and whether any complaint has been

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lodged regarding missing records. Further, the affidavit has been given on the basis of the official records as well as information gathered from reliable sources as well as legal submissions. The applicant wants to know which part of the affidavit is correct on the basis of the official records, which part is correct on the basis of the information gathered by the affiant and which part is correct on the basis of the legal submissions. Verification is also defective. The respondents have tried to avoid production of the record inspite of what they had stated in their reply to OA No. 462/91 filed by the applicant earlier. In their reply to OA No. 462/91, the respondents had stated that the file pertaining to the selection had been sent to office of respondents No.1 i.e. the Ministry of Information and Broadcasting and the entire case of the respondents at that was that the panel had not yet been approved and was under consideration of respondent No.1 and, therefore, the question of availability of the file with respondent No.2 did not arise.

9. In MA No. 347/95, filed under Section 22(3) (a) and (b) of the Administrative Tribunals Act and order XIX Rule 2 of C.F.C., the applicant has sought a direction that the affiant Smt. Vimla Mittal, Director, Doordarshan Kendra, Jaipur be asked to appear before the Tribunal and the applicant be allowed to cross-examine her with regard to her affidavit that the records pertaining to the selection held in 1989 are not available inspite of thorough search. The respondents have also filed their reply to this MA also, stating that Smt. Vimla Mittal had assumed charge of the office of Director, Doordarshan Kendra, Jaipur on 10.6.1993 and she was, therefore, not associated in any manner, whatsoever, with the selection process held during 1989. Further, according to them, the information and the official record

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gathered and furnished were only those which were available when the affidavit regarding the said documents had been filed by her. She had only official knowledge regarding the availability of the said record. Therefore, the respondents have stated that the present Director would not be in a position to throw any light in the matter of the said selection process and would also not be in a position to give any information relating to the said selection, even if she is subjected to cross-examination. The entire records have been submitted before the Tribunal and nothing more is available either in the office of Director, Doordarshan Kendra, Jaipur or in the office of Directorate General of Doordarshan, New Delhi. Therefore, calling the present Director, Doordarshan Kendra, Jaipur for cross-examination would be an exercise in futility. They have, therefore, prayed that the MA may be dismissed.

10. The learned counsel for the applicant stated during his oral arguments that in the reply to the earlier OA, No. 462/91, the respondents had not denied the averment of the applicant that he was a selected candidate and was at Sl.No.1 of the panel and it was on the basis of this averment of the applicant accepted by the Tribunal that the Tribunal vide its order dated 11.1.1993 in the aforesaid OA had directed the respondents, vide para 14 thereof, to grant appointment to the applicant on the post of Floor Assistant. Now the respondents have changed their stand and have denied that the applicant was a selected candidate. The applicant wanted the entire record of selection to be produced before the Tribunal for perusal so that the true position would be known. However, the respondents had deliberately not produced the entire record relating to the selection. The affidavit filed by Smt. Vimla Mittal to the effect that except the panel prepared by the Selection Committee, no other records were

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available, was not acceptable because she had not indicated on what basis she had actually filed the affidavit. It was for this reason that the applicant wanted her to be asked to appear before the Tribunal so that the applicant could cross-examine her to bring out the truth of the matter. He added that until Smt. Vimla Mittal is asked to appear before the Tribunal and the applicant is allowed to cross-examine her, there would be no meaningful disposal of the present application, because the entire case of the applicant depends upon availability of the true and complete record of the selection.

11. The learned counsel for the respondents stated during his oral arguments that respondents had not admitted in their reply to the earlier OA that the applicant was a selected candidate and his name appeared at Sl.No.1 of the select panel. All that the respondents had stated was that the panel has yet not been approved because it had been sent to the Directorate General of Doordarshan, New Delhi for approval. As regards para 14 of the Tribunal's order dated 11.1.1993, it had to be read in its proper context and it could not be read in isolation. The Tribunal had itself noted in an earlier part of the order that the panel had not yet been published. Then how could it be said, according to him, that the applicant had been selected? Moreover, in para 14 of the order, all that the Tribunal had stated, was that those candidates who have been selected should be appointed. This was an important qualification to the directions given by the Tribunal. He also pointed out that the applicant had filed a Contempt Petition against non-implementation of the Tribunal's order dated 11.1.1993 but the Tribunal had dismissed the Contempt Petition taking note of the fact that the applicant had been informed vide communication dated

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6.7.1993 that he had not been selected. When the Contempt Petition had come up for hearing, Mr. Manish Bhandari, Advocate had appeared as Briefholder for the learned counsel for the applicant and, therefore, he could not disown the position stated in the order disposing of the Contempt Petition. After the panel had been sent to the Directorate General, Doordarshan, New Delhi for approval, it was reported by the Directorate General that respondent No.2 was competent to take action on its basis. The applicant had received the letter dated 6.7.1993 and has in fact made it the impugned order, Ann.A1, in the present OA. There were directions from the Tribunal on different dates for production of records and the respondents have eventually clarified the position stating that no records apart from the final selection panel are available with them. Power under Order XIX Rule 2 of the C.P.C. is to be exercised with great caution. Since it is not likely to serve any purpose at this stage because Smt. Vimla Mittal was not associated with the selection process and had only official knowledge about the matter, her cross-examination would not throw any light on the matter. The affidavit sworn by her was in the form usually prescribed and it was not necessary to specify which part of the affidavit was based on her personal knowledge, which was based on her official knowledge, etc. He concluded by stating that selection panel shows that the applicant was not a selected candidate and there was no manipulation therein. Therefore, there is no question of offering any appointment to the applicant. After the applicant's Contempt Petition against non-implementation of the Tribunal's order dated 11.1.1993 passed in OA No. 462/91 had been dismissed, the applicant cannot now take shelter behind any reply given by the respondents in the said OA to claim appointment on the

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post of Floor Assistant on the ground that the respondents had admitted that the applicant was a selected candidate and his name appeared at Sl.No.1 of the select panel.

