

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.17/2013

Order Reserved on: 10.01.2017
Order pronounced on 20.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Shri Satish Chand
S/o Shri Ramesh Chand
Working as Asstt Binder
Under Govt. of India Press
Faridabad.

... Applicant

(By Advocate: Shri M. S. Reen)

Versus

Union of India & Others : through

1. The Secretary
Ministry of Urban Development &
Poverty Alleviation
Nirman Bhawan
New Delhi – 110 001.

2. The Director
Directorate of Printing
Govt. of India Press
Nirman Bhawan
New Delhi – 110 001.

3. The Manager
Govt. of India Press
Faridabad (Haryana). ... Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

ORDER**By V. Ajay Kumar, Member (J):**

The applicant, who is working as Assistant Binder in the 3rd Respondent-Government of India Press, filed the OA, aggrieved by the Annexure A1-Office Memorandum dated 27.12.2012, whereunder, his services were terminated.

2. The brief facts of the case are that the respondents, vide Advertisement published in November, 2007 called for applications for selection to the posts of Group 'C' and 'D' by direct recruitment including the post of Assistant Binder among other posts. Total 45 posts of Assistant Binder at Government of India Press, Faridabad, i.e., 23 unreserved, 1 SC, 4 ST, 17 OBC were advertised for selection. The qualifications required for selection are that (i) Matriculation (10th) pass from recognized School or Board (ii) Certificate of successful completion of apprenticeship under the Apprenticeship Act, 1961 or Certificate of successful completion of Vocational Course, at + 2 level in Printing Technology.

3. The applicant, who belongs to OBC category and who fulfill all the eligibility criteria has applied and in pursuance of the same, and also in pursuance of the selection done, i.e., trade test and interview, by the recruitment board, the respondents shown the name of the applicant under OBC category, along with others, vide the declaration of panel for the post of Assistant Binder dated 09.02.2008. In pursuance of the

said selection, the applicant was appointed as Assistant Binder w.e.f. 22.02.2008, and was kept on probation for a period of two years.

4. While things stood thus, one Shri Puneet who belongs to SC category and one Shri Nafe Singh, who belongs to OBC category, who were not selected as Assistant Binders, though applied along with others, filed OA No.2318/2008 claiming that persons who had done apprenticeship much after them had been selected, ignoring their seniority and in violation of the principle decided by the Hon'ble Apex Court in **U.P.State Road Transport Corporation and Another v. U.P.Parivahan Nigam Shishukhs Birozgar Sangh and Others**, (1995) 2 SCC 1. However, the said OA was dismissed by this Tribunal. Aggrieved by the same, the said Puneet and Another, filed WP(C) No.26/2009, which was finally disposed of by an order dated 20.07.2010 of the Hon'ble High Court of Delhi.

5. It is necessary, for better understanding of the facts, to quote the relevant paragraphs of the aforesaid decision, in detail, as under:

"1. Petitioners Puneet and Nafe Singh underwent apprenticeship training at the Government of India Press Faridabad and successfully completed the apprenticeship for a period of two years. Nafe Singh underwent apprenticeship from 7.10.1997 to 6.10.1999. Puneet underwent apprenticeship from 7.10.1998 to 6.10.2000.

2. They applied for being appointed as Assistant Binders when respondent No.3 issued an advertisement in the month of November 2007 to fill up 23 unreserved seats, 1 seat in SC category, 4 seats in ST category and 17 seats in OBC category. It may be noted that whereas Nafe Singh applied under the OBC category, Puneet applied under the SC category.

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26. To summarize on the legal position, pertaining to direct recruitment posts of a technical nature, declared as „Non

Selection" posts, persons who have apprenticeship certificates have to be put in a seniority list as per the direction No.4 issued by the Supreme Court in U.P.Road State Transport Corporation"s case and after subjecting the eligible candidates to a trade test and an interview, all those who are declared suitable for being appointed, irrespective of their merit which actually need not be tested at all and the test being restricted to determine suitability, be offered appointment in order of seniority.

27. Vide CM No.9237/2010 our attention was drawn to the fact that sensing a scam in the recruitment process, a vigilance enquiry has been ordered. We were called upon to call for the report of the vigilance enquiry, which has yet to be borne for the reason the vigilance enquiry is still on.

