

(Reserved on 09.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/01563/2004

This the *20th* day of *July, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Harish Yadav, Son of Sri B.P. Yadav, Resident of 22, Lal Kurti Bazar, Jhansi.
2. Chhotey Lal Son of Sri Chiman, Resident of 97, Telpura Babina Cantt, Jhansi.
3. Vinod Kumar, Son of Sri Janki Prasad, Resident of Village and P.O Hansari, District – Jhansi.
4. Vinod Kumar, Son of Sri Sajan Singh, Resident of 9A, M.E.S Colony, Jhansi.
5. Sudesh Kumar, Son of Sri Bansi Lal, Resident of Gwaltoli Hansari, District – Jhansi.

.....Applicants

By Advocate: Shri K.P. Singh

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The chief Engineer, HQs Central Command, Lucknow.
3. The Chief Engineer, Jabalpur Zone, Bhagat Marg, Jabalpur.
4. The Chief Engineer, Lucknow Zone, Lucknow.
5. The Commander Works Engineers, Rani Laxmi Bai Marg, Jhansi Cantt., Jhansi.

.....Respondents

By Advocate : Shri D. Tiwari proxy for Sri R.K. Srivastava

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for following main reliefs :-

- “1. To set aside / quash the order dated NIL (Annexure-1 to Comp-I) by which the respondents have cancelled the selection held on 20-24th Feb. 1997 for the post of Chowkidar, M.T Driver and Safaiwala.
2. To issue a mandamus directing the respondents to issue appointment letter to the applicants on the basis of selection held by the respondents on 20-24th Feb. 1997 on the post of Chowkidar”.

2. The facts in brief are that pursuance to an advertisement issued by the respondents for filling up posts of Chowkidar, Safaiwala and MT Drivers, an interview was held between 20th to 24th February 1997 where the applicants, who had applied for of post of Chowkidar, appeared alongwith with other candidates. Before this advertisement was issued, some of the candidates had filed an O.A No. 588/1996 – Bal Chandra & Ors. UOI & Ors in this Tribunal, which passed an interim order on 26.02.1997 staying declaration of the result of the selection held between 20th to 24th February 1997 (Annexure A-3 to the OA). Another interview was conducted on 07th /08th April 1997 for the post of Chowkidar in which the applicants also appeared. The declaration of result of this interview held in April, 1997 was also stayed by the Tribunal vide order dated 02.04.1997 passed in another O.A No. 880/1991 (Annexure A-4 to the O.A) which was filed by some other candidates. It is stated in this O.A that during pendency of the O.A No. 588/1996 and 880/1991, the respondents appointed the candidates selected for the post of M.T Drivers and Safaiwala in pursuance of the tests held.

3. O.A No. 588/1996 was disposed of by this Tribunal vide order dated 17.08.2000 with direction to the respondents to declare the result of the selection in which the applicants of that O.A had also appeared (Annexure A-5 to the O.A). The respondents declared the result on 09.09.2000 in respect of the interview held on 8th / 9th April 1997 (Annexure A-6 to the O.A). Since the result of earlier selection was not declared the applicants filed O.A No. 1040/2000 which was disposed of by this Tribunal vide order dated 15.09.2000 (Annexure A-7 to the O.A) directing the respondents to declare the result of the selection held in February 1997. But instead of complying with the order dated 15.09.2000, the respondents issued advertisement on 10.10.2000 (Annexure A-8 to the O.A) for filling up vacancies of Chowkidar and Mazdoor. The respondents issued another notification in Employment News dated 25.11.2000-01.12.2000 for filling up vacancies of Chowkidar. Aggrieved, the applicants filed O.A No. 1399/2000 which was disposed of vide order dated 06.12.2000 (Annexure A-9) and the respondents were restrained from making any selection in pursuance of the notification dated 25.11.2000-01.12.2000 till the order dated 15.09.2000 is complied with. Thereafter, the respondents filed recall applications which were rejected vide order dated 10.05.2001 (Annexure A-10). Again, the respondents issued fresh advertisement in Employment News on 3rd to 9th February 2001 for filling up vacancies of Chowkidar (Annexure A-11). Then the applicant filed CCP No. 121/2000 and the respondents filed reply stating therein that interview and selections held in February 1997 were cancelled by the competent authority (Annexure A-1 to the O.A) with a direction to hold fresh interview on 07th / 08th April 1997. Therefore, the result of interview held in February 1997 could not be declared. Subsequently, the CCP was dismissed vide order dated 05.08.2004.

