

**Central Administrative Tribunal
Principal Bench**

OA No.62/2018

Orders Reserved on: 28.02.2018.

Pronounced on: 22.03.2018

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Babita Singh
W/o Shri Harvir Singh,
Age 47 years,
Working as Assistant Secretary,
R/o 2064/16A, Vasundhara,
Ghaziabad (UP). ... Applicant

(By Advocate: Mr.A.K. Behra)

VERSUS

1. Secretary,
School Education,
Ministry of Human Resource Development,
Govt. of India, Shastri Bhawan,
New Delhi-110001
2. Chairman,
Central Board of Secondary Education,
Shiksha Kendra,2- Community Centre,
Preet Vihar,
Delhi-110092.
3. Secretary,
Central Board of Secondary Education,
Shiksha Kendra,2- Community Centre,
Preet Vihar,
Delhi-110092. ... Respondents

(By Advocate: Mr. G.S.Virk with Mr. M.A.Niyazi)

O R D E R**Mr. K.N. Shrivastava, Member (A):**

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

“8(a) Quash and set aside the impugned order of rejection of documents dated 15-03-2017 (Annexure-A1) and order of termination dated 30-03-2017 (Annexure-A-2) and declare the same as illegal and arbitrary.

8(b) Direct the Respondents to re-instate the applicant to the post of Assistant Secretary, with all consequential benefits, including the payment of arrears and other financial benefits etc.”

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant joined Central Board of Secondary Education (CBSE) – respondent organization as a Head Assistant (Legal) on 05.06.2002 through a selection process. The said post was rechristened as Superintendent (Legal) in the year 2014. The said post was in the pre-revised pay scale of Rs.5500-175-9000. The eligibility condition for the recruitment stipulated that the candidate must possess at least second class Bachelor's Degree from recognized University with at least three years' experience in handling legal cases either in a Government or Autonomous or Public Sector Undertaking or in a Private Ltd. Co. The age limit

prescribed was 35 years. The applicant had fulfilled all the eligibility conditions and accordingly was selected to the post.

2.2 After the implementation of the Central Pay Commission recommendations w.e.f. 01.01.2006 the post of Superintendent (Legal) was placed in the pay scale of PB-2 Rs.9300-34800+Grade Pay Rs.4200/-.

2.3 The applicant was promoted to the post of Section Officer on 20.05.2010. She joined the promoted post on 20.05.2010 in PB-2 Rs.9300-34800+Grade Pay Rs.4600/-.

2.4 The respondent no.2 issued an advertisement for the post of Assistant Secretary in the year 2010 to be filled up through direct recruitment. The eligibility conditions prescribed were as under:

The candidate must possess at least 2nd class Bachelor's Degree from recognized University with at least five years experience in a Secondary Education Board/University/Govt. Departments/Autonomous Educational Organisations with similar functions. Working knowledge of both English and Hindi and knowledge of handling grievance cases were mentioned as desirable requirements.

2.5 The respondent No.2 brought out further advertisements for various posts, including that of Assistant Secretary. The applicant participated in the selection process and was finally selected to the post of Assistant Secretary under the OBC quota. She was issued appointment letter dated 07.03.2013 (Annexure A-15) and joined the post on 08.03.2013.

2.6 The respondent organization issued a Show Cause Notice (SCN) to the applicant vide Annexure A-17 memorandum dated 20.02.2017, alleging therein that the applicant has secured her appointment as Assistant Secretary through fraudulent means. Annexure A-17 memorandum is reproduced below:

“MEMORANDUM”

WHEREAS, a vacancy notification was released by CBSE in the Employment News dated 11th to 17th August, 2012, inviting applications from the eligible candidates for various posts in the Board including the vacancies for the post of Assistant Secretary in PB-3 Rs.15600-39100 +Grade Pay Rs.6600/- on the conditions mentioned in the said advertisement. As per the notification, the format of application and eligibility conditions for each post, were available on the official website of CBSE viz. www.cbse.nic.in.

AND WHEREAS, as per the records available in the Board, Smt. Babita Rani, then working as Section Office in the Board in the PB-2 Rs.9300-34800 + Grade Pay of Rs.4600/- w.e.f. May 2010, submitted an offline application for the post of Assistant Secretary in PB-3 Rs.15600-39100 +Grade Pay Rs.6600/- against the vacancy notification, appeared in the Employment News 11th to 17th August, 2012.