28. We need not wait for any report in view of the legal position, as per our understanding above, which requires us to dispose of the instant petition setting aside the impugned order dated 20.11.2008 and disposing of the instant writ petition as also OA No.2318/2008 by passing the directions to the 3rd respondent to redraw a list of empanelled candidates, not on the basis of their merit position, but on the basis of their seniority reckoned from the dates they successfully obtained the apprenticeship certificates, subject to their suitability. We clarify that if on the basis of the trade test and the interview which was conducted, suitability can be culled out de hors the merit, same should be done and if not the candidates be re-subjected to a trade test with the focus of the test being to determine suitability and not the relative merit.

29. We clarify that since appointments in the unreserved category and the ST category are not in question for the reason one petitioner applied for the sole post in the SC category and the other applied for a post in the OBC category, needful would be done only in respect of the SC and OBC candidates and not the candidates in the unreserved category and ST category.

30. Needful be done within a period of 4 months from today. Till the directions issued are complied with, existing empanelled candidates in the category of SC and OBS shall continue to work. "

6. The Contempt Case (C) No.224 of 2011, which was filed alleging non-compliance of the aforesaid order, has been disposed of by an order dated 17.09.2012 of the Hon'ble High Court of Delhi, and the relevant paragraphs therein read as under:

"A reading of the judgment alongwith operative directions culled out above would show that the court declared the post in issue i.e, the post of Assistant Binders as a non selection post. The court further directed respondents to redraw a list of empanelled candidates not on the basis of merit but on the basis of seniority reckoned from the date the petitioners had successfully obtained an apprenticeship certificate, subject to their suitability. Lastly, the court made it clear that the said exercise would be confined to SC and OBC

categories only, and not, qua candidates who fell in the unreserved and ST categories.

Accordingly, the respondents pursuant to the said judgment drew up a fresh seniority list. As indicated above the petitioner No.2 has been included in the re-drawn panel. This aspect is disclosed in the respondents' affidavit dated 9.12.2011. The position with respect to the same has been re-affirmed by Ms. Chauhan, learned counsel for the respondents.

The issue, therefore is outstanding only with regard to petitioner No.1 as he along with 5 other applicants has been left out from the re-drawn panel. This aspect is also referred to in the aforementioned affidavit of the respondents dated 9.12.2011.

In so far as the petitioner no.1 is concerned, the following remark has given in the re-drawn panel:

".... 5. Puneet S/o Sh.Ramesh Chand (SC): Non availability of SC vacancy, not covered for UR category as he got 56 marks against the UR standard of 60 marks out of 100 marks...."

Based on this remark Mr. Mittal, learned counsel for the petitioner No.1 submits that the respondents have once again in violation of the judgment of this Court applied the merit criteria as against seniority and suitability criteria, which is adverted to in the judgment of this Court dated 20.07.2010.

As against this Ms. Chauhan has submitted that while petitioner No.1 is suitable, in terms of the judgment of this Court, his seniority is lower than the other two applicants in the SC category. She submits that the seniority of the other two candidates i.e. Shri Sultan Singh and Shri Narender Kumar is of that vintage 1995 and 1996 respectively. She states that the petitioner's seniority is of the year 2000, and therefore, his name is not included in the re-drawn panel. In rejoinder learned counsel for the petitioner says that the respondents ought to have considered the petitioner in the unreserved category based on the criterion of seniority and suitability.

According to me, this was clearly not the scope of the judgment, and therefore, arguments in this regard cannot be entertained. This position is also clear on perusal of the observations of the Division Bench in paragraph 29 of the judgment wherein it is made clear that they were considering appointments only in the SC and OBC category and not in the unreserved category.

In my view, no case for contempt is made out. The same is accordingly dismissed.

Needless to say that, in so far as the petitioner No.2 is concerned, the judgment of this Court dated 20.7.2010, would be implemented."

7. Certain others, who were also not selected, filed OA Nos.983/2008, 1927/2008 and 612/2009, all of which were disposed

of on 08.10.2010 by way of separate orders, after noting the operative portion of the Judgement of the Hon'ble High Court in WP(C) No.26/2009, as under:

"3. In view of the above, the OA is disposed with a direction to the respondents to consider the case of the applicants and take action in terms of the above directions of the Hon'ble High Court, and pass appropriate orders within a period of two months from today. No costs."