12. We have heard the learned counsel for the parties and have perused the material on record, as also the records produced before us by the respondents during the hearing.

13. The file of Doordarshan Mendra, Jaipur regarding the selection in question containing, inter alia, the panel for Floor Assistant was produced before us and it was perused by us. The file maintained in the office of Directorate General, Doordarshan, New Delhi after receipt of the panel from Doordarshan Mendra, Jaipur was also called at Jaipur and it has also been perused by us. The factual position emerging from the files produced before us is that essentially it is the final selection panel which is available but the detailed recommendations or notings of the members of the Selection Committee duly authenticated by them are not available. The panels prepared by the Selection Committee show that for the four general category posts of Floor Assistants, four candidates were included in the main panel and recommended appointment and five candidates were included in the "reserve" list. The name of the applicant does not figure in the main panel or the reserve list. There are no erasers or corrections in this panel. There were three other panels also for the post of Floor Assistant, one for Scheduled Caste candidates, one for Scheduled Tribe candidates and one for Ex-servicemen. The applicant is a general category candidate and his name does not figure in any of the ^{other} panels either. A copy ^{each} of the panels was sent to the Directorate General, Doordarshan, New Delhi and its file, as received from New Delhi, shows that photocopies of the panels are in the said file. We do not see any change or eraser in the list of the

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panel for general candidates.

14. We have not found any categorical admission by the respondents in their reply either to the earlier OA or to the present OA or the MAs filed by the applicant that the applicant is a selected candidate for the post of Floor Assistant. Para 14 of the Tribunal's order dated 11.1.1993 which has been strongly replied upon by the applicant for claiming that there was a direction from the Tribunal that the applicant being a selected candidate should be given appointment, has to be read in its own context. There are observations of the Tribunal in the earlier parts of the said order that the panel had not yet been declared because it had been sent to New Delhi for approval. Therefore, what the Tribunal's observations in para 14 of the order dated 11.1.1993 could only mean was that those candidates who have been selected should be given appointment. By implication if the applicant was not a selected candidate, he was not entitled to an appointment. In any case, the matter was clarified when the Contempt Petition filed by the applicant against non-implementation of the order dated 11.1.1993 was filed, wherein the Tribunal had taken note of the position that the applicant had been informed that he was not a selected candidate and on this ground the Contempt Petition was dismissed. Even if the applicant's counsel Shri S.K.Jain had not appeared before the Tribunal on the date of disposal of the Contempt Petition, his Briefholder had appeared. The records produced before us and perused by us are the official records containing panels for selection of candidates for the post of Floor Assistant and these panels appear to have been prepared and signed in their natural course and we do not see any manipulation therein as suggested by the applicant. We have no reason to disbelieve the contents of these panels or

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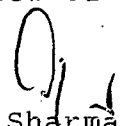
their authenticity. Other records relating to selection such as the signed notings made by the members of the Selection Committee were not available with the respondents and an affidavit to this effect was filed by Smt. Vimla Mittal, Director, Doordarshan Kendra, Jaipur. We have no reason to disbelieve that a search was carried out and whatever records were available were produced before the Tribunal. We have no reason to disbelieve what has been stated by Smt. Vimla Mittal in her affidavit. We are, therefore, of the view that no purpose would be served by summoning Smt. Vimla Mittal for cross-examination by the applicant with regard to the search carried out in the Directorate at Jaipur for tracing out the missing records as called for by the Tribunal earlier and with regard to the contents of her affidavit.

15. The applicant had made reference to a letter dated 23.6.1993 issued by the Directorate General, Doordarshan, New Delhi to Directorate, Doordarshan Kendra, Jaipur stating, with reference to the earlier OA No. 462/91 filed by the applicant, that appointment of the applicant as also of another person who had filed another OA may be considered with reference to selection of Floor Assistant to avoid contempt proceedings. This direction was issued in the context of the Tribunal's order dated 11.1.1993. In our view, this is a general letter stating that the judgment of the Tribunal in OA No. 462/91⁰ should be implemented, and the direction is that the appointment of the applicant and of another should be considered with reference to the selections held. Obviously, appointment had to be made only if the person concerned had actually been selected for appointment by the Selection Committee and not otherwise.

16. In view of the position discussed above, there is no merit in this application. It is, therefore, dismissed at the

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stage of admission. MA No. 141/94 regarding production of records also stands disposed of in view of the fact that whatever records were available with the respondents have been produced before us. MA No. 347/95 for asking the Director, Doordarshan Kendra, Jaipur to appear before the Tribunal for cross-examination by the applicant is dismissed, in view of the reasons given above. No order as to costs.


(O.P.Sharma)

Administrative Member


(Gopal Krishna)

Vice Chairman