

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(12)

ORDERS OF THE BENCH

Date of Order: 28.08.2012

OA No. 211/2011 with MA No. 108/2012

Mr. R.D. Sharma, counsel for applicant.

Mr. Amit Mathur, proxy counsel for

Mr. R.B. Mathur, counsel for respondent nos. 1 to 3.

Mr. Anupam Agarwal, counsel for respondent no. 5.

None present for respondent no. 4.

At the request of learned counsel for the parties,
put up the matter on 13.09.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

13/09/2012

OA No. 211/2011 with MA No. 108/2012

Mr. R.D. Sharma, counsel for applicant.

Mr. Amit Mathur, ^{proxy} counsel for

Mr. R.B. Mathur, counsel for R-1 to 3.

Mr. Anupam Agarwal, counsel for R-5.

None present for R-4.

Heard.

O.A. and M.A. are disposed of
by a separate order on the separate
Sheets for the reasons recorded
therein.

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of September, 2012

ORIGINAL APPLICATION No. 211/2012
WITH
MISC APPLICATION No. 108/2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Madan Lal Jolia son of Shri Roop Narain Jolia, aged 38 years, resident of B-27, Varun Colony, Near Dadu Dayal Marriage Garden, New Sanganer Road, Mansarovar, Jaipur. SSA in EPF Organisation, Nidhi Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur.

... Applicant
(By Advocate : Mr. R.D. Sharma)

Versus

1. Union of India through Labour Secretary/the Chairman, Central Board of Trustees, Ministry of Labour & Employment, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishyanidhi Bhawan, Bikai Ji Cama Palace, New Delhi.
3. The Regional Provident Fund Commissioner, Nidhi Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur.
4. Shri Sandeep Kumar Gupta, AO/EO C/O Regional Provident Fund Commissioner, Nidhi Bhawan, Pachimpal Vistara Colony, Jodhpur.
5. Shri Harish Kumar Sachdev, C/O Regional Provident Fund Commissioner, Nidhi Bhawan, Vigyan Nagar, Kota.

... Respondents
(By Advocates:
Mr. Amit Mathur Proxy Counsel for Mr. R.B.Mathur, Respondent nos. 1 to 3.
None for respondent no. 4
Mr. Anupam Agarwal – Respondent no. 5)

ORDER (ORAL)

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

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- "(i) To amend the notification dated 17.09.2009 (Annexure A-1 Colly)
- (ii) To insert the vacancy of Rajasthan region in the notification dated 02.08.2010 (Annexure A-1 colly) looking to variation in number of EQ vacancy of Rajasthan region from 7 to 11 as the respondent No. 2 has again notified EQ vacancy after having found variation in EQ vacancy in respect of the other states.
- (iii) To declare 2 EQ vacancies of EO/AO against point No. 15 & 20 as reserved for SC as per roster.
- (iv) To declare the result of remaining 4 EQ vacancies including 2 candidates of SC who have qualified the examination but could not be declared on account of not issuance of notification even after having found error/variation in number of EQ vacancy of Rajasthan Region.
- (v) To select the applicant for promotion to the post of EO/AO at par with other selected candidates with all consequential benefits.
- (vi) To issue appropriate directions to the respondents to allow all the benefits as are admissible to the selected post/grade.
- (vii) To pass order(s), direction(s) as may be necessary in the interest of justice.
- (viii) The cost of the OA may kindly be awarded in favour of the applicant."

2. Learned counsel for the applicant submitted that the applicant has been working with the respondent department on the post of Social Security Assistant with effect from 01.04.2004. On 01.09.2009, the respondent no. 2 requested the Regional Provident Fund Commissioner to notify the Examination quota vacancy in the cadre of Enforcement Officer/Accounts Officer as on 31.12.2008 and to invite applications from the eligible employees. The respondent no. 3 unfairly invited 7 vacancies of EO/AO in respect of Rajasthan Region which include 6 UR and 1 ST but none for SC (Annexure A-1 Colly) whereas EQ vacancy in respect of Rajasthan Region was 11 (8UR+1ST+2SC) as per Post based Roster maintained by respondent no. 3 (Annexure A/4).

