

Central Administrative Tribunal
Jabalpur Bench

OA No.1112/05

Jabalpur, this the 13th day of October 2006.

CORAM

Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

D.N.Sachan
S/o Shri Baburam Sachan
389, New Type III
Maitri Nagar, Amapur
Kanpur (U.P.)

Applicant

(By advocate Shri A.K.Pare)

Versus

1. Union of India through
Secretary
Ministry of Defence
Department of Defence Production
New Delhi.
2. Director General
Ordnance Factories Board
10-A, Shaheed Khudiram Bose Road
Kolkata.
3. General Manager
Ordnance Factory
Itarsi
Distt. Hoshangabad (MP).
4. Senior General Manager
Gun Carriage Factory
Jabalpur.

Respondents

(By advocate: Shri S.K.Mishra)

ORDER

By A.K.Gaur, Judicial Member

This is the third round of litigation. The applicant who is working as a Trained Graduate Teacher since 1.1.94 submitted his candidature pursuant to an advertisement issued by respondent No.4 for the post of Post Graduate Teacher (PGT English) in the year

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1999. According to the applicant, he was the only eligible candidate having requisite experience and qualification, but after the interview, appointment order was not issued in favour of the applicant. Aggrieved by his non-selection, the applicant earlier approached this Tribunal by filing OA No.619/01, which was disposed of with a direction to consider his representation. Accordingly, the applicant approached the respondents with a fresh representation which was rejected vide order dated 28.11.2001 (A-3). Against the rejection, the applicant filed OA No.175/02 which was rejected vide order dated 29th July 2004. The grievance of the applicant is that the respondents re-advertised the said post in the employment news dated 21-30 September 2005 without any justification. The applicant preferred a representation on 19.10.2005 against the re-advertisement and for issuing appointment letter in his favour. The representation is pending with respondent No.2, hence this OA.

2. Learned counsel for the applicant argued that the action of the respondents in not selecting the applicant, though he was the only eligible candidate having requisite qualification and experience, is malafide, unconstitutional, discriminatory and bad in law. He also argued that the non-selection of the applicant is an outcome of improper and extraneous consideration to favour other two candidates who were also not appointed.

3. Contesting the case, the respondents have filed a detailed reply. They have contended that after the selection in written examination, the applicant was short-listed as one amongst the five candidates for the post of TGT and selected for the interview. Based upon the interview and the written marks, a select list was published in which the name of the applicant did not find place. The respondents have categorically stated that the candidates at Sl.No.1 & 2 of the merit list i.e. Shri Mukesh Vashishta and Shri Gupta respectively were also not selected for appointment, as they lacked the requisite qualifying service/experience required under the SRO. The applicant was not successful in the interview. The

previous selection process itself was cancelled. Under such circumstances, when the applicant did not qualify to be included in the select list, but merely qualified for the interview, he has no moral ground to seek appointment as a matter of right, that too in a subsequent selection. Therefore, the OA deserves to be dismissed, contend the respondents.

4. We have heard learned counsel appearing for both parties. On a careful perusal of the records, we find that while dismissing the earlier OA No.175/02, the Tribunal observed that there was no irregularity or illegality committed by the respondents in not selecting the applicant. The candidature of the applicant was rejected as he could not succeed in the interview. The Tribunal also recorded in the order in OA 175/02 the statement of the respondents that candidate at Sl.No.1 of the select list Shri Mukesh Vashishta was not selected for appointment as PGT as he lacked the requisite qualification and that one Om Prakash Gupta was selected.

5. In view of the decision rendered by Hon'ble Supreme Court reported in 2004 SCC (L&S) 316 – Union of India Vs. T.K. Singh, it is settled principle of law that cancellation of selection cannot be challenged ^{through a writ of Mandamus} by a candidate, unless selected and gets letter of appointment. The Hon'ble Supreme Court has held in the following cases that a candidate, although included in merit list, has got no indefeasible right to get the appointment - (Shankarsan Dash Vs. Union of India and Ors. – 1991 SCC (L&S) 800; State of Bihar and Ors. Vs. Md. Kalimuddin and Ors. -1996 (2) SCC 7; Union of India Vs. S.S. Uppal – JT (1) 1996 p.258). We have also gone through Annexure A-3 filed along with the OA rejecting the representation of the applicant. Points 5 & 6 of A-3 are worth reproducing hereunder:

"5. The contention of the applicant that he was the only eligible candidate with requisite experience is not correct. In fact, the selected candidate possessed requisite qualification and experience as assessed by the Selection Board. The selection Board found the selected candidate to be fit in all

respects including criteria of education and experience as laid down in the SRO.

6. The reference of the case of appointment of Shri V.P.Singh in the year 1988, by the applicant, is not similar. Instead, it is different and not comparable with the instant case of the applicant. Shri V.P.Singh, a departmental candidate was found suitable for the said post by the Selection Board. Thus the two cases are different and a reference to this case by the applicant is not appropriate."

6. According to the respondents, the earlier selection process itself was cancelled, and they have re-advertised the post. In our considered view, the present OA is not sustainable. The OA is also hit by principle of res-judicata.

7. In the facts and circumstances of the case, we are of the considered view that the OA has no merits and is liable to be dismissed. Accordingly the OA is dismissed. No costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Dr.G.C.Srivastava
(Dr.G.C.Srivastava)
Vice Chairman

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मुलांकन सं. ओ/व्या..... जबलपुर, दि.....
प्रतिलिपि अवधे दिन:—
(1) सहिल, उच्च व्यापारिक वर एक्सोरियर, जबलपुर
(2) आदेश क. शीर्षकी/व्यु..... के काउंसल
(3) प्रव्यापी शी/प्रीति/व्यु..... के काउंसल
(4) वंशपाल, टो.प्र.ज., जबलपुर उपराज्यक
सूचना एवं आवश्यक कार्यकारी हेतु
अप रजिस्ट्रार

A.K.Por & Dr.G.C.Srivastava
S.K. Mishra
DD/2006

Approved
19/10/06