AND WHEREAS, it has been observed that against the Col.No.7 of the said Application, i.e. against the specific column to mention category of the candidate to which the candidate belonged, Smt. Babita Rani purposefully mentioned her category as “GN/OBC” in her application for the above post and further mentioned her caste as “JAT”, below thereunder, against the column “caste name”, despite the fact that the caste viz “JAT” was not enlisted as the Other Backward Caste (OBC) in the common central list of OBCs. Smt. Babita Rani deliberately furnished false particulars in the application form with regard to her category and misled the Board. By furnishing false declaration/particulars with regard to her caste, she wrongfully claimed and taken the benefit of reservation of OBC caste, for appointment to the post of Assistant Secretary in the Board. As per the records of the Board, Smt. Babita Rani was appointed as Assistant Secretary in

CBSE vide offer of appointment letter No.CBSE/RECTT.CELL/1(30)/2013/20298143-8148 dated 07.03.2013 against the post of Assistant Secretary, reserved for OBC candidate, because of false declaration given by her in the application form, for the said post.

AND WHEREAS, it has been also been observed that Smt. Babita Rani submitted the aforesaid application directly i.e. without routing it through proper channel, in violation of condition No.8, as mentioned in the above stated CBSE vacancy notification, which categorically provided that the persons already in service in Govt./autonomous organisations should apply through proper channel and advance copies of the applications will not be entertained.

AND WHEREAS, it has come to the notice that Smt. Babita Rani submitted false declarations regarding the status of her, experience regarding pay scale/pay drawn by her in the SHARDA Group of Educational Institutions, when she served the said organization as Legal Advisor during July, 1996 to May 2002 i.e. prior to her joining the Board as Head Assistant (Legal) in June, 2002, which is evident from the following:

- (i) In her application for the post of Head Assistant (Legal) in the Board in the pre-revised pay scale of Rs.5500-175-9000/-, she mentioned her experience as “working as Legal Advisor with SHARDA Group of Institutions from last five years” and enclosed copy of the experience certificate, which was issued on 18.10.2001, without mentioning anything about the pay scale/salary paid to her.
- (ii) In her application dated 04.10.2006 for the post of Section Officer in the Company Law Board, submitted in CBSE for forwarding the said application to the Company Law Board, against the experience column in the application form, she mentioned that she worked as a Legal Advisor on fixed salary of Rs.8000/- in SHARDA Group of Educational Institutions from July 996 to May 2002.
- (iii) In her application submitted in the Board for the post of Assistant Secretary, in response to the vacancy notification of the Board appeared in the Employment News dated 11th to 17th August, 2012, against the experience column, Smt. Babita Rani mentioned that she worked in SHARDA Group of Educational Institutions as Legal Advisor from July 1996 to May 2002 in the pay scale of Rs.6500-225-10500 (Rs.8000+).

AND WHEREAS, it is noticed that Smt.Babita Rani, had submitted an experience certificate dated 18.10.2001 in the Board from SHARDA Group of Educational Institutions, New Delhi alongwith her application for the

post of Head Assistant (Legal) in the pre-revised pay scale of Rs.5500-175-9000/- . In the said experience certificate dated 18.10.2001, it was certified that Ms. Babita Rani was working as Legal Advisor with their organization since July, 1996 and she was handling all legal affairs of the organisations. In the said experience certificate, there was no mention about the pay scale/amount of pay etc. drawn by Smt. Babita Rani in the said organization.

AND WHEREAS, it is observed that the declarations/particulars furnished by Smt.Babita Rani with regard to her pay scale/pay drawn by her in the SHARDA Group of Educational Institutions, on different occasions in her various applications as per the details given above, are in sharp variation to each other. It is evident that Smt. Babita Rani purposefully and deliberately submitted false declarations/particulars in the Board with regard to pay scale/actual pay drawn by her in the said organization, in the manner which suited her most and did the same with the motive to meet the conditions of service eligibility of the posts, she applied from time to time, including the post of Assistant Secretary in the Board on direct recruitment basis.

AND WHEREAS, the attention of Smt. Babita Rani, Assistant Secretary is invited to the condition No.11(f) of the offer of appointment made to her vide letter No. letter No.CBSE/RECTT.CELL/1(3)/2013/20298143-8148 dated 07.03.2013 for the post of Assistant Secretary in PB-3 Rs.15600-39100 + Grade Pay Rs.6600/- which provided in clear and unambiguous terms that, if any declaration or information furnished by the candidate, found to be false or the candidate had wilfully suppressed any material information, the candidate is liable to be removed from the services of the Board and such other action, as deemed fit, would also be initiated against the candidate, by the Board.

