

OA 83/2008 with MA 88/2008

30-7-2008

Mr. Nand Kishore, Counsel for applicant

Mr. Anupam Agarwal, Counsel for respondents

Heard learned Counsel for the parties.

Judgement Reserved.

~~(B.L. Khatru)~~

(^{PLV}
B.L. Khatru)
(MCA)

(M.L. Chauhan)
M (J)

01/8/2008

order pronounced
today in the open court
by the aforesaid Bench.


01/08/2008
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the *5th Aug* , 2008

ORIGINAL APPLICATION No.83/2008
With MA No.88/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Babu Lal Dholpuria
s/o Shri Parsa Ram Dholpuria,
working as Law Assistant,
D.R.M. Office, Kota of
West Central Railway, Kota,
r/o 10/4, P.W.D. Colony,
Vigyan Nagar, Kota.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India
General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota.
3. General Manager,
Western Railway,
Churchgate,
Mumbai.

... Respondents

(By Advocate: Shri Anupam Agarwal)

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O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the respondents may be directed not to dislocate the applicant from the present posting of Law Assistant till finalization of O.A. No. 50/2008.
- (ii) That the respondent may be directed not to act upon Annexure A/1 till selection of Law Assistant to be held and finalized.
- (iii) Any other direction and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

4. Briefly stated facts of the case are that the applicant was selected as Law Assistant pursuant to select panel prepared in the year 1997. The said select panel was challenged by filing OA before the CAT-Mumbai Bench. The OA was allowed and it was held that the select panel so prepared should be recast after excluding marks given for seniority and then the list of candidates who secured 60% marks in aggregate should be prepared and the names should be arranged on the basis of seniority. From the material placed on record, it is also evident that subsequently Review Application No.37/98 and M.P. No. 318/98 was filed before the CAT-Mumbai Bench in which while dismissing the Review Application, the Tribunal directed the respondents that during the interregnum period before implementing the order dated 10.3.98 whenever they want to make ad-hoc appointment, they should first

exhaust the successful candidates list as per the impugned selection test. For that purpose, 3 months' time was granted to the department to implement the direction given by the Tribunal vide order dated 10.3.98. Further, from the material placed on record, it is also evident that the said order of the Tribunal was challenged by filing SLP before the Hon'ble Apex Court and the Apex Court dismissed the Civil Appeal No. 6622/01 filed by the applicant vide order dated February 12, 2008. Since the order of status quo was operating in favour of the applicant, he was allowed to continue to work on ad-hoc basis. Now since the SLP filed by the applicant has been dismissed by the Apex Court, the respondents have issued order dated 7.3.2008 (Ann.A1) whereby the General Manager (P), West Central Railway, Jabalpur was advised by the Western Railway, Headquarter Office, Churchgate, Mumbai to take necessary action with respect to reversion of the applicant and one Shri Virendra Sharma who are working as Law Assistant on ad-hoc basis. It is this order, which is under challenge before this Tribunal thereby praying for the aforesaid reliefs.

When the matter was taken up for admission on 18.3.2008, this Tribunal while issuing notices also granted ex-parte stay to the applicant on the premise that persons similarly situated have been allowed to continue on adhoc basis, as such, the applicant may

also be allowed to continue on the post of Law Assistant and respondents were directed to maintain status quo as of that day qua the applicant till the next date. The said stay was continued from time to time.

3. The respondents have filed reply. In the reply, the facts as stated above, have not been disputed. According to the respondents, the present OA is premature, inasmuch as, vide impugned order Ann.A1 only directions were given to take necessary action regarding reversion of the applicant and another person in view of the fact that SLP has been dismissed and interim stay stands vacated, whereby no final order has been passed.