4. It is contended in the O.A that the applicants were waiting for selection for the post of Chowkidar since 1997 and there was no justification on the part of the respondents to cancel the result of the interview held on February 1997. It is further stated that the action of the

respondents is discriminatory since if the respondents found various lapses in selection proceeding then they ought to have cancelled the entire selection process. But the respondents appointed the candidates selected for the post of MT Drivers and Safaiwala in pursuance of the selection held on 20th to 24th February 1997, whereas, in regard to the post of Chowkidar, they took different view. It is further contended by the applicants that the impugned order shows that on scrutiny of the Boards proceeding, various procedural lapses were noticed by the respondents, then the entire selection process ought to have been cancelled.

5. The respondents have filed their Counter Affidavit and have raised a preliminary objection regarding delay in filing of this O.A. The respondents have denied the allegation of the applicants that they had no knowledge about cancellation of selection held between 20.02.1997 to 24.02.1997, stating that the selection proceedings conducted by the Board of Officers at Jhansi between 20.02.1997 to 24.02.1997 was sent to for approval of the competent authority at Jabalpur, but the same was not approved as serious irregularities were found in the said selection proceedings which were declared null and void by the competent authority, who further ordered for constitution of a fresh Board of officers to conduct the selection on 07th and 08th April 1997 at Jhansi and all the candidates, including the applicants were duly informed about the decision. They were asked to appear for interview in April, 1997 before newly constituted Board of officers. It is stated that no fresh list of candidates was called and that the candidates including the applicants appeared for interview held on 07th and 08th April 1997. It is further stated that the candidates were declared successful vide Notification dated 09.09.2000 (Annexure CA-5 to the Counter Affidavit) were issued appointment letters and they have already joined their post. It is further stated by the respondents no selection for the post of MT Drivers or Safaiwala were made on the basis of selection process held between 20.02.1997 to 24.02.1997 refuting such averment of the applicants in this OA.

6. In the Rejoinder filed by the applicants, the contentions in the OA have been reiterated. It is stated that the respondents have never communicated to the applicants that the selection which took place between 20.02.1997 to 24.02.1997 was already cancelled. It is also stated that even in the selection held on 07th April 1997, the respondents have not disclosed that the selection held between 20.02.1997 to 24.02.1997 was cancelled. It is further stated that several cases were already filed against the selection which took place between 20.02.1997 to 24.02.1997 as well as the selection held on 07th and 08th April 1997. It is contended that in O.A No. 588/1996 – Bal Chand Vs. UOI & Ors, the applicants were also appearing as interveners and the Court had directed to declare the result of the selection process in respect of the recruitment to the post of Chowkidar in which the applicants had participated (Annexure A-5 to the O.A) and the respondents did not comply the order.

7. Heard Mr. K.P. Singh, learned counsel for the applicants who also submitted a detailed written argument summarising the points made by him. He stressed on the point that when the selection held in February, 1997 was the subject matter of a number of O.A.s with interim orders, the respondents could not have taken any decision without leave of the Tribunal, in view of the provisions under the section 19(4) of the A.T. Act, 1985. He also argued that the respondents did not implement orders of this Tribunal dated 15.9.2000 (Annexure A-7) to declare the results of the selection process for Chowkidar held in February 1997, but they had declared the result of selection held in April, 1997. He stated that the stand of the respondents that the selection in February was cancelled, but no intimation was given to the applicants about such cancellation and no publication about it was made in the newspaper about the decision to cancel the selection process held in February. It was further submitted that a letter dated 23.08.2001 (Annexure -3 of the Review Application no. 36/2010), was issued informing about status of the cases before Tribunal and there was no mention about cancellation of February selection. The intimation at Annexure A-1 informing about cancellation of the selection of February was also not advertised, hence,

such cancellation of the selection process without communicating the same is illegal. In support of his contentions, learned counsel for the applicants has relied on a decision of the Hon'ble Supreme Court in U.O.I & ors. Vs. Dinanath Shantaram Karekar & Ors – AIR 1998 SC 2722 and copy of this judgment was submitted by the counsel.

