

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORDERS OF THE BENCH**

**Date of Order: 01.04.2014**

**OA No. 57/2011**

Mr. C.B. Sharma, counsel for applicant.  
Mr. Mukesh Agarwal, counsel for respondent nos. 1 to 3.  
Mr. Vikash Pareek, proxy counsel for  
Mr. Kunal Rawat, counsel for respondent no. 4.  
None present for respondent no. 5.

Put up the matter on 02.04.2014 for further hearing.

*M.Nag*  
(M. NAGARAJAN)  
JUDICIAL MEMBER

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

Kumawat

02/04/2014

OA No. 57/2011

Mr. C.B. Sharma, counsel for applicant.  
Mr. Mukesh Agarwal, counsel for respondent Nos. 1 to 3.  
Mr. Vikash Pareek, proxy counsel for  
Mr. Kunal Rawat, counsel for the respondents No. 4.  
None for the respondent No. 5.

Heard the learned counsel for the parties

Order Reserved.

*M.Nag*  
(M. NAGARAJAN)  
Member (J)

*Anil Kumar*  
(ANIL KUMAR)  
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORDER RESERVED ON 01.04.2014**

**DATE OF ORDER : 8 .04.2014**

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER  
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

**1. ORIGINAL APPLICATION NO. 527/2010**

Kadar Singh Yaday son of Shri Rameshwar Dayal Yadav aged 50 years, resident of 38, Satya Vihar Colony, Lal Kothi, Jaipur. Presently working as Deputy Controller of Mines, Indian Bureau of Mines, Adarsh Nagar, Ajmer.

... Applicant

(By Advocate: Mr. Anupam Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. The Controller General, Indian Bureau of Mines, Indira Bhawan, Civil Lines, Nagpur (Maharashtra).
3. The Secretary, Department of Personnel & Training, Government of India, New Delhi.
4. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
5. Shri Y.G. Kale, Regional Controller of Mines, Indian Bureau of Mines, Indira Bhawan, Civil Lines, Nagpur (Maharashtra).
6. Shri V. Jaya Krishna Babu son of Shri V. Krishna Murthy, Village Sydapuram, Post Sydapuram Mandal, Nellore (A.P.)

... Respondents

(By Advocates:

Mr. Mukesh Agarwal – Counsel for Respondents nos. 1 to 3

Mr. Vikas Pareek, Proxy counsel for

Mr. Kunal Rawat, counsel for Respondent no. 4

None present for respondent nos. 5 & 6.

**2. ORIGINAL APPLICATION NO. 57/2011**

Harkesh Meena son of Late Shri Kishari Lal Meena, aged about 49 years, resident of Quarter No.5, Type-V, Indian

Bureau of Mines Colony, Balupura Road, Adarsh Nagar, Ajmer and presently working as Deputy Comptroller of Mines and Office Incharge, Regional Office, Indian Bureau of Mines, Makupura Industrial Area, Nasirabad Road, Ajmer.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Indian Bureau of Mines through the Controller General, Indian Bureau of Mines, Civil Lines, Indira Bhawan, Nagpur.
3. Union of India through the Secretary, Department of Personnel & Training, New Delhi.
4. Union Public Service Commission through Secretary Dholpur House, Shahjahan Road, New India Gate, New Delhi.
5. Shri P.N. Sharma, presently appointed as Regional Controller of Mines, Office of Controller of Mines (North Zone), Indian Bureau of Mines, Adarsh Nagar, Ajmer (Rajasthan).
6. Shri J.R. Choudhary, presently appointed as Regional Controller of Mines, Indian Bureau of Mines, Nehru Nagar, Dehradun, Uttarakhan.
7. Shri T.K. Rath, Presently appointed as Regional Controller of Mines, Indian Bureau of Mines, Mahanee Complex, C.S. Pur, Bhubaneshwar, Orrissa.
8. Shri Y.G. Kale, presently appointed as Regional Controller of Mines, Indian Bureau of Mines, Civil Lines, Nagpur, Maharashtra.

... Respondents

(By Advocates:

Mr. Mukesh Agarwal – Counsel for Respondents nos. 1 to 3

Mr. Vikas Pareek, Proxy counsel for

Mr. Kunal Rawat, counsel for Respondent no. 4

None for respondents nos. 5 to 8.