AND WHEREAS, it is observed the above misconducts committed by Smt. Babita Rani in the Board i.e. wrongfully claiming and taking the reservation benefit of OBC category in the Board for appointment to the post of Assistant Secretary against a post reserved for the bonafide OBC category candidate, despite the fact that she did not actually belong to the OBC category, enlisted in the central common list of OBC and also by furnishing wrong declarations/particulars from time to time with regard to her pay scale/actual pay drawn in SHARDA Group of Educational Institutions, while working in the said organization from July 1996 to May 2002.

NOW THEREFORE Smt. Babita Rani, Assistant Secretary, is hereby directed to explain as to why disciplinary action under Rule 9.12 of CBSE Service Rules, 1985 should not be initiated against her for violating the provisions of Rule 7.3(xi) of CBSE Service Rules, 1985, by committing the above serious misconducts and why she should not be removed from the services of the Board under the provisions of condition No.11(f) of her appointment letter No.CBSE/RECTT CELL/1(30)/ 2013/20298143-8148 dated 07.03.2013 for the post of Assistant Secretary, which she accepted unconditionally alongwith other conditions of service mentioned in the said letter dated 07.03.2013, before joining the post of Assistant Secretary in CBSE on 07.03.2013. Her written reply must reach this office within 10 days from the date of receipt of this notice/Memorandum, failing which case will be decided ex-parte.”

2.7 The applicant was held guilty of violating the provisions of Rule 7.3 (xi) of CBSE Service Rules, 1985 and was called upon to explain as to why disciplinary action against her should not be taken against her under Rule 9.12 of CBSE Service Rules, 1985.

2.8 The applicant vide her Annexure A-24 interim reply dated 21.03.2017 to the A-17 memorandum/SCN dated 20.02.2017 denied the charges. In the interim reply she also demanded some documents from the respondents and stated therein that on receipt of such documents, she would be able to file her detailed reply to Annexure A-17 memorandum. However, without conducting any enquiry in the matter, the respondent no.2 vide the impugned Annexure A-2 penalty order dated 30.03.2017 terminated the services of the applicant with immediate effect. In the termination order, reference has been made to the averments

made in the interim Annexure A-24 reply dated 21.02.2017. The operative part of the order reads as under:

“AND WHEREAS, the undersigned has considered the above submissions of Smt. Babita Rani as highlighted under S. No. (i) to (vi) herein above and it is held as under:

- (i) Smt. Babita Rani in her reply letter 21.03.2017, has admitted that the JAT community of U.P. is not enlisted as an OBC category in the central common list of OBCs in Central Government and she belongs to the GENERAL category for the purpose of her appointment in CBSE to the post of Assistant Secretary.
- (ii) That as per the records, Smt. Babita Rani has been appointed against the post of OBC, despite the fact that she is not a bonafide OBC candidate as per the central list of OBCs in Central Government. From the reply furnished by Smt. Babita Rani, it is crystal clear that she was fully aware, before applying for the post of Assistant Secretary in CBSE that JAT community of U.P. does not fall under the OBC category as per common central list of OBCs and she was a GENERAL category candidate. But, she wrote her category as GN/OBC in the application form of the Assistant Secretary thereby mentioning her caste as OBC falsely alongwith GN deliberately and purposefully to create ambiguity in her application form with regard to her category and to falsely take benefit of reservation of OBC candidate.
- (iii) That she did not submit her application through proper channel in as much as that she did not route her application through her Unit Head/Branch Head to the Admin. Branch, for consideration of her application.
- (iv) That she submitted different declarations/particulars/pay details/pay scales in her various applications relating to her period of employment in Sharda Group of Educational Institutions from July, 1995 to May, 2012, which are in sharp variations to each other as mentioned herein above in this order. This very fact itself substantiates that she submitted false declarations with regard to her status of experience/pay drawn/pay scale drawn by her in the Sharda Group of Educational Institutes during the period mentioned above.

NOW THEREFORE, the undersigned after consideration of the provisions of condition No. 11 (f) mentioned in the appointment letter No. CBSE/RECTT.