On merits, it is stated that initial order of appointment/promotion of the applicant as Law Assistant on ad-hoc basis was passed in pursuance of directions issued by the CAT-Mumbai. According to the respondents, such directions were for a limited period. It is further stated that status quo order which was operating in favour of the applicant stood vacated in view of dismissal of SLP. Thus, the impugned order is nothing but a consequential order pursuant to dismissal of the SLP by the Hon'ble Supreme Court. According to the respondents, the applicant cannot have any right to continue for time to come or till regularly selected candidates are

available. It is further stated that the applicant already stood declared unsuccessful in the subsequent selection by the Western Railway and did not participate in the selection held by the West Central railway. Therefore, he has no legal right to continue as Law Assistant on ad-hoc basis. Regarding the fact that similarly situated are being continued, the respondents have stated that S/Shri Jai Kumar Naidu & V.S.Sisodia are continuing because of the order of Hon'ble High Court, Jabalpur. Regarding Shri K.K.Gaur, the respondents have submitted that he is being continued because of satisfactory working, which is lacking in the case of the applicant.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. Alongwith the rejoinder, the applicant has also placed on record copy of the judgment rendered by the M.P. High Court in Writ Petition No. 689/2001 in the case of Jai Kumar Naidu and anr. Vs. UOI and also copy of the order dated 2.6.2008 passed in SLP (Civil) No.14300/2008 whereby the Apex Court has granted order of status quo qua the appellant therein.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. It is not in dispute that the applicant was empanelled for selection to the post of Law Assistant and the said selection was quashed by the CAT-Mumbai Bench in OA No. 503/97 decided on 10.3.98 and the respondents were directed to prepare revised select list excluding the marks given for seniority and then prepare fresh select list. It is also admitted case between parties that pursuant to direction given by the Tribunal, the applicant could not be empanelled because he has not obtained 60% marks in aggregate. However, the applicant has challenged validity of the panel prepared pursuant to direction given by Mumbai Bench by filing OA No. 50/08. after a lapse of about 11 years when the SLP was ultimately dismissed and the decision of CAT-Mumbai bench was upheld. Thus, on the face of these facts, is it legally permissible for this Bench to issue a mandamus to the respondents to continue the applicant on ad-hoc basis especially when he has not been empanelled as per the revised panel prepared pursuant to the direction given by the CAT-Mumbai Bench? According to us, such a course is not permissible and the applicant cannot continue on ad-hoc basis, more particularly, when he has not been empanelled for the said post and further that the applicant did not appear in the subsequent selection test for the post of Law Assistant. Suffice it to say that the applicant has been allowed to continue on ad-hoc basis on the post of Law Assistant for more than

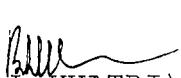
10 year by virtue of the stay operating in his favour, otherwise, he has not been selected as per revised panel. Further, it is not the case of discrimination as pleaded by the applicant whereby he has stated that 3 persons namely S/Shri Jai Kumar Naidu, V.S.Sisodia and K.K.Gaur are still working on ad-hoc basis. It may be stated here that Shri Jai Kumar Naidu and V.S.Sisodia are continuing by virtue of the status quo order passed by the Hon'ble Supreme Court which is still operating whereas in the case of the applicant the SLP stood already dismissed. Regarding Shri K.K.Gaur, the stand taken by the respondents is that his working is satisfactory, which is lacking in the case of the applicant. The respondents have specifically stated that claim of the applicant was considered by the respondents pursuant to direction given in OA No.14/08 dated 16.1.2008 and it was found that he is not fit for the post. Thus, according to us, the applicant has not made out any case of discrimination so as to warrant interference in the matter.

8. Fact remains that name of the applicant could not find place in the revised panel prepared pursuant to direction given by CAT-Mumbai Bench which decision has been upheld by the Supreme Court. The only limited direction was given by the Mumbai Bench while disposing of M.A. No. 318/98 whereby the respondents

were directed to give ad-hoc appointment during the interregnum period before implementing the order dated 10.3.1998 and such direction was to be implemented within a period of three months from 10.3.98. It was pursuant to such direction, as already stated above, which was to operate for a limited period, The applicant could not have been continued after implementation of the order dated 10.3.98 as the said decision has to be implemented within three months but for the stay granted by the Apex Court which now stands vacated.

9. Accordingly, the OA is bereft of merit and the same is dismissed. IR granted on 18.3.2008 and continued from time to time shall stand vacated. No costs.

10. In view of the order passed in the OA, no order is required to be passed in MA No.88/2008, which shall stand disposed of accordingly.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl.Member

R/