### ORDER

#### **PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Since the controversy involved in OA No. 527/2010 (Kadar Singh Yadav vs. Union of India & Others) and CA No. 57/2011 (Harkesh Meena vs. Union of India & Others) is the same, therefore, with the consent of the parties, these OAs are being

disposed of by a common order. The facts of OA No. 527/2010 (Kadar Singh Yadav vs. Union of India & Others) have been taken as a lead case. The applicant has filed this OA praying for the following reliefs:-

"It is therefore, prayed that the record relating to promulgation of rules of 1991, 1998 and 2003 and selection pursuance to the advertisement Annexure A/2 may kindly be called and after perusing the same:

- (i) The impugned advertisement No. 03/2010 be quashed and set aside.
- (ii) the amendment of 2003 so far as it relates to the post of Regional Controller of Mines be declared ultra virus and thus null and void.

Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances may kindly be granted to the applicant."

2. The brief facts, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Group 'A' Officer, Assistant Controller of Mines on 26.02.1990.

3. That as per the Recruitment Rules prevailing at that point of time, he was eligible for promotion to the post of Deputy Controller of Mines on completion of six year of service and thereafter as Regional Controller of Mines on completion of further four years of service.

4. The respondent department amended the Service Rules on 02.11.1991. The respondents further amended the Rules in 2003 but they failed to provide protection to the employees as provided in Para 3.1.3 of the guidelines issued by the DOPT for framing of

Service Rules. In the amendment made in the year 2003, the respondents made a provision of 60% direct recruitment on the post of Regional Controller of Mines and 40% on the basis of promotion. Prior to amendment of 2003, the post of Regional Controller of Mines was filled up on the basis of 100% promotion. Because of this amendment, the applicant could not be promoted despite of completion of requisite qualifying eligibility period of 10 years on 15.02.2000.

5. The respondents by way of Rules of 2003 lowered down the requisite experience of direct mode for Regional Controller of Mines from 13 years to 10 years and increased experience for promotion to the post of Regional Controller of Mines from three years to five years. More so, the prescribed ten years' experience for Regional Controller of Mines in direct recruitment mode is of merely supervisory category and not of higher responsibility to justify the reduction

6. That respondent no. 2 vide its letter dated 24.09.2007 requested the respondent no. 1 to grant one time exemption in the interest of the department.

7. However, the respondents issued an advertisement No. 3/2010 seeking application for recruitment of nine posts of Regional Controller of Mines. It clearly demonstrates that the vacancy so advertised has been clubbed for all the previous years since the last

promotion. It has adversely affected the future prospects of the applicant. The applicant has been deprived of his promotion.

8. The learned counsel for the applicant further submitted that the respondents have failed to follow the procedure and guidelines of the respondent no.3 as they failed to conduct the periodical review of the Recruitment Rules as provided in its guidelines for framing the amendment/relaxation in the Recruitment Rules 1998 and as reiterated in 2010. It is clearly provided that Recruitment Rules should be reviewed once in five years but the respondents have not carried out any review after 2003.

9. The action of the respondent no. 4 (UPSC) is also illegal in as much as the UPSC during the selection process acted maliciously and against the procedure. The interviews for the post of Regional Controller of Mines were conducted by respondent no. 4 during 08.11.2010 to 11.11.2010. As per the practice/rules, at least 21 days prior intimation for interview is given to a candidate. As per the information of the applicant, 5 candidates were issued call letters without adhering to time schedule who were not in the initial list of the candidates who were issued interview call letters on 20.10.2010. Similarly two candidates at sr. no. 219 and 58 whose applications were received late were issued call letters for interview. Feeling aggrieved by it, the applicant represented to UPSC on 12.11.2010 (Annexure A/6).

10. The learned counsel for the applicant also submitted that Shri Y.G. Kale had an experience of 12 years as Junior Group "A" Officer, Shri V. Jaya Krishna Babu had an experience of just 10 years in a very small mine. Both these persons have been selected while the applicant who is having 28 years of experience has been left out. The applicant has a excellent academic record also.

11. The learned counsel for the applicant also submitted that the result of the selection was published in the Employment News in the last week of February, 2011 whereas the appointment letters were issued 11.01.2011.

12. He argued that the amendment of Rules 2003 prescribing 40% by promotion and 60% by direct recruitment for the post of Regional Controller of Mines being against the principle of reasonable expectation and thus is totally illegal. The amendment is also illegal as much as the same has been made without any policy. It curtails future promotional prospects of the applicants.

13. The amendment also prescribes direct recruitment in all the grades, which is illegal. It places a person with lesser experience and age above a person with more experience. Therefore, the amendment of 2003 be quashed and set aside. It is also violative of Articles 14, 16 and 21 of the Constitution of India and, therefore, deserves to be quashed. That the Department is again going to amendment Rules to allow 100% reservation. Therefore, he argued

that the amendment of 2003 so far as it relates to the post of Regional Controller of Mines be declared ultra virus and thus null & void and the impugned advertisement No. 03/2010 (Annexure A/2) be quashed and set aside.

