

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR  
ORDER SHEET

(S)

APPLICATION NO.: \_\_\_\_\_

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><b>21.05.2007</b></p> <p><b>OA No. 13/2007</b></p> <p>Mr. Prahlad Sharma, Counsel for applicant. Ms. Kavita Bhati, Proxy counsel for Mr. Kunal Rawat, Counsel for respondents.</p> <p>Adjourned to <u>01.06.2007</u>.</p> <p><i>T</i> <b>(TARSEM LAL)</b> MEMBER (A)</p> <p><i>K</i> <b>(KULDIP SINGH)</b> VICE CHAIRMAN</p> <p>AHQ</p> <p><u>1-6-67</u></p> <p>Mr. Prahlad Sharma counsel for applicant. Mr. Kunal Rawat counsel for respondents Heard. The OA has been disposed of by a separate order.</p> <p><i>T</i> <b>(Tarsem Lal)</b> Administrative Member</p> <p><i>K</i> <b>(Kuldip Singh)</b> Vice Chairman</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 1st day of June, 2007

ORIGINAL APPLICATION No.13/2007

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN  
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Balakrishan M.  
s/o Shri Narayan,  
r/o 14/III, C.B.I Colony,  
Subhash Marg, C-Scheme,  
presently working as  
Sr. Clerk Steno,  
C.B.I. Jaipur

.. Applicant

(By Advocate: Shri Prahlad Sharma)

Versus

1. Union of India through Joint Director (Admn.) Central Bureau of Investigation, Government of India, Block No.3, Kendriya Karyalaya Parisar, Lodhi Road, New Delhi.
2. The Deputy Director (Admn), Central Bureau of Investigation, Government of India, Block No.3, Kendriya Karyalaya Parisar, Lodhi Road, New Delhi.
3. The Administrative Officer (PERS), Central Bureau of Investigation, Government of India, Block No.3, Kendriya Karyalaya Parisar, Lodhi Road, New Delhi.
4. The Superintendent of Police, S.P.E., Central Bureau of Investigation, Jaipur Branch, 1, Tilak Marg, C-Scheme, Jaipur.

.. Respondents

(By Advocate: Shri Kunal Rawat)



## O R D E R (ORAL)

The applicant has filed this OA assailing the order dated 27<sup>th</sup> December, 2006 passed by respondent No.2 whereby his representation dated 5<sup>th</sup> December, 2006 has been turned down by the competent authority, as not maintainable as per rules.

2. Facts, as alleged by the applicant in brief, are that vide circular dated 12<sup>th</sup> September, 2005 (Ann.A2), respondents proposed to hold a Limited Departmental Competitive Examination for appointment of departmental candidates to the grade of Sub Inspector of Police in Central Bureau of Investigation (C.B.I.). Alongwith the same, the respondents had also issued a scheme of the examination for this Limited Departmental Competitive Examination for the post of Sub Inspector.

It is further stated that about 470 candidates have appeared in the examination and out of these candidates 19 candidates of General Category were placed in the select panel. Name of the applicant has been shown at Sl.No.46 as he has secured 370 marks. It is further stated that in the select list name of Shri Gaurav Mehra at Sl.No.13 has been mentioned, which is in violation of the service rules, as he was penalized in departmental enquiry and was under currency of



penalty and since the name of the applicant stands at Sl.No.1 of the waiting list and if name of Shri Gaurav Mehta <sup>is</sup> ~~was~~ not included then the applicant automatically comes in the select list as he is next meritorious candidate in the competitive examination. The applicant had submitted a representation to this effect which has been turned down vide the impugned order Ann.A1.

The next contention taken by the applicant is that one Shri A.K.Mishra, Sub Inspector, C.B.I. Lucknow was promoted to the rank of Inspector vide office order dated 4<sup>th</sup> September, 2006 (Ann.A7) so one more vacancy has also arisen and the applicant should have been adjusted against that post.

The applicant has also challenged the selection process stating that Shri Gaurav Mehta secured lower marks in the written examination, still he has been give more marks in the interview to uplift him above the applicant. As such, it is prayed that respondents may kindly be ordered to appoint the applicant on the post of Sub Inspector in C.B.I. and name of the applicant be included in the said panel.

3. The respondents are contesting the OA. It is stated that after declaring the result, the result was put up before the Director, C.B.I. who approved the panel on 15<sup>th</sup> July, 2006. The reserved panel was to be operative in the event of candidates are not available



for appointment from the main select panel. It is further stated that out of 19 candidates of General Category, one Shri Gaurav Mehra, Senior Clerk Steno, CBI Academy Ghaziabad, as a result of an RDA against him was under currency of penalty of withholding of two increments without cumulative effect from 07.08.2005 to 31.07.2007. Therefore, he has not been offered appointment so far to the post of Sub Inspector. He will be offered appointment only after completion of currency of penalty i.e. after 31<sup>st</sup> July, 2007. So one vacancy has been kept vacant to be offered to Shri Gaurav Mehra.