8. We have heard Mr. D. Tiwari proxy for the respondents' counsel. He submitted that the selection process in February was cancelled with approval of the higher authorities and the candidates including the applicants were called to appear before the selection board in April, 1997. The selection was finalized and declared on 9.09.2000 as stated in the Counter Reply filed by the respondents and the applicants did not qualify on merit. The candidates selected for the said post have joined and are working since 2000. He argued that the applicants have been duly considered for selection, but could not qualify. The applicants had also filed a Contempt application No. 121/2000 for non-compliance of the order dated 15.9.2000 in O.A. No. 1040/2000 and this Contempt application was dismissed by order dated 5.08.2004 of this Tribunal, copy of which is annexed at Annexure no. CA-3 to the Counter affidavit for delay condonation. It is also submitted by him that the contention of the applicants that posts of MT Drivers and Safaiwala were filled on the basis of February, 1997 selection, is not correct as stated in para 7 of the Reply/ Counter Affidavit. Hence, selection in February 1997 was cancelled for all posts. Learned counsel for the respondents also filed the written arguments on behalf of the respondents

9. We have perused the record and considered the submissions of learned counsels in the case. It is noticed that this O.A. was first dismissed by this Tribunal vide order dated 13.4.2010 of this Tribunal on the ground of delay since the cancellation of the selection in February, 1997 was challenged in 2004. The plea of the applicants was that the cancellation order was never communicated to them and it came to their knowledge in 2004 when a counter was filed by the respondents in the Contempt case no. 121/2000. The order was successfully challenged by the applicants in the Review Application no. 36/2010

mainly on the ground of a fresh selection held in April, 1997 without fresh advertisement, for which earlier order dated 13.4.2010 was considered to be erroneous and the order dated 13.4.2010 was recalled and the O.A. was restored to its original number vide order dated 30.11.2012 by this Tribunal in the Review Application No. 36/2010.

10. Before we proceed further, it is noticed that the O.A. was filed with a delay, for which a Misc. Delay Condonation Application No. 158/2005 has been filed by the applicant, which has not been disposed of. In this application, main ground advanced by the applicant was that the impugned order to cancel the selection held in February, 1997 was not communicated to the applicant till it was disclosed in the Counter filed by the respondents in the contempt case no. 121/2000, which was dismissed by this Tribunal vide order dated 5.08.2004. In the objection counter affidavit dated 25.02.2005 in reply to the delay condonation application, this contention has been denied by the respondents by stating that the fact of cancellation of the selection in question was stated in the Misc. (Recall) Application no. 2137/2001 filed in O.A. No. 1399/2000. However, it was not averred by the respondents that the cancellation of the selection was communicated to the applicants when they were called to appear the selection before the respondents in April, 1997 or any time thereafter or the such cancellation was advertised for general information of the public, since the selection was in pursuance to an advertisement. Hence, we are of the view that in the interest of justice, this O.A. should be considered on merit and delay in filing the O.A. should be condoned.

11. Accordingly, we allow the Misc. Application no. 158/2005 for condonation of delay and condone the delay in filing this O.A.

12. Coming to the merits of this O.A, it is noticed that there are two groups of candidates, who have applied for the post of Chowkidar, which were advertised by the respondents and for which the selection was held in the month of February, 1997. One group of candidates including the applicants wanted that the respondents should declare the

result of this selection. There was another group of persons, who were earlier engaged as Chowkidar on casual basis and their services were dispensed with in 1997. They had filed T.A No. 1523/1986 in this Tribunal, where the direction was given that their fresh appointment may be considered by the respondents against existing vacancies. This group of employees wanted to be accommodated against the vacancies for which they had filed the O.A No. 588/1996 – Balchand & Ors. Vs. Union of India and others. When the advertisement for recruitment in 1997 was issued, an interim order was passed by this Tribunal in O.A No. 588/1996 staying the declaration of the result of the selection held during the period of 20th to 24th February 1997. Thereafter, the respondents conducted another interview from 08th to 09th April, 1997 for the Chowkidar posts and same candidates, who had applied earlier for February, 1997 selection were interviewed. Some candidates filed M.A for staying the result of the selection. This O.A No. 588/1996 was disposed of vide order dated 17.08.2000 (Annexure A-5). with direction to the respondents to declare the result of selection in which the applicants namely Bal Chand and others had appeared. With this order, the challenge of the group of persons to prevent the recruitment of Chowkidars as per the advertisement ended. The operating para of the order dated 17. 08.2000 is reproduced below: -

“In view of what has been stated above, we dispose of this application with direction to the respondents to declare the results of the selection process in respect of the recruitment to the post of Chowkidars in which the applicants participated within a week from the date of communication of this order.”

