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Reserved on 7.2.2018

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/01855/2010

This the 14th day of February, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

Khem Raj Ahirwar son of Late Shri Ram Swaroop Ahirwar r/o 200, Tal Burra, District-Jhansi (U. P.)

Applicant

By Advocate: Sri L. S. Kushwaha proxy to Sri Rakesh Verma

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Officer Incharge, 40, Wing Air Force Station, Maharajpur, District- Gwalior M. P.

Respondents

By Advocate: Sri Dharmendra Tiwari proxy to Sri N. P. Shukla

ORDER

HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J)

The applicant preferred the O.A. u/s 19 of the Administrative Tribunals Act, 1985 with the following relief: -

- i) To issue a writ, order or direction in the nature of Mandamus directing the respondent No. 2 to initiate fresh selection in respect of the post of Luscar and to allow the petitioner to appear therein and in case he merits, he be directed to be appointed on the next vacancy which may become available in future.
- ii) To issue a writ, order or direction in the nature of Mandamus directing the respondents to call for the entire records of the selection in question and in case the petitioner merits therein, he be directed to be appointed on the next vacancy which may become available in future.
- iii) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- iv) To award cost of the petition in favour of the petitioner.

2. The brief facts emerging from the O.A. are that certain vacancies including the post of Luscar were advertised by the respondent No. 2 for being filled in the regular and substantive capacity. The post of Luscar in number was two, out of which one was reserved for physically handicapped and one was unreserved for general.

2.1 Applicant applied for the post in general category and was issued called letter dated 27.1.2004 (Annexure A-1) to appear in the interview and physical test. In the call letter, no specific date was mentioned to appear in the interview and physical test. The applicant informed the respondent No. 2 and before any action could have been taken in this regard, the interview and physical test was conducted on 10/11.2.2004.

2.2 Applicant filed Suit No. 252/2004 before the Court of Additional Civil Judge (Junior Division), District- Jhansi wherein respondent No. 2 received the notice as well as notice issued by the aforesaid Additional Civil Judge (Junior Division), District- Jhansi called petitioner to appear in the interview and other physical test on 8.9.2004. However, before the aforesaid date, the Board of Officers had already made their recommendations for appointment of candidates on the various

posts including the post of Luscar.

2.3 On 8.9.2004, the applicant appeared before the Board of Officers for interview and other physical test along with few others for being appointed on the post of Luscar.

2.4 The respondents filed written statement and objection in the aforesaid suit enclosing therewith copy of the proceedings of Board of Officers took place on 8.9.2004 and also took the plea that the aforesaid suit is barred by jurisdiction and the said suit was dismissed by the Additional District Judge (Junior Division), Civil Court, Jhansi vide judgment dated 26.4.2010 (Annexure A-2) on the ground of jurisdiction.

2.5 Perusal of findings of the Board of officers (Annexure A-3) shows that the applicant has been declared unfit for the post on account of having insufficient trade knowledge and average performance.

2.6 It is submitted that applicant has gathered information through the reliance sources that all the appointees are amongst the candidates who appeared in the interview and physical test in the proceedings of Board of Officers conducted on 10/11.2.2004 and none of the candidates appeared in the subsequent proceedings held on 8.9.2004 has been allowed to be empanelled by the respondents.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that 8 posts of Group C and were sanctioned for 40, Wing Air Force Gwalior out of total 51 posts, which were advertised by the Central Air Force Command Bamrauli in December, 2003. The eligible candidates were called for interview on fixed date 27.1.2004 but due to administrative reason, the interview date was postponed from 27.1.2004 to 10.2.2004. The total 183 candidates had appeared in the interview before selection board on 10/11.2.2004. The applicant was also intimate vide telegram No. 40w/2001/1/pc/13 dated 5.2.2004 (Annexure CA-1) but he has not appeared in the interview at first time.

3.1 On the request of various left over candidates including the applicant, the second interview was held on 8.9.2004. The total 31 candidates were appeared in the interview before selection board on 8.9.2004 including the applicant but applicant declared fail in the interview for the post of Mess Waiter due to his poor performance and he was not included in the selected candidate's panel dated 14.9.2004 (Annexure CA-2). It is further stated that applicant had never applied and appeared in interview for the post of Luscar but he was appeared for the post of Mess Waiter and declared failed in the interview held on 8.9.2004.

3.2 The applicant challenged the selection process in Civil Suit No. 252/2004 before Learned Civil Court, Jhansi which was dismissed vide order dated 26.4.2010 on the ground of jurisdiction. Now the applicant has filed the present O.A. before this Tribunal after seven years from the date of final panel which is highly barred by limitation.