8. Thereafter, the respondents vide Office Orders dated 31.10.2012, by quoting the orders of the Hon'ble High Court in WP (C) No.26/2009, dated 20.07.2010 and in CCP No.224/2011 dated 17.09.2012 and while stating that in pursuance of the said orders of the Hon'ble High Court that they have redrawn the panel and submitted the same to the Hon'ble High Court for approval and the applicant along with certain others have not been included in the redrawn panel and accordingly the services of the applicant stand terminated on completion of one month's notice on 29.11.2012. When the applicant and other similarly placed persons filed OAs questioning the said orders, the respondents by virtue of the Show Cause Notices dated 27.11.2012 withdrawn the said termination orders dated 31.10.2012 and accordingly, the applicant withdrawn the said OA. Even after submission of categorical reply to the said Show Cause Notice by the applicant, the respondents issued the impugned termination order dated 27.12.2012 to the applicant.

9. When the respondents, in pursuance of the re-drawal of the panel, terminated the services of some Assistant Binders, who belongs to unreserved category, they filed OA No.15/2013. This Tribunal, by

its order dated 02.12.2016, while noting the aforesaid facts, and while holding that redrawing of seniority list/panel, in pursuance of the orders above referred, shall not empower the respondents to disturb the position of the applicants therein, who belong to Unreserved category, in any manner, allowed the said OA.

10. In the present case, the applicant belongs to OBC category and in view of the aforesaid fact situation, the respondents are empowered to redraw the panel/seniority list with regard to those candidates, who belonged to SC and OBC categories and who were appointed as Assistant Binders, in pursuance of the Advertisement, issued in November, 2007, including the applicant.

11. This Tribunal while issuing notices to the respondents in the OA, by its Order dated 02.01.2013, directed the respondents to maintain status quo as on the said date till the next date of hearing. The said order has been extended from time to time. By virtue of the same, the applicant has been continuing in service.

12. Heard Shri M.S.Reen, the learned counsel for the applicant and Dr. Ch. Shamsuddin Khan, the learned counsel for the respondents, and perused the pleadings on record.

13. A conspectus of the aforesaid facts, coupled with the judicial decisions, clearly indicates that there is no fault on the part of the applicant and that he has not furnished any wrong or false information

for obtaining the appointment. It is due to the wrong application of law by the respondents themselves, the applicant was appointed, along with others, w.e.f. 22.02.2008 as Assistant Binder and being continued till date. It cannot be said that the applicant is not qualified otherwise for appointment as Assistant Binder, except by virtue of lower position in the seniority of Apprentice Ship.

14. The respondents, vaguely stated in their counter, at Para 4.3, that the applicant failed in trade test/practical test conducted during recruitment process 2007. But failed to state that if the applicant failed, how he was appointed along with others and why they had not stated the same in the impugned order. As the reason for passing the impugned termination order was not that the applicant failed in 2007 selection, but he was wrongly appointed, the same cannot be gone into without any proper, valid, sufficient supporting pleadings.

15. The persons who belong to Unreserved/General category and ST, though identically placed like the applicant, i.e., placed below in the seniority of Apprentice Ship and not placed in the redrawn panel could able to continue in service, as no General category or ST category candidate filed Writ Petitions and only SC and OBC candidates filed the Writ Petition, referred above.

16. In view of the aforesaid orders of the Hon'ble High Court, the action of the respondents can not be said as illegal, as the applicant belong to OBC category. But the fact remains that for no fault of him,

the applicant will be put to untold misery, if his services are terminated at this stage. Applicant is now aged about 35 years, and will be put to great hardship, if he is terminated from service after putting a service of more than 8 years, for no fault of him.

17. In **Vikas Pratap Singh and Others v. State of Chhattisgarh and others**, (2013) 14 SCC 494, the Hon'ble Apex Court dealt with an identical situation, as under:-

"3. The facts in a nutshell are as under: On 18.09.2006, an advertisement inviting applications for recruitment to 380 posts of Subedars, Platoon Commanders and Sub- Inspectors in the respondent-State was issued by the Police Headquarters, Chhattisgarh. For the said purpose, the Preliminary Examination was conducted on 24.12.2006 and the successful candidates thereat were called for the Main Examination held in two parts as Paper I and II on 04.02.2007 and 05.02.2007, respectively. After conducting physical examination and personal interviews, the final merit list of candidates was published on 08.04.2008, whereby all the appellants herein were selected. Based on the said merit list, the appointment letters were issued to the selected candidates including the appellants on various dates between 21.08.2008 and 15.09.2008.