13. In pursuance to the order dated 17.08.2000 in OA No. 588/1996, the respondents declared the result on 09.09.2000 of the selection held on April, 1997. Not a very clear Copy of the panel dated 09.09.2000 has been enclosed as Annexure CA-5 with the Counter Reply. The applicants had also filed the O.A No. 1040/2000, which was disposed of vide order dated 15.09.2000 (Annexure A-7 to the O.A) directing the respondents to declare the result of the selection held during 20th to 24th February, 1997. It was never pointed out to the Tribunal when the order

dated 15.09.2000 was passed, that the result for the selection held in April, 1997 was finalized on 09.09.2000. Thereafter, the respondents issued another advertisement on 10.10.2000 for filling up the post of Chowkidars and Mazdoors and the applicants filed another O.A No. 1399/2000, which was disposed of restraining the respondents from making any selection till the order dated 15.09.2000 was complied with. Finally, when the order dated 15.09.2000 was not complied with by the respondents, the applicants filed CCP No. 121/2000, which was adjudicated by this Tribunal. The respondents in this CCP filed a Counter where it was informed that the selection process held in February, 1997 has been cancelled with approval of the competent authority by the respondents due to some serious irregularities with the approval of the competent authority. It was also stated that the candidates including the applicants were called again to appear in selection held in April, 1997 for which the selection has already been and the result was declared on 09.09.2000. This contention of the respondents were accepted by this Tribunal and the CCP was dismissed vide order dated 05.08.2004, a copy of which is annexed at CA-3 of the Counter Affidavit.

14. The applicants' claim that they came to know about cancellation of the selection process held in February 1997 after filing of Counter Affidavit by the respondents in the CCP 121/2000. Before that it was never communicated to the applicants or advertised in the new paper. After the dismissal of the CCP, the applicants approached this Tribunal in this O.A challenging the order of the respondents to cancel the selection held in the month of February, 1997.

15. One of the grounds advanced by the learned counsel for the applicants in this O.A is that the order to cancel the selection was bad in law since the matter was pending before this Tribunal and during which this order should not have been passed in view of the provisions of Section 19(4) of A.T Act 1985. Section 19(4) stated as under : -

“4. where an application has been admitted by the Tribunal under Sub –section (3), every proceedings under the

relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.”

It is stated that after the Tribunal admits an application for redressal of grievances in relation to the subject matter, no order can be passed by the respondents department to dispose of any appeal or representation and if any such appeals / representations are proceedings are pending, these shall abate. In this case, the matter was relating to selection process, in which the applicant had a grievance that the respondents have cancelled the selection held in the month of February, 1997. The respondents stated in their Counter that the applicants were never selected in the selection process held in February, 1997, which was cancelled by the competent authority as the selection process carried out by the Board of Officers for the post of Chowkidars was found to be having serious irregularities, as stated in para 6 of the Counter Affidavit on delay condonation application. In reply to this submission, the applicants have stated in para 7 of the RA that the respondents have illegally cancelled the selection and promoted some incumbents out of selection held in February, 1997. In para 7 of the RA, the applicant have stated the following : -

“7. That the contents of paragraph no. 6 of the counter affidavit is misconceived and denied. It is submitted that the respondents illegally cancelled the selections and promoted some incumbents out of the selection held on 20th to 24th February, 1997. The applicants, though selected, but were discriminated. No information of cancellation was ever given to the applicants. Fresh process of selection carried out on 7th, 8th April, 1997 without informing about cancellation of selection held on 20th to 24th February, 1997. The para Nos. 22 & 23 is reiterated and reaffirmed.”