CELL/ 1(30)/2013/20298143-8148 dated 07.03.2013 of Smt. Babita Rani, regarding her appointment to the post of Assistant Secretary in CBSE in PB-3 Rs. 15600-39100 + Grade Pay 6600/- ad also after due consideration of the declaration given by her in her application for the post of Assistant Secretary to the extent that, if any information/details found to be incorrect/false at any stage of selection or if any fact is found to have been concealed by her and detected after appointment, her services may be terminated and also keeping in view all the above mentioned material facts of the case, hereby terminates the services of Smt. Babita Rani, Assistant Secretary, JEE Unit, CBSE with immediate effect and she stands relieved forthwith".

2.9 The order of rejecting the request of the applicant for providing copies of certain documents was communicated to the applicant vide Annexure A-1 memorandum dated 15.03.2017.

2.10 Aggrieved by the impugned Annexure A-1 and A-2 Memoranda, the applicant has filed the instant OA praying for the reliefs as indicated in para-1 supra.

3. When the case came up for consideration on 28.02.2018, Shri A.K. Behera, learned counsel for the applicant and Shri G.S. Virk and Shri M.A. Niyazi, learned counsel for the respondents were present.

4. Shri Behera submitted that the applicant had wanted to submit a detailed reply to the Annexure A-17 charge memorandum dated 20.02.2017 and for doing so, she had sought certain documents from the respondents, a request for which was made by her in her Annexure A-24 interim reply dated 21.02.2017; the respondents have failed to provide the documents sought by the

applicant, which has prejudiced her case inasmuch as she could not comprehensively reply to the Annexure A-17 memorandum.

4.1 Shri Behera further submitted that the applicant has not been a stranger to the respondent organization-CBSE and that she has worked there for about 15 years in various capacities, viz. Superintendent (Legal), Section Officer and Assistant Secretary. He further submitted that all the personal details of the applicant were available with the respondents and that she has not indulged into any act of misrepresentation about her personal information.

4.2 Shri Behera vehemently contended that the impugned Annexure A-2 termination order is bad in law as it has been passed without conducting any enquiry in the matter.

5. Shri G.S. Virk, learned counsel for the respondents did not controvert the contention of the applicant that the termination order has been passed without conducting disciplinary enquiry.

6. From the impugned Annexure A-2 order, it is quite evident that the termination order has been passed in accordance with condition 11 (f) of the Annexure A-15 appointment letter dated 07.03.2013 issued to the applicant, appointing him to the post of Assistant Secretary in PB-3 Rs.15600-39100+Grade Pay Rs.6600/-.

This condition reads as under:

“f. If any declaration or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable to be

removed from the services of the Board and such other action as the Board may deem necessary will also be initiated by the Board against you”.

7. The respondent no.2 without conducting a disciplinary enquiry against the applicant has passed the termination order, which is not in dispute. The termination is in the nature of a major penalty. It is to be noted that the applicant has been working in the respondent-organization since 2002. Therefore, the procedure prescribed in Rule 9.12 of the CBSE Service Rules, 1985 was required to be followed. This Rule makes it absolutely mandatory that for imposition of major penalties, enquiry has to be conducted in accordance with this rule. The respondent's stand, as could be noticed from the impugned Annexure A-2 order, is that the applicant has secured her appointment as Assistant Secretary by making fraudulent declaration and, therefore, in exercise of condition 11 (f) of the appointment letter her services could have been terminated by just issuing a SCN to her. The respondent no.2, however, has failed to note that the applicant has been working as a permanent staff of CBSE in her capacity as Superintendent (Legal) and Section Officer and that the impugned Annexure A-2 order is punitive and stigmatic in nature and passed without following the principles of natural justice as well as in flagrant violation of Rule 9.12 of CBSE Service Rules, 1985. On this ground itself, the impugned Annexure A-1 and A-2 orders deserve to be quashed and set aside.

8. In the conspectus of the discussions in the foregoing paras, the OA is disposed of in the following terms:

- i) The impugned Annexure A-1 memorandum dated 15.03.2017 and Annexure A-2 memorandum dated 30.03.2017 are quashed and set aside.*
- ii) The respondents are directed to re-instate the applicant in service within 15 days of the receipt of a certified copy of this order with all back wages but with no interest on such back wages.*
- iii) The respondents shall have liberty to take appropriate action as per law for any misdemeanour on the part of the applicant by following the principles of natural justice and by conducting disciplinary proceedings as per Rule 9.12 of the CBSE Service Rules, 1985, if they so desire.*

9. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’