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That the applicant being eligible and Scheduled Caste (SC) candidate appeared in the departmental competitive examination for promotion to the post of Enforcement Officer/Accounts Officer conducted from 7th to 11th December, 2009 against all vacancies of Examination Quota as on 31.12.2008. The total vacancies of Examination Quota in the cadre of EO/AO as on 31.12.2008 were 22. As per the Roster Point No. 7, 15 and 20, three SC posts are earmarked/reserved for SC employees. 11 posts of EO/AO are filled up in which 1 post of SC is also filled up from SC candidates. Therefore, the remaining 2 points (Point No. 15 & 20) out of the 11 vacancies should have been given to SC candidates. Even after having found variation in EQ of the Rajasthan Region assessing 11 vacancies in place of 7, the respondent no. 3 has not notified the actual number of vacancies before declaration of result. The respondent no. 2 assessed 11 EQ vacancies by a letter dated 15.04.2010 (Annexure A-1 Colly). In case of variation in number of vacancy, the changes are to be notified as per provisions of the examination scheme as the respondent no. 2 has done in respect of other regions like Andhra Pradesh, Jharkhand and Tamil Nadu but that has not been done in Rajasthan Region.

3. The applicant submitted his written representation dated 13.05.2010 to notify EQ reserved SC vacancy but the respondent has neither solved his grievance nor rectified the variation in number of EQ vacancy including reserved points 15 & 20 for SC

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even after having knowledge of variation in number of EQ vacancy in respect of Rajasthan Region.

4. On 02.08.2010, the respondent no. 2 has rectified already notified vacancies of EQ after having found the variation in number of EQ vacancy of other regions namely Andhra Pradesh, Jharkhand and Tamil Nadu but does not notified variation in respect of Rajasthan Region.

5. On 31.08.2010, respondent no. 3 communicated 11 EQ vacancies as on 31.12.2008 to respondent no. 2. The applicant again submitted his written representation dated 13.09.2010 to the respondents through proper channel but the applicant has not been given any relief. In the case of Rajasthan, the respondents have arbitrarily and unfairly erred in notifying the vacancies of SC as 'nil' by notification dated 17.09.2009 and, therefore, the action of the respondents is wholly unfair, discriminatory and utterly in violation of recruitment rules.

6. The applicant belongs to SC community and has become victim of the said reduction in vacancy and having secured 233 marks has not been declared successful and thus denied the promotion under the examination quota against the SC vacancy as per roster maintained in terms of OM dated 02.07.1997 on the basis of the judgment in the case of **R.K. Sabharwal vs. State of Punjab**. Therefore, the learned counsel for the applicant submitted that the OA be allowed and the respondents be

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directed to declare the result of the two candidates of SC who have qualified the examination but could not be declared successful on account of not issuance of SC vacancy in the notification even after having found error in number of EQ vacancy of Rajasthan Region. He further argued that the candidates should not suffer on account of mistake on the part of the State and to support his averment, he referred to Para No. 13 of the judgment of Hon'ble Supreme Court in the case of

Andhra Pradesh Public Service Commission vs. P. Chandra Mouleeswara Reddy & Others, MANU/SC/8497/2006, which reads as under:-

"13. The candidates, therefore, in our opinion, should not suffer owing to a mistake on the part of the State. The Tribunal, we have noticed hereinbefore, directed the Commission to notify the remaining nine candidates in the merit order following the 'Rule of Reservation'. It was categorically stated that those who would be appointed in terms thereof would be able to claim any right only with prospective effect i.e. from the date of their actual joining of service. It, therefore, cannot be said that the order of the Tribunal was in any manner unjustified or unreasonable. The High Court, thus, in our opinion, rightly refused to exercise its jurisdiction under Article 226 of the Constitution of India."

7. On the other hand, official respondents argued that this OA has been filed by the applicant after the selection process is over and after completion of the selection procedure. The selected candidates have been given appointment. Therefore, when the procedure of selection is over, the applicant cannot be permitted to challenge the same. He further argued that the applicant is challenging the selection as well as notification issued by the respondents in the year 2009. The applicant has participated in

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the selection process and once he has participated in the selection process, it is a well settled law that he cannot challenge the selection process. Therefore, the OA is liable to be dismissed on this ground alone.

8. He further argued that the applicant to prove his case has produced a forged document. He referred to the document which is at Annexure A/7, which is representation dated 13.05.2010. It has been verified by the respondents that no such representation was received in the office of the respondents. The aforesaid representation is annexed with the application with the purpose to prove the fact that the applicant submitted the representation to the respondents prior to completion of selection process. The applicant is trying to get the relief from the learned Tribunal by submitting false documents as such; the OA should be dismissed with exemplary cost.

9. He further submitted that the applicant has come with a prayer that the notification dated 01.09.2009 may kindly be modified. This notification was issued on 01.09.2009 and the applicant could have filed the OA within one year from the date of issuance of the notification. Since the present OA has been filed after one year of issuance of the notification, therefore, the OA is liable to be dismissed on the ground of limitation. The applicant made representation after completion of the selection procedure as result of the examination was declared on 05.08.2010.

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10. Learned counsel for the respondents agreed that the respondents have committed a mistake while calculating the vacancy position for SC candidates. This fact came in the knowledge of the respondents when they informed certain information under the Right to Information Act. However, he denied that Roster has not been correctly followed by the respondents as per the direction of the Hon'ble Supreme Court in the case of R.K. Sabbarwal vs. State of Punjab but he admitted that two vacancies belonging to SC were not advertised due to the fact that vacancy of the SC were not correctly determined by the respondents. He further submitted that non advertising of the vacancy does not give any right to the applicant for the selection that is already over. He further submitted that vacancy of SC has not been transferred to the General category. He submitted that as & when vacancies will be advertised, those vacancies belonging to SC will also be advertised. However, by not advertising two vacancies for SC category, no right is accrued in favour of the applicant. The applicant appeared in the selection process but failed to qualify. Now once the applicant has appeared in a particular selection, he cannot challenge the same. The claim of the applicant can only be considered against those vacancies, which were advertised. Those vacancies which were not advertised, the claim against those vacancies cannot be taken into consideration.

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11. With regard to the averments of the learned counsel for the applicant that vacancy position in other States like Andhra Pradesh and Tamil Nadu were modified whereas in Rajasthan Region, they were not modified/amended, learned counsel for the respondents argued that in other States, vacancies were issued and the same were notified prior to the completion of the selection procedure. The selection procedure came to an end in the month of August, 2010 when the result was declared. He argued that it is a well settled legal position that the vacancies which have not been advertised/ notified cannot be filled up. Therefore, there is no question of violating office Memorandum dated 02.07.1997 by the official respondents but it is a case where the respondents could not determine the vacancies correctly. He further argued that since two SC vacancies were not advertised, therefore, the SC candidates who may otherwise be eligible for promotion may not have applied. If these two posts of SC are filled up without advertising the post then the rights of those SC candidates who were otherwise eligible but did not apply for want of vacancy then their right of consideration would be curtailed. He submitted that as & when these two vacancies for SC candidates are advertised, the applicant can apply for the same if otherwise found eligible. Therefore, on any ground the OA has no merit and the OA may be dismissed with cost.

12. The applicant has also filed a rejoinder and an additional affidavit.

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13. Heard learned counsel for the parties and perused the documents on record and the case law referred to by the learned counsel for the applicant. It is not disputed that there were 11 posts of EO/AO to be filled up by promotion through departmental examination but the respondents have notified only 7 vacancies (6 for UR, 1 for ST and none for SC). Learned counsel for the respondents admitted that in the 11 posts for EO/AO, 2 vacancies should have been reserved for SC category candidates but by mistake they could not be included while issuing the advertisement for filling up these posts. Learned counsel for the applicant vehemently argued that since there are two vacancies for SC candidates, therefore, the applicant should be considered against those posts since he has qualified in the written examination. Therefore, he should be given appointment by promotion. On the contrary, learned counsel for the respondents argued that in the 7 posts that were to be filled up by promotion on the basis of departmental examination, none was for SC. The applicant appeared in the examination but could not qualify. Before appearing in the examination, he was aware of the fact that no post of SC has been reserved amongst the 7 posts, therefore, now after being declared unsuccessful in the examination, he cannot claim the benefit of 2 SC posts, which were not advertised. We are inclined to agree with the averments made by the learned counsel for the respondents that the applicant is not entitled to be considered against those 2 SC vacancies, which were not advertised while issuing the

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notification dated 17.09.2009. As stated by the learned counsel for the respondents, the applicant can appear again if otherwise eligible as & when these two SC vacancies are advertised by the respondents. In our opinion, the applicant has no legal right to be appointed on the post, which has not been advertised. The selection process is over and appointments have already been given. The applicant also appeared in the selection process but has failed to qualify. Therefore, in our opinion, he cannot now agitate that two posts meant for SC should have been advertised and he should be adjusted against those two vacancies.

14. With regard to the averment of the learned counsel for the applicant that the vacancy position in other States like Andhra Pradesh, Jharkhand and Tamil Nadu were modified whereas in Rajasthan Region, they were not modified/amended, the learned counsel for the respondents made it clear that in those States, vacancies were issued and they were modified prior to the completion of the selection procedure but in the case of Rajasthan Region, the vacancies could not be modified/amended because in this region, the selection process was over and the result was declared. We are convinced that in view of the averment made by the learned counsel for the respondents, there is no illegality/infirmity in the action of the respondents in not modifying the vacancies as the selection process was already over..

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15. Learned counsel for the applicant also argued that the candidates should not suffer on account of the mistake on the part of the State and to support his averment, he referred to Para No. 13 of the judgment of the Hon'ble Supreme Court in the case of **Andhra Pradesh Public Service Commission vs. P. Chandra Mouleeswara Reddy & Others** (supra). We have carefully gone through the judgment of the Hon'ble Supreme Court. In that case Andhra Pradesh Service Commission advertised 19 posts for the recruitment to the post of Deputy Superintendent of Police. The examination was conducted for those 19 posts. However, the State asked the Commission to fill up only 10 posts. The said exercise was carried by the Commission. Thus being aggrieved by the action of the State Government of not filling up 9 posts out of the 19 posts, which were advertised, the applicant filed the OA before the Andhra Pradesh Administrative Tribunal. The Tribunal directed the Commission to notify the remaining 9 candidates in merit order following the reservation order. It was also made clear that those who would be appointed in terms thereof would be able to claim any right only with prospective effect i.e. from the date of their actual joining of service. The Hon'ble Supreme Court also upheld the judgment of the Tribunal. Whereas in the present case 7 posts were advertised and all the 7 posts were filled up. Therefore, the ratio laid down by the Hon'ble Supreme Court in the case **Andhra Pradesh Public Service Commission vs. P. Chandra Mouleeswara Reddy & Others** (supra) is not

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applicable under the facts & circumstances of the present case.
Thus the applicant is not entitled for any relief in this OA.

16. Consequently, the OA being bereft of merit is dismissed with no order as to costs.

17. In view of the order passed in the OA, the MA No. 108/2012 also stands dismissed.

Anil Kumar
(Anil Kumar)

Member (A)

AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)