16. When a specific stand is taken by the respondents that the higher authorities have found that the selection process held in February, 1997 to be having some serious irregularities and it has been cancelled with the approval of the competent authority, we find that no satisfactory reason has been furnished by the applicants to show whether the

decision of the competent authority of the respondents to cancel the selection process held in February, 1997 violated any rules or terms of advertisement. In addition, the contention of the applicants that they were selected in the selection process of February, 1997, is not supported by any evidence on record. Hence, it cannot be said that the cancellation of the selection process was a decision relating to the appeal / representations for redressal of grievance of the applicants, therefore, there was no bar under Section 19(4) of A.T. Act 1986 on the part of the respondents to take a decision in the selection process, which was a process initiated as per the rules applicable. It may be noted from the orders of this Tribunal dated 05.08.2004 in CCP No. 121/2000 that nothing wrong in the decision for cancelling the selection process of February, 1997 was found. The contentions of the respondents in this regard have been accepted by the Tribunal and the CCP No. 121/2000 filed by the applicants was dismissed. Hence, we are of the considered view that the decision to cancel the selection process was within the competence of the respondents and by doing so no violation of any rule has been committed.

17. Another argument advanced by the learned counsel for the applicants was that the decision to cancel the selection process of February, 1997 was never communicated to the applicants or advertised. It is seen that in para 6 of the CA, the following averments have been made by the respondents: -

“6.....The fact of the matter is that all the Applicants had been duly informed about the cancellation of said selection proceedings carried out between 20th – 24th February 1997 but were further informed that, after cancellation of said proceedings, the fresh process of selection of the Applicants without inviting fresh applications would be carried out on 7th and 8th April 1997 by a fresh Board of Officers comprising more Senior Officers. Significantly, all the Applicants had accepted the said order/ information and all the applicants duly appeared in the subsequent selection process carried out on 7th and 8th April 1997. The result of the selection process carried out on 7th & 8th April 1997, which was held up due to operation of interim orders of this Hon'ble Tribunal, was finally declared on 09.09.2000 and was so duly notified

on 09.09.2000 vide Notice dated 09.09.2000. True photocopy of which is being filed herewith and marked as Annexure CA-5 to this counter affidavit.....”

In reply to this contention in the CA, the applicants have stated in para 7 of the Rejoinder (as extracted above) that the selection process held in February, 1997 has been cancelled without any information to them. However, no evidence has been produced by the applicants to show that such cancellation was not informed to them. Since the applicants have participated again in the selection process held in April, 1997, copy of the information received by them should have been enclosed by the applicants to show whether the contention in para 6 of the CA was correct or not.

18. Learned counsel for the applicants has also cited the judgment in the case of Union of India Ors. Vs. Dinanath Shantaram Karekar (Supra). It is seen that in the cited case, the issue was removal of the employees from service in disciplinary proceedings. Hence, cited case is distinguishable from this O.A on facts.

19. However, since the original advertisement was published by the respondents, it would have been appropriate for the respondents to have informed the candidates through another advertisement as a corrigendum informing to the effect that the selection process held in February 1997 has been cancelled with the approval of the competent authority and the candidates are instructed to appear in the interview afresh. Instead the candidates including applicants have been informed individually instructing them to appear for April 1997 selection process, as stated in the Counter Affidavit. Since the matter has already been accepted by this Tribunal in previous cases, this point will not be helpful for the applicants.

20. Another argument of learned counsel for the applicants was that as per letter dated 23.08.2001 enclosed to the Review Application, no action was taken by the respondents on the selection process as on 23.08.2001. Hence, the impugned letter communicating cancellation of February, 1997 selection process was fabricated subsequently. This

contention is also not acceptable in view of the fact that such cancellation of selection process held from 20th to 24th February, 1997 has already been accepted by this Tribunal in CCP 121/2000 and as discussed above, no evidence has been produced before us to substantiate the claim that this cancellation is violative of any rule or guidelines of the Govt. of India or the terms of the advertisement issued and hence, the impugned decision of the competent authority to cancel the selection process cannot be termed as illegal.

21. In view of the above discussions, we find that the applicants have not been able to substantiate the grounds mentioned in the O.A, which is, therefore, liable to be dismissed.

22. Accordingly, the OA is dismissed. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...