14. The learned counsel for the applicant, Mr. C.B. Sharma, in OA No. 57/2011 adopted the arguments advanced by the learned counsel for the applicant, Mr. Anupam Agarwal, in OA No. 527/2010. In addition, he stated that the provisions of 60% direct recruitment in the Rules 2003 for the post of Regional Controller of Mines is against the recommendations of the 5<sup>th</sup> Pay Commission, as recommended in Para 20.40 which provides that direct recruitment is not generally resorted to at two successive grade in a cadre. In view of this position, the respondents without any base introduced direct recruitment of four consecutive grades in Mining Engineering discipline.

15. The respondents promoted the applicant to the post of Deputy Controller of Mines on 26.12.2006 instead of against the vacancy available prior to 2000. The direct recruitment at the level of Regional Controller of Mines is not in the interest of Indian Bureau of Mines. This post should be filled only from the departmental candidates who are well acquainted with the mines and minerals of the country.

16. He also pointed out that 9 posts of Regional Controller of Mines advertised were for the vacancies of last 10 years and also in view of the vacancy for promotional quota.

17. He also submitted that S/Shri J.K. Jangid, B. Ram, Mohan, Sharad S. Sapkal, Kamlesh Kumar Tardia and G.C. Sethi were issued interview letters subsequently. He also submitted that respondents be directed to promote the applicant to the cadre of Deputy Controller of Mines and thereafter on Regional Controller of Mines from due dates. The selection process conducted by respondent no. 4 in pursuance to the advertisement dated 13.02.2010 (Annexure A/1) be quashed and set aside. He further prayed that the respondents be directed to give effect to the recommendations of the committee which provide 100% promotion on posts having Grade Pay of Rs.5400/- and above upto Rs.10,000/-.

18. The respondents have filed their reply. The learned counsel for the respondents submitted that the applicant has participated in the selection/recruitment process held in pursuance to the advertisement No. 03/2010 but was not selected. Thereafter, he challenged the same along with the amendment of the Recruitment Rules for the post of Regional Controller of Mines in the Indian Bureau of Mines, notified in 2003. Thus as per the law settled by the Hon'ble Courts and law laid down by the Hon'ble Supreme Court in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla**,

1986 (Suppl.) SCC 285, the OA of the applicant is not maintainable and liable to be dismissed. He also submitted that in an identical case, OA No. 37/2011, wherein the applicant (Shri G.K. Jangid) after his non selection for the post of RCOM had challenged the Recruitment Rules and the entire selection process followed to fill up the post of RCOM before the CAT Bench, Madras, has been dismissed vide the order dated 19.01.2011 on the ground that after participating in the interview, the applicant cannot challenge the selection process. Thus the OA of the applicant deserves to be dismissed.

19. He further submitted that the amendment of the Recruitment Rules was earlier challenged in OA No. 137/2007 by one of the incumbents in the cadre of Deputy Controller of Mines before the Hon'ble Tribunal Cuttack Bench, Cuttack. The matter was finally dismissed by the Hon'ble Tribunal vide its order dated 15.10.2009 (Annexure R/1). The Hon'ble Tribunal while dismissing the order has held as under:-

"It is well settled principle of law that what is guaranteed by Article 16(1) of the Constitution is equality of opportunity in the matter of an appointment in public services and nothing more. It is open to the Government to frame necessary rules prescribing the requisite qualifications and it is also open to the authorities to lay down such perquisite conditions for appointment as would be conducive to the maintenance of proper discipline amongst Government servant, (Banarsi Das vs. State of UP, AIR 1955 SC 520). Further the rulings of the Hon'ble Apex Court in the case of P.U. Joshi and others vs. Accountant General, Ahmedabad and others, 2003 (2) SGC 632 that "there is no right in any employee of the state to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safe guarding rights or benefits already earned, acquired or accrued at particular

point of time, a government servant has no right to challenge the authority of the state to amend, alter and bring into force new rules relating to even an existing service. Taking into consideration all these above, we are of the considered view that his OA sans any merit and is accordingly dismissed."

20. After the OA No. 137/2007 was dismissed by the Hon'ble Tribunal Cuttack Bench, Cuttack, vacancies were advertised vide Advertisement No. 03/2010 in the Employment News. Thus in view of the above, all the allegations made by the applicant regarding the amendment of the Recruitment Rules and Selection process are totally wrong and baseless.

21. The learned counsel for the respondents also submitted that it is settled that the applicant after participating in the selection process has no right to challenge the same. In support of his contention he referred to the judgment of the Hon'ble Supreme Court in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla (supra)**.

