

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 909 of 2002

Jabalpur, this the 15<sup>th</sup> day of September, 2004

Hon'ble Mr. M. P. Singh, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Sudesh Kumar Yadav,  
Personal Assistant, Aged about 40 years,  
S/o Shri Manrakhan Yadav,  
Regional Medical Research Centre for Tribals  
(ICMR)RMRC Complex,  
PO-Garha, Jabalpur, Dist.-Jabalpur(M.P.)

APPLICANT

(By Advocate - Shri M.K. Verma)

VERSUS

1. Union of India through the Secretary  
Department of Health & Family  
Welfare, Nirman Bhavan, New Delhi.
2. The Director General,  
Indian Council of Medical Research,  
V. Ramalingaswamy Bhawan,  
Ansari Nagar, PB No.4911,  
New Delhi. 110 029
3. The Director Regional Medical  
Research Centre for Tribals(ICMR),  
RMRC Complex,  
PO-Garha, Jabalpur-482003
4. Mr. C.A. Thomas, Administrative  
Officer  
Regional Medical Research Centre  
for Tribals(ICMR) RMRC  
Complex,  
PO-Garha, Jabalpur-482003
5. Mr. Gyanchand Jain, Section  
Officer(Stores)  
Regional Medical Research Centre  
for Tribals(ICMR), RMRC  
Complex, PO-Garha, Jabalpur-482 003

RESPONDENT

(By Advocate - Shri A. Adhikari)

O R D E R

By A.K. Bhatnagar, Judicial Member -

By this OA filed under Section 19 of the Administrative Tribunals Act 1985, the applicant has prayed for the following main reliefs :-

" (i) That this Hon'ble Tribunal may graciously be pleased to quash the order dated 1.1.2002 (Annex-A-7) by which the Respondents No-5 has been appointed, in the interest of justice.

(ii) That this Hon'ble Tribunal may further be pleased to hold that the respondent Department has committed a grave violation/departure of recruitment rules.

(iii) That this Hon'ble Tribunal may further be

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pleased to hold that the instant post of Section Officer was required to be filled through any of the promotional category mentioned in the recruitment rules and not by the direct recruitment.

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(iv) That this Hon'ble/may further be pleased to hold that the selection committee appointed by the department was not in terms of recruitment rules and therefore the selection of Respondent No.5 was ab-initio void."

2. The brief facts of the case as per the applicant are that the applicant was initially appointed as Jr. Stenographer in the pay scale of Rs.1200-2040/- on 17.8.87. He was further selected for the post of Senior Stenographer in the pay scale of Rs. 1400-2600 on 29.12.1992. The above post of Sr. Stenographer was redesignated as Personal Assistant in the pay scale of Rs.1640-2900 w.e.f. 19.12.94 (Annexure-A-2). The post of Section officer is required to be filled up 20% by direct recruitment, 40% holding limited Competitive Test of departmental candidates working on the post of Assistants and Personal Assistants who have completed not less than 5 years approved service, and 40% by promotion from amongst Assistants who have rendered not less than 8 years approved service in that grade, on the basis of seniority, subject to rejection of unfit on the recommendations of Departmental Promotion Committee, as per recruitment rules filed as Annexure A-3.

The post of Section officer was advertised in the news paper and in the Employment News for direct recruitment. In pursuance to this, about 200 applications were received by the department, out of which 20 names of the candidates were short listed. The applicant has also applied as a departmental candidates alongwith 19 candidates. He was called for the selection test by a call letter Annexure-A-6. The department constituted a selection committee/DPC which was against the recruitment rules. The private respondent no.5 has been appointed on the post of Section Officer (stores) who does not possess the requisite qualification and experience as required in the recruitment rules.

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Against the illegal appointment of private respondent No.5 the applicant preferred a representation on 19.4.2002. Till now the respondents have not taken any action on the said representation of the applicant. Aggrieved by this, the applicant has filed this OA claiming the aforesaid reliefs.