4. In the meanwhile, the Inspector General of Police and the respondent- Board received complaints in respect of defects/mistakes in several questions of the Main Examination Papers. The respondent-Board constituted an Expert Committee to inquire into the complaints. Upon examination of the two Papers, two sets of defects were noticed: (a) eight questions in Paper II itself were incorrect and (b) model answers for evaluation of answer scripts to another eight questions of Paper II were incorrect. The respondent-Board directed for deletion of the first set of eight questions in Paper II and preparation of correct model answers key for objective questions in Papers I and II and accordingly carried out re-evaluation of the answer scripts of the candidates. On 27.06.2009 a new revised merit list was published wherein the names of twenty six appellants did not figure at all and accordingly, the appointment of the appellants were cancelled by the respondent-State.

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19. In view of the aforesaid, we are of the considered opinion that in the facts and circumstances of the case the decision of re-evaluation by the respondent-Board was a valid decision which could not be said to have caused any prejudice, whatsoever, either to the appellants or to the candidates selected in the revised merit list and therefore, we do not find any infirmity in the judgment and order passed by the High Court to the aforesaid extent.

20. It is brought to our notice that in view of the interim orders passed by the learned Single Judge the appellants have now completed their training and have been in service for more than three years. Therefore the only question which survives for our consideration and decision is whether after having undergone training and assumed charge at their place of posting the 26 appellants be ousted from service on the basis of cancellation of their appointment qua the revised merit list.

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22. The pristine maxim of *fraus et jus nunquam cohabit* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi*, (1990) 3 SCC 655, *P. Chengalvaraya Naidu v. Jagannath and others*, (1994) 1 SCC 1 and *Union of India and others v. M. Bhaskaran*, 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: *Vinodan T. and Ors. v. University of Calicut and Ors.*, (2002) 4 SCC 726; *State of U.P. v. Neeraj Awasthi and Ors.* (2006) 1 SCC 667).

23. In *Girjesh Shrivastava and Ors. v. State of M.P. and Ors.*, (2010) 10 SCC 707, the High Court had invalidated the rule prescribing selection procedure which awarded grace marks of 25 per cent and age relaxation to the candidates with three years' long non-formal teaching experiences as a consequence of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a considerable length of time an order for cancellation of appointment would severely affect economic security of a number of candidates and observed as follows:

"28. ...Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court."

Therefore, mindful of the aforesaid circumstances this Court directed non-ouster of the candidates appointed under the invalidated rule.

24. In *Union of India (UOI) and Anr. v. Narendra Singh*, (2008) 2 SCC 750 this Court considered the age of the employee who was erroneously promoted and the duration of his service on the promoted post and the factor of retiring from service on attaining the age of superannuation and observed as follows:

"31. The last prayer on behalf of respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so, that only few days have remained. He will be reaching at the age of superannuation by the end of this month i.e. December 31, 2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. upto December 31, 2007. At the same time, we hold that since the action of the Authorities was in accordance with Statutory Rules, an order passed by the Deputy Accountant-General canceling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all through out.

32. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. December 31, 2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."

25. This Court in *Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.*, 1994 Supp (2) SCC 591 although recorded a finding that appointments given under the 'wait list' were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In *Buddhi Nath Chaudhary and Ors. v. Akhil Kumar and Ors.*, (2001) 2 SCR 18, even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed:

"We have extended equitable considerations to such selected candidates who have worked on the posts for a long period."

(See: *M.S. Mudhol (Dr.) and Anr. v. S.D. Halegkar and Ors.*, (1993) II LLJ 1159 SC and *Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors.*, (2009) 1 SCC 768)

27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

29. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation."

18. In the facts of this case, we are of the considered view that the applicant deserves to be extended with the benefit granted by the Hon'ble Apex Court in the above case.

19. In the circumstances and for the aforesaid reasons, the OA is disposed of by directing the respondents to continue the services of the applicant by adjusting him in any of the existing or future vacancies of Assistant Binder. However, the seniority of the applicant shall be fixed, for all intents and purposes, after all the Assistant Binders recruited through the advertisement published in November, 2007 and as shown in the revised redrawn panel. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)