3.3 The process of selection for the post of Mess waiter and other posts has already completed in the year 2004 and the selected candidates are working since 2004. It is settled law that merely on the basis of selection, the concern candidate cannot claim for appointment.

4. Rejoinder reply is filed by the applicant in which he has reiterated the facts as stated in the O.A. and denied the contents of the Counter reply.

5. Heard the learned counsel for applicant Sri L.S. Kushwaha proxy for Sri Rakesh Verma and learned counsel for respondents Sri Dharmendra Tiwari proxy for Sri N.P. Shukla and perused the pleadings available on record.

6. Counsel for applicant reiterated the facts as stated by him in the O.A. and submitted that since the applicant was originally not called for interview but was called for interview only after receiving of the notice from the Court. However, the applicant asked for the relief only to the extent that his case be considered for the next available vacancy. The counsel for respondents submitted that applicant has not narrated the correct fact. In fact, the applicant was never applied for Luscar post as submitted by him in the O.A. Instead, he has applied only for the post of Mess-waiter. The respondents have called him for interview but he did not appear. Applicant was again called for interview along with other left over candidates and this time, applicant appeared in the interview and could not succeed. Thereafter, applicant has filed a suit No. 252/2004 before Civil Judge, Jhansi which was dismissed in 2010 on the point of lack of jurisdiction. Thereafter, he approached this Tribunal. Counsel further submitted that there is no merit in the O.A. as applicant has failed to array the selected candidates in the O.A. Further

he has not clearly mentioned the post for which he has applied for.

7. We are unable to accept the contentions raised by the learned counsel for applicant.

8. The applicant has totally failed to demonstrate before us why the relief asked for is to be granted to him. The applicant applied for the post of Mess-waiter, wrongly alleged by him as Luscar. It is also not disputed that applicant appeared in the interview and could not do well and was not selected and other persons were selected. The applicant has not challenged the selection of those persons and simply asked the present relief that he should be considered in the future vacancy which we are unable to grant as the applicant has not specifically mentioned that for which future vacancy he should be considered and justification for the same. It is also not disputed that applicant appeared in the interview which was held in the year 2004 and he has wrongly filed a suit before Civil Judge, Jhansi as per his own contention, which was pending for more than 6 years and after disposal of the said suit, he preferred this O.A. before this Tribunal in the year 2010 and now we are hearing this O.A. in the year 2018. Therefore, much water has flown.

9. In the catena of judgments the Hon'ble Apex court observed that once a person appeared in the examination without any protest and was not found successful, question of entertaining a petition challenging the such examination would not arise.

10. The Hon'ble Apex Court in the case of Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others reported in (2002) 6 SCC 127 has been pleased to observe that "once a person appeared in the examination without any protest and not found successful in the examination, the question of entertaining a petition challenging the such examination would not arise." Although in that case, the applicant has arrayed the selected candidate but unfortunately in the present case, the applicant has not arrayed the successful candidate.

11. The same view is taken by the Hon'ble Apex Court in the case of Madan Lal and others Vs. State of J&K reported in AIR 1995 SC 1088 and Hon'ble Apex Court observed that "No allegation of bias was raised and all selected candidates have joined, no ground left for unsuccessful candidate."

12. The Hon'ble Apex Court in the case of Trivedi Himanshu Ghanshyam Bhai Vs. Ahmadabad Municipal Corporation reported in 2007 (8) SCC 644 has been pleased to observe that "Unsuccessful candidate could not challenge applicants appointment on the ground that he did not have requisite administrative experience."

13. The Hon'ble Apex Court also observed that "the Court cannot assume the role of selection committee and evaluate the fitness of the candidate for a particular post."

14. In view of the facts and circumstances stated above as well as observation made by the Hon'ble Apex Court, we are of the opinion that O.A. lacks merit and deserves to be dismissed because the applicant without any protest appeared in the interview held on 8.9.2004 for the post of Mess Waiter and when declared failed and then challenged the same before Civil Court, Jhansi which was dismissed vide order dated 26.4.2010. Thereafter, applicant filed the present O.A. before this Tribunal in the year 2010 challenging the selection held in the year 2004 and for direction to the respondents to initiate fresh selection. Selection process has completed in the year 2004. Thereafter, much water has flown and the selected candidates have already joined the posts and there are no vacancy left.

15. Accordingly, O.A. is dismissed. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

(JUSTICE DINESH GUPTA)
MEMBER (J)

HLS/-

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