Besides that, it is also stated that due to some error in computer 4 candidates of General Category were inadvertently called for interview though they had not qualified as they had failed in one paper. Representations of these candidates for re-totaling/re-evaluation is under consideration and if as a result of re-totaling/re-evaluation, any one is found to have secured minimum passing marks in failed papers will have to be included in the select panel as out of four, two have otherwise secured enough grand total enabling them for inclusion in the select panel.

As regards Shri Gaurav Mehra is concerned, it is submitted that since the applicant has not made Shri Gaurav Mehra as respondent, therefore, the OA is liable to be dismissed. Since the applicant is asking



appointment against the vacancy kept for Shri Gaurav Mehra, so Shri Gaurav Mehra was necessary party.

It is also pleaded that currency of penalty is no bar for promotion. However, during the currency of penalty, one cannot be offered promotion. As such, the applicant has no ground to seek appointment against the post kept for Shri Gaurav Mehra. The respondents also quoted instructions regarding promotion to higher post, such as:-

**"Punishment no bar in Assessing Suitability for Promotion.**- An Officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion would be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of imposition of the penalty he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty."

As regards the vacancy occurred after promotion of Shri A.K.Mishra, Sub-Inspector of ACB, Lucknow Branch, it is stated that this vacancy occurred much after the approval of the result by the competent authority. It is stated that Shri A.K.Mishra had taken charge of the post of Inspector on 31<sup>st</sup>. October, 2006 whereas result of the Limited Departmental Examination was approved on 15<sup>th</sup> July, 2006. So the vacancy occurred by promotion of Shri A.K.Mishra could not be included in the panel. As



such, it is stated that there is no ground for challenge on this score also.

4. We have heard the learned counsel for the parties and gone through the record.

5. At the outset, we may mention that claim of the applicant for promotion to the post of Sub-Inspector against the vacancy kept for Shri Gaurav Mehra affects the vested right of Shri Mehra. Perusal of the OA shows that the applicant has challenged empanelment of Shri Gaurav Mehra as he has been undergoing punishment, so he should not be placed in the panel. Even in his representation dated 5<sup>th</sup> December, 2006 the applicant has stated that one candidate Shri Gaurav Mehra was not given appointment because of punishment awarded to him so the next candidate should have been considered against the vacancy of Shri Gaurav Mehra. So we find that the applicant is challenging empanelling name of Shri Gaurav Mehra, since he was undergoing punishment. However, we find that this contention has no merit because since the instructions issued by the Department, as quoted above, would go to show that a person undergoing punishment is also eligible to be considered which clearly show that a person undergoing such a punishment cannot be held ineligible for consideration to the higher post as the specific penalty of withholding promotion has not been imposed on him, and the suitability of the officer for

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promotion would be assessed by the DPC as and when occasions arise for such assessment. We find that even in the scheme of examination there is specific Paragraphs 4 and 5. Paragraph 4 deals with Personality Test and Para 5 deals with Evaluation of Service record, which carries a maximum of 50 marks. The service record is evaluated by the DPC. So after this position, the applicant cannot say that the DPC has not considered the punishment which Shri Gaurav Mehra was undergoing and it is after considering his service record, the DPC has put him in the panel and which has been approved by the competent authority.

Though the learned counsel for the applicant has referred to a judgment titled Gulam Mustafa and Ors. vs. Union of India and Ors., reported in 2003 (2) ATJ 58 which was a case for promotion to Passenger Guard based on interview and persons who were undergoing punishment were selected. It was held that the selection held made arbitrarily and criterion of merit has not been followed and the selection panel was quashed. However, in this case we find that this judgment is not applicable because in that case the selection was on the basis of interview whereas in this case the selection is bifurcated in various heads. It is Limited Departmental Competitive Examination and specific marks have been allotted for evaluation of service records. Besides that, there are departmental instructions that if a person undergoing



punishment of withholding of increment or reduction to a lower stage in the time scale does not make him ineligible for competing in the Limited Departmental Competitive Examination. So we find that the contention of the learned counsel for the applicant on this score has no merit at all and the representation on this account has been rightly turned down.

Besides that, we may also mention that since the applicant has challenged empanelment of Shri Gaurav Mehra, but Shri Mehra has not been made as party in the OA, so the OA suffers on account of ~~not~~ joinder of necessary party also.

As regards another contention of the applicant that Shri A.K.Mishra, Sub-Inspector has been promoted to the next higher post of Inspector so on the vacancy occurred, he should be given appointment. But to that effect, we may also mention that the said vacancy ~~has~~ occurred after approval of the result by the competent authority, so the applicant could not be given appointment against that vacancy.

6. Therefore, we find none of the contentions raised by the applicant has any merit and, therefore, no interference is called for. The OA is, therefore, dismissed with no order as to costs.

*Tarsem Lal*

(TARSEM LAL)

ADM MEMBER

*Kuldeep*

(KULDIP SINGH)

VICE CHAIRMAN