

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the ^{7/12} ~~June~~ day of May, 2010

Review Application No. 3/2010
(Original Application No.106/2007)

Mukesh Chand
s/o late Shri Kishan Murari,
r/o H.No. 1076/19,
Galim Mali Ka Bada,
Nagra,
Distt. Ajmer.

.. Applicant

(By Advocate: Mr. Anupam Agarwal)

Versus

1. Union of India,
through the Secretary to the Government of India,
Ministry of Mines,
Shastri Bhawan,
New Delhi.
2. The Secretary,
Government of India,
Department of Expenditure (Implementation Cell),
Ministry of Finance,
North Block,
New Delhi.
3. The Controller General,
Indian Bureau of Mines,
Indira Bhawan,
Civil Lines,
Nagpur.
4. The Sr. Administrative Officer,
Indian Bureau of Mines,
Nagpur.
5. The Assistant Administrative Officer,
Indian Bureau of Mines,
Nagpur.

.. Respondents

ORDER (By Circulation)

The applicant has filed this Review Application against the order dated 15th March, 2010 whereby this Tribunal held that the applicant has got no indefeasible right to claim appointment on the basis of recommendation made by the Selection Committee which has not been approved by the competent authority. It was further held that there is no infirmity in the action of the respondents whereby they have issued fresh advertisement for appointment to the post of Field Orderly against which post the applicant can also compete.

2. It may be stated that the applicant has filed the aforesaid OA thereby challenging the advertisement dated 14.10.2006 whereby various posts including the post of Field Orderly was advertised. The grievance of the applicant in the OA was that he was already selected for the post of Field Orderly in the interview held on 25.6.1998, as such, it was not permissible for the respondents not to act upon the panel so prepared in the year 1998 and to re-advertise the vacancy. This Tribunal dismissed the OA for the reason as already indicated hereinabove. The Review Application has been filed by the applicant on the ground that in the instant case no panel was prepared, as such reliance placed by this Tribunal to the decision of the Apex Court in the case of State of Bihar and Ors. vs. Amrendra Kumar Mishra, JT 2006 (12) 304 is wholly misconceived. It has been pleaded that ~~as per~~ the information given to the applicant under the RTI Act was that a complaint was received from the *W*

Secretary General, IBMEA alleging irregularities in the selection which was referred to COM (NZ) AJmer for enquiry and comments vide letter dated 27.7.1998. Admittedly, the said enquiry was never completed and even the enquiry officer retired on 28.2.2001. Thus, the respondents failed to make any appointment on the post of Field Orderly. It is on the basis of these facts, the applicant has filed this Review Application for reviewing the order passed in the OA.

3. We have given due consideration to the submissions made by the applicant in the Review Application. We are of the view that the applicant has not made out any case for reviewing the order. The reasoning given by this Tribunal find mention in para-5 of the judgment. At this stage, it will be relevant to extract the relevant portion of these paragraphs, which is in the following terms:-

“5. Facts remain that recommendation of the Selection Committee in respect of the interview held on 25.6.1998 has not been acted by the competent authority. Thus, in view of this admitted fact and the fact that the validity of the panel is for one year which can be extended for six months in exceptional circumstances, the question which requires our consideration is whether a writ of mandamus can be issued to the respondents not to proceed further pursuant to the advertisement Ann.A/1 and the applicant be given appointment on the basis of the recommendations so made by the Selection Committee on the basis of the interview held on 25.6.1998.....” (emphasis supplied to the underline)

Thereafter this Tribunal quoted the decision of the Apex Court in the case of State of Bihar Vs. Amrendra Kumar Mishra and the facts under which such decision was given by the Apex Court whereby the Apex Court has held that no such direction should be given by the High Court where validity of the panel has already expired and this Tribunal has made the following observations:-

(b)

".....The case of the applicant in this OA is on much weaker footing. In this case the competent authority has not even accepted recommendations of the Selection Committee, as such, the question of giving appointment to the applicant does not arise. Thus, according to us, the applicant has got no indefeasible right to claim appointment on the basis of the recommendation made by the Selection Committee which has not been approved by the competent authority. Thus, we see no infirmity in the action of the respondents whereby they have issued fresh advertisement for appointment to the post of Field Orderly against which post the applicant can also compete. "(emphasis supplied to the underline)

Thus, as can be seen from the portion as quoted above and the question formulated for consideration (which find mention in first part of para-5, as reproduced above) was whether writ of mandamus can be issued to the respondents not to proceed further pursuant to the advertisement Ann.A/1 and the applicant be given appointment on the basis of the recommendations so made by the Selection Committee on the basis of the interview held on 25.6.1998. Thereafter this Tribunal has given categorical finding, as reproduced above, to the effect that the competent authority has not even accepted the recommendations of the Selection Committee, as such, the question of giving appointment to the applicant does not arise. This Tribunal has also categorically held that the applicant has got no indefeasible right to claim appointment on the basis of recommendations made by the Selection Committee. Thus, there is no infirmity in the action of the respondents whereby they have issued fresh advertisement for appointment to the post of Field Orderly against which post the applicant can also compete. Thus, the contention of the learned counsel for the applicant that the OA

was rejected on the ground that validity of the period has already expired and in fact no panel was prepared, cannot be accepted. The OA has been dismissed on the ground that the competent authority has not accepted the recommendations of the Selection Committee and the applicant has got no indefeasible right to claim appointment on the basis of the recommendations made by the Selection Committee. Thus, according to us, the applicant has not made out any case for reviewing the order.

4. The reasoning so given by this Tribunal is in consonance with the decision rendered by the Apex Court in the case of State of M.P. and Ors. vs. Sanjay Kumar Pathak and ors., (2008) 1 SCC (L&S) 207 whereby the Apex Court has held that even though the selection process may have been completed, no appointment can be made in the absence of a select list. Admittedly, in this case no select list/panel was ever prepared. The reference made to the case of State of Bihar vs. Amrendra Kumar Mishra was a passing reference. Thus, according to us, the applicant has not made out any case for reviewing the order.

5. The Review Application is accordingly dismissed by circulation.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judi. Member

R/