22. He further submitted that it is prerogative of the employer to frame the necessary rules or amend the existing rules as per the requirement of the Department. He denied that the respondents have frequently amended the recruitment rules. In the instant case consequent to the implementation of the 5<sup>th</sup> CPC whereby a new cadre of Senior Assistant Controller of Mines (Sr. ACOM) was introduced in between ACOM and Deputy Controller of Mines, amendment in the recruitment rules became necessary. This

resulted in alteration in the number of posts in the cadre of DCOM and RCOM. Due procedure was followed before making amendment in the rules.

23. The applicant has challenged the amendment in the Rules after participating in the selection process and after remaining unsuccessful; this shows malafide intention of the applicant in filing this OA. The amendments in the recruitment rules were made in the year 2003 and if the applicant was aggrieved by this amendments, he should have challenged them at the relevant point of time.

24. The learned counsel for the respondents further submitted that in an identical case in OA No. 37/2011 wherein the applicant (Shri G.K. Jangid) after his non selection for the post of RCOM had challenged the Recruitment Rules and entire selection process followed to fill up the post of RCOM before the CAT Bench, Madras, has been dismissed vide order dated 19.01.2011 on the ground that after participating in the interview, the applicant cannot challenge the selection process (Annexure R/6).

25. He further submitted that there is no violation of the fundamental rights of the applicant in this case, as alleged by him. The names of certain left over persons were included in the list of short listed candidates by UPSC, after they were found eligible for

the post on scrutiny. Hence the allegations made by the applicant alleging malafide in the recruitment process are devoid of merit.

26. With regard to the submission of the learned counsel for the applicant that less experienced persons than the applicant have been selected whereas the applicant has been left out, the learned counsel for the respondents submitted that in an open competition, there is no guarantee that more experienced or more qualified person will get selected. In open selection, merit is the criteria and, therefore, more meritorious persons are selected. UPSC is the constitutional body. The interviews are held by the selection committee constituted by UPSC. The applicant cannot sit in judgment over the collective wisdom of the selection board.

27. With regard to the submissions made by the learned counsel for the applicant that appointment letters were issued by the respondents even before the result was declared by UPSC, the learned counsel for the respondents submitted that the result of the interviews were communicated to the Ministry by UPSC vide letter No. F.1/288(74)2009-RVI dated 10.12.2010. The publication of the result by UPSC on their website or in the Employment News has no co-relationship between issuance of the appointment letters to the selected candidates. The results of the interview are subsequently published in the Employment News.

28. With regard to the submission made by the learned counsel for the applicant in OA No. 57/2011 that the respondents be directed to give effect to the recommendations of the committee which provide 100% promotion to the post having Grade Pay of Rs.5400/- and above upto Rs.10000/-, the learned counsel for the respondents submitted that report of the committee has been uploaded in the official website of the respondents, inviting comments from stake holders, associations etc. The draft report is yet to be accepted by the various agencies of the Government and any amendment suggested by the committee cannot be guaranteed till the same is accepted by the Government.

29. The learned counsel for the respondent no. 4, UPSC, submitted that 05 candidates, on representation, were called for interview vide telegram dated 09.11.2010 and there was no irregularity in calling all these 05 candidates.

30. He further argued that the recruitment process had short listing criteria for scrutiny of applications received from the various categories of applicant. There was a need to short list the applicants as there were 227 applications against 09 vacant posts.

31. He further submitted that the applicant was called for interview. He appeared before the Interview Board on 08.11.2010. However, he was not successful. Therefore, he cannot question the credibility of other candidates over selection. It is settled law that

that after participating in the selection process, the applicant does not have any right to challenge the said select list. Therefore, he prayed that the OA has no merit and it should be dismissed.

32. The applicant has filed the rejoinder.

33. 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.

34. With regard to the prayer of the applicant for the amendment of the Recruitment Rules so far as it relates to the post of Regional Controller of Mines be declared ultra virus is concerned, the learned counsel for the respondents drew our attention to the order of the co-ordinate bench (Cuttack Bench) in OA No. 137/2007. In that OA, same rules were challenged by the applicant of that OA. The OA was dismissed by the Hon'ble Cuttack Bench, Cuttack of the Tribunal vide its order dated 15.10.2009 (Annexure R/1). While dismissing the OA, the Hon'ble Tribunal had considered the judgment of the Hon'ble Supreme Court in the case of **Banarsi Das vs. State of UP, AIR 1955 SC 520** and judgment of the Hon'ble Supreme Court in the case of **P.U. Joshi & Others vs. Accountant General, Ahmedabad & Others, 2003 (2) SCC 632**.