3. The learned counsel for the applicant has submitted that the appointment of respondent no.5 was against the recruitment rules therefore, the appointment of respondent <sup>was</sup> no.5/bad in the eyes of law. He further submitted that the department has also not constituted the selection committee DPC in terms of the recruitment rules. Hence, any action taken by the selection committee in respect of appointment is illegal. The applicant was most eligible candidate but he has not been appointed on the post of Section Officer, and the right of promotion of the applicant has illegally been deprived by the respondent by appointing the respondent No.5. The post of Section Officer was required to be filled from promotional categories not through direct recruitment as has been done in the case of respondent no.5, Who does not possess the requisite qualification and experience.

4. Resisting the claim of the applicant, the official respondents as well as private respondent no.5 filed the counter reply and submitted that all the submissions made by the applicant are incorrect and based on mis-understanding of the recruitment rules which are liable to be dismissed. The Regional Medical Research Centre for Tribals at Jabalpur(ICMR) has two posts of Section Officer. The first post was sanctioned by Indian Council of Medical Research New Delhi(ICMR) vide its letter dated 27.4.84 which was meant for the Head Quarter! Vide letter dated 6.3.85

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another post of Section Officer(Stores) was sanctioned. The duties and responsibilities of these two posts of Saction Officers are entirely different and the post of Section Officer (Stores) has nothing to do with the post of Section Officer which was earlier sanctioned. The post in question Section Officer(stores) deal with personnel matters like purchases, import of equipments and chemicals inventory control etc. and the appointing authority for the post of Section Officer is respondent no.3 who decided to advertise the post. This post was filled through competitive test and personal interview. The applicant also applied for the post. He was called for test and interview along with others. He could not get through the test and his performance in the test was found poor. He appeared in the examination without any whisper or any protest but when he was not selected for the post he came out with objections of impropriety of various aspects challenging the selection/appointment on the post of Section Officer(Stores). Had he got any objection on the direct recruitment he could have challenged the recruitment before appearing in the test for the post of Saction Officer(stores)and should have sought appropriate remedy without being a mute participant in the process. The applicant has appeared in the test and when he could not get through the same he chose to challenge the same which is not tenable in the eyes of law. As the Hon'ble Supreme Court of India in a catena of decisions have held that once a person took part in a selection process and subsequently, challenged the selection process after having failed in selection process the same is not permissible. The learned counsel for the respondents has placed the reliance on the judgment of Hon'ble Supreme Court, in the case of Om Prakash Vs. Akhilesh Kumar, AIR 1986 SC 1043 in which it has been held as under :-

"4.1 Having appeared in a test, one cannot question its validity after failing in the test or finding himself unlikely to pass. There is no estoppel against challenging the rules of examination ever after appearing in the test."

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5. We have heard the rival contentions of the parties and perused the available material on record. Mainly the applicant has raised 2 points in his arguments (i) that the post of Section Officer(stores) is required to be filled by 20% direct recruitment and 40% holding by departmental competitive test and rest by promotion from among the persons (ii) that the applicant has further challenged the Constitution of Selection Committee and finally challenged the appointment of respondent No.5 on the ground that it should have been filled through direct recruitment not through promotion category. In this case we find that the applicant admittedly appeared in the test for the post of Section Officer(stores) at his own will without any protest or even without any whisper and is challenging the selection process thereafter. It is also not disputed that the applicant who was not found fit and failed in the selection process has been challenging the appointment of respondent No.5. We find force in the arguments of the learned counsel for the respondents that the applicant should have challenged the selection process before its commencement if it was against the rules. Now, the applicant has no right to challenge the selection process after having been declared failed in the test, as has been held by the Hon'ble Supreme Court in the case of Om Prakash(supra).

6. After carefully considering the submissions of the learned counsel for the parties, and the facts and circumstances of the case, and in view of the above discussion, we find that the applicant has got no case and the OA deserves to be dismissed being devoid of merits. Accordingly, the OA is dismissed being bereft of merits. No costs.

  
(A.K.Bhatnagar)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman