

(7)

01/10/2012

O.A. 664/2011

Present : Applicant present in person.

Mr. V.D. Sharma counsel for the respondents.

This case has been listed before Joint Registrar due to non-availability of Division Bench. Let the matter be placed before the Hon'ble Bench on 11/10/2012.


Joint Registrar

W/O

11/10/2012

O.A. 664/2011

Mr. V.K. Mathur, Counsel for applicant.
Mr. V.D. Sharma, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 11th day of October, 2012

ORIGINAL APPLICATION No. 664/2011

CORAM :

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

Dr. Bharat Singh Rathore son of Shri Sajjan Singh Rathore, aged 50 years, resident of Plot No. 7, Hari Marg, Civil Lines, Jaipur Rajasthan. Presently holding the post of Deputy Director (Sr. Geologist) Department of Mines & Geology, Government of Rajasthan, Jaipur

... Applicant

(By Advocate : Mr. V.K. Mathur)

Versus

1. Selection Board, Union Public Services Commission, New Delhi through its Chairman.
2. State of Rajasthan through the Principal Secretary, Department of Personnel, Government of Rajasthan, Jaipur.
3. Principal Secretary to the Government, Mines and Petroleum Department, Government of Rajasthan, Jaipur.
4. Deputy Secretary to the Governent Mines (Group) Department, Government of Rajasthan, Government Secretariat, Jaipur.
5. Director, Petroleum Department, Khanij Bhawan, Jaipur.

... Respondents

(By Advocate : Mr. V.D. Sharma)

ORDER (ORAL)

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

"In conspectus of above of facts, it is prayed to Hon'ble Tribunal that this Hon'ble Tribunal may very graciously be pleased to call for and examine the entire record of the case, accept and allow this Original Application, and

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- a) By an appropriate order and direction the respondents may be directed to consider the name & candidature of the applicant for appointment on the post of IAS Officer under Non State Civil Service Quota as per provisions of Indian Administrative Service (Recruitment) Rules 1954 and on the basis of Merit Award and give appointment to the applicant if found suitable and eligible with all consequential benefits at par with other promotees.
- b) Any other order or relief or direction this Hon'ble Court may deem fit and proper be also passed in favour of the applicant."

2. Learned counsel for the applicant argued that the applicant is working on the post of Senior Geologist (Deputy Director) since 22.07.2010. The service of the applicant has been outstanding throughout his service tenure. The respondent no. 2 issued a letter dated 26.04.2011 to respondent no. 3 for sending the names of three officers of outstanding merit from the Non State Civil Services under their administrative control after screening all eligible officers (Annexure A/2).

3. He further submitted that respondent no. 4 issued order vide letter dated 18.05.2011 (Annexure A/3) to respondent no. 5 stating thereby that the name of the applicant for selection/promotion to the post of IAS under the quota of Non State Civil Service Officers as per provisions of Indian Administrative Service (Recruitment) Rules, 1954 is under consideration but the APAR of the applicant for the year 2009-2010, 2010-2011 is not available so the same may be provided duly filled. The list of 31 officers from various departments was published in July 2011 including the name of the applicant.

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4. Thereafter the applicant was shocked and surprised to see a news item published in the daily newspaper, Rajasthan Patrika dated 24.12.2011, whereby it was revealed to the applicant that the respondents after screening have deleted the candidature of 15 candidates including the applicant out of 31 candidates and declared the name of only 16 candidates as eligible for filling up 3 posts of IAS by way of promotion under Non State Civil Service Officer quota as per the provisions of the Indian Administrative Service (Recruitment) Rules, 1954.

5. The applicant gave a representation to the respondent nos. 2 & 4 on 25.12.2011 and invited attention towards his merit for consideration (Annexure A/8). He submitted that his name has been excluded without any justified reason, which is highly illegal, arbitrary, malafide and is in violation of the legal and fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. Therefore, the OA be allowed and the respondents be directed to consider the name and candidature of the applicant for appointment on the post of IAs Officer under Non State Civil Service Quota as per the provisions of Indian Administrative Service (Recruitment) Rules, 1954.

6. On the other hand, learned counsel for the respondents argued that as per the Indian Administrative Service (Appointment by Selection) Regulation, 1997, the names of officers holding Gazetted posts and fulfilling the eligibility criteria are obtained from various administrative departments in

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Department of Personnel. The names proposed by the departments are considered by the internal screening committee constituted under the orders of the Chief Secretary and short listed for sending to the Union Public Service Commission to be finally considered by the selection committee, as the ratio of zone of consideration is 5:1.

7. Learned counsel for the respondents further argued that in response to the letter dated 26.04.2011 issued by the Department of Personnel, names of 31 Non-SCS officers were received in the department from various Administrative Departments and name of the applicant was also included in the said list of 31 officers. He further submitted that the name of the applicant was duly considered by the Committee constituted by the State Government to scrutinize the names of Non-State Service Officers recommended by various administrative departments and to prepare a panel of names of 15 officers (5 times of number of vacancies) for further consideration by the selection committee regarding appointment to the Indian Administrative Service Cadre by selection from Non State Civil Service in its meeting held on 19.08.2011. The Screening Committee after considering service record of the officers recommended 15 names and the name of the applicant was not found suitable by the committee. The Screening committee did not recommend the name of the applicant, hence, his name was not forwarded to UPSC for further consideration by the Selection Committee. The applicant nowhere has alleged any

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malafidness or illegality on the part of the respondents or by screening committee and in absence of challenging the same, no relief can be claimed. Moreover, he has not impleaded any officer as party respondent to substantiate his claim and thus no presumption can be drawn about malafidness.

8. Learned counsel for the respondents also argued that it is also important here that as per recommendation by the Screening Committee, 15 officers were called for interview by Union Public Service Commission and vide notification dated 10.02.2012 (Annexure R/1) under Rule 8(2) of the Indian Administrative Service (Appointment by Selection) Regulation, 1997, three officers namely, Dr. Rajesh Sharma, Kunj Bihari Gupta and Banna Lal have been appointed as IAS against the vacancies determined by the Government of India for the select list of 2011. The applicant has not challenged the notification dated 10.02.2012 and as such in absence of challenging the same, no relief can be claimed.

9. Thus after issuance of order dated 10.02.2012, the relief as sought for by the applicant cannot be granted and the order dated 10.02.2012 is required to be challenged. In absence to the challenging the order dated 10.02.2012, the OA is not liable to be entertained. To support his averments, he also referred to the order dated 12.12.2006 passed in OA No. 451/2006 [Dr. Kalyan Sahai Sharma vs. Union of India & Others]. In Para 6 of the said order, this Tribunal has held that

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"6.the panel has to be prepared by the Committee based on objective comparative assessment of the entire service career and upon close scrutiny of the entire service record of the concerned officer and it is not open for this tribunal to sit in appeal on such assessment so made by the Committee when the applicants have not been given specific instance to show that the Committee has prepared the list in unfair, arbitrary and discriminatory manner on the basis of pick and choose method by giving instances of such official who were less meritorious....."

Thus he argued that the present OA has no merit and it should be dismissed with costs.

10. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the respondents. It is an admitted fact that the State Government invited applications from the officers of Non State Civil Service from various administrative departments. The name of the applicant was forwarded by his parent department. In all the name of 31 Non State Civil Service Officers were received in the Department of Personnel from various department and the name of the applicant was also included in this list of 31 officers. According to the respondents, the name of the applicant was duly considered by the Committee constituted by the State Government to scrutinize the names of Non-State Service Officers recommended by various administrative departments and to prepare a panel of names of 15 officers (5 times of number of vacancies) for further consideration by the selection committee regarding appointment to the Indian Administrative Service Cadre by selection from Non State Civil Service in its meeting held on 19.08.2011. The Screening Committee after considering service record of the officers, recommended 15

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names and the name of the applicant was not found suitable by the committee. The Screening committee did not recommended the name of the applicant; hence, his name was not forwarded to UPSC for further consideration by the Selection Committee. The applicant nowhere has alleged any malafideness or illegality on the part of the respondents or by screening committee and in absence of challenging the same, no relief can be claimed. Moreover, he has not impleaded any officer as party respondent to substantiate his claim and thus no presumption can be drawn about malafideness.

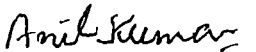
11. The ratio decided by this Tribunal in OA No. 451/2006 vide order dated 12.12.2006 (Dr. Kalyan Sahai Sharma vs. Union of India & Others) squarely applicable in the present OA. The applicant has a right of consideration and he was duly considered by the Committee constituted by the State Government to scrutinize the name of the Non State Civil Officers recommended by various administrative departments. The Screening Committee after consideration of service record of officers recommended the names of 15 officers and the name of the applicant was not found suitable by the Committee. The applicant has not alleged any malafide against the Committee or against any member of the Committee. The applicant has also not shown that he is more meritorious than the 15 officers who were short listed by the Screening Committee. Moreover, the selection is over and the three officers have already been selected vide order dated 10.02.2012 (Annexure R/1). This


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notification is not challenged. Therefore, no order can be passed against these officers behind their back. Therefore, we are of the opinion that the applicant has failed to make out any case for relief in the present OA.

12. Learned counsel for the applicant also drew our attention to a letter from DOPT dated 18.04.2012 where one post is available for recruitment from Non-SCS quota. He submitted that the respondents be directed to send the name of the applicant against this post. We have no doubt that the State Government will follow the due procedure in filling up this one post and no specific direction can be issued in favour of the applicant to the respondents at this stage.

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


(Anil Kumar)
Member (A)


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

AHQ