632. The relevant portion of the order of Cuttack Bench has been quoted in Para No. 19 of this order. We do not find any reason to differ from the view taken by the co-ordinate bench at Cuttack.

Therefore, we are of the view that the prayer of the applicant to declare amendment in the rules so far as it relates to Regional Controller of Mines as ultra virus, cannot be granted.

35. With regard to the prayer of the applicant that the impugned advertisement No. 03/2010 be quashed & set aside, the learned counsel for the respondents have stated that it is settled law that once the applicant has participated in the selection/recruitment process then he cannot challenge that selection. The learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla**, 1986 (Suppl.) SCC 285. He also referred to the case of Girish Kumar Jangid vs. Secretary, UPSC & Another in OA No. 37/2011 decided by the CAT Bench Madras vide order dated 19.01.2011.

36. We have perused the judgment of the Hon'ble Supreme Court in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla**, 1986 (Suppl.) SCC 285. In Para No. 26 of the judgment, the Hon'ble Supreme Court has held that this is a case where the petitioner in the Writ Petition should not have been granted any relief. He appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination. The candidates who appeared in the examination were not responsible for the conduct of the examination. The ratio decided by the Hon'ble Supreme Court in

this case is squarely applicable in the present OA. The applicant appeared in the selection process without protest. His representation against the recruitment process is dated 12.11.2010 whereas the interview for the post of Regional Controller of Mines were over on 11.11.2010. Therefore, we are of the considered opinion that the applicant is not entitled for any relief on this point.

37. We have also perused the order passed by the CAT Bench Madras in the case of Girish Kumar Jangid vs. Secretary, UPSC & Another (supra). Para No. 4 of this order is quoted below:-

"4. On perusal of the application, we find that the applicant has received the call letter on 10.11.2010 and he has attended the interview on 11.11.2010. After participating in the interview, he cannot challenge the selection process. Therefore, we are not inclined to interfere in the matter as there is no merit in this application. Accordingly, the OA is dismissed at the admission stage."

38. In view of the settled position of law that once a candidate has participated in the selection process on being unsuccessful, he cannot challenge the selection process, we do not find any reason to interfere with the selection made by the UPSC in pursuance the Advertisement No. 03/2010.

39. The learned counsel for the applicant also argued that out of 09 vacancies only 60% of the vacancies should have been earmarked for direct recruitment and rest of the vacancies should have been ear-marked for promotion quota but the respondents have earmarked all 09 vacancies for direct recruitment which is against the

provisions of Rule 2003. The learned counsel for the respondents submitted that there were 08 RCOM, who were already working in the Department and who were promoted from the post of Deputy Controller of Mines. Thus 40% of the cadre strength was already filled up from promotion quota. Therefore, the 09 posts which were advertised belonged to direct recruitment quota. Thus there is no irregularity in the advertisement No. 03/2010. We are inclined with the contention of the learned counsel for the respondents that since 08 posts were already filed up from promotion quota, therefore, filling up 09 vacancies from direct recruitment quota was not irregular/illegal.

40. We have perused a letter dated 24.09.2007 written by Head of Office, Indian Bureau of Mines (Annexure A/5A). In Para No. 3 of this letter, it has been stated that as on date, 09 out of 18 posts, 50% posts of Regional Controller of Mines are vacant. This also shows that 09 posts of Regional Controller of Mines were filled up. All these posts belong to promotion quota as there was no direct recruitment on the post of Regional Controller of Mines prior to 04.03.2010 that is the date of advertisement (Annexure A/2) for filling up 09 posts of Regional Controller of Mines.

41. The applicant in OA No. 57/2011 (Harkesh Meena vs. Union of India & Others) has also prayed that direction be issued to the respondents to give effect to the recommendations of the committee which provide 100% promotion of posts having Grade

Pay of Rs.5400/- and above upto Rs.10000/-. The learned counsel for the respondents has made it clear in their reply that no positive direction can be given to the respondents. It is prerogative of the department to take a decision on the recommendation of the committee after following due process of law. We are in agreement with the contention of the learned counsel for the respondents. It is for the employer/ respondent department to examine the recommendations of the committee and take a decision according to the provisions of law. Therefore, we hold that no positive direction in this regard can be given to the respondents.

42. Thus we are of the opinion that the applicants have not been able to make out any case for interference by this Tribunal in the present OA.

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

44. The Registry is direct to keep one copy of this order in the file of OA No. 57/2011 (Harkesh Meena vs. Union of India & Others).

  
(M. NAGARAJAN)

MEMBER (J)

  
(ANIL KUMAR)

MEMBER (A)

abdul

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