

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3452/2014

Reserved on 30.03.2016
Pronounced on 23.09.2016

**Hon'ble Mr.Sudhir Kumar, Member (A)
Hon'ble Mr.Raj Vir Sharma, Member (J)**

Agast Anand,
S/o Mr.Lalbachan Kumar,
r/o 15/20-5, Gardenia, Phase 1,
Survey No.36, Badgaon, Sheri,
Pune-411014, Maharashtra. ... Applicant

(By Advocate: Mr. Nalin Tripathi)

VERSUS

1. National Institute of Public Finance
and Policy, Through Director
18/2, Satsang Vihar Marg,
Special Institution Area (Near JNU)
New Delhi-110067
2. The Secretary,
Ministry of Finance,
Government of India, North Block,
New Delhi-110001
3. Ms. Alka Matta,
897, Sector-A, Pocket-C,
Vasant Kunj, New Delhi. ... Respondents

(By Advocate: Ms.K.Iyer and Mr.V.K.Mehra)

O R D E R

Hon'ble Mr. Sudhir Kumar, Member (A):

The applicant of this OA had approached this Tribunal alleging wrong doing in the appointment of Private Respondent R-3 by respondent no. 1 and 2, in response to the advertisement published on 20.12.2009 and 22.12.2009, inviting applications for the post of Secretary in respondent no. 1 Institute. For claiming that this OA had

been filed within the period of limitation, it was declared that the OA is within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985, since the period of limitation for this Tribunal starts only from 20.07.2014, the date of RTI reply furnished to the applicant by the concerned CPIO under the RTI Act on 28.07.2014 through Annexure P-4, signed by the Private Respondent R-3 herself. The OA was filed on 23.09.2014.

2. The applicant's case is that respondents had advertised for the post of Secretary of respondent Institute, prescribing certain qualifications as per Annexure P-1, and the corresponding Recruitment Rules (RRs in short) annexed as Annexure P-2, and the latter did not provide for any waiver of essential qualifications. It was submitted that even though the applicant was duly qualified, in so far as qualifications were concerned, but he did not meet the other criteria, as had been advertised, and, therefore, he could not apply for the said post, as the advertisement did not specify that the essential qualifications were optional, and were subjected to waiver.

3. The applicant has alleged that much after the selection of Private Respondent R-3 had been made only in the year 2014, he came to know that Private Respondent R-3 has been appointed, who had earlier applied in 2008 in the same organization for the post of Accounts Officer, but had not been selected.

4. The applicant has alleged that the post of Secretary in a premium organization involves lot of responsibilities, but the appointment of Private Respondent R-3 has been made contrary to the RRs, just to favour her, as a result of nepotism/favouritism, and such selection suffers from arbitrariness and bias, and because of such

malafide and illegal acts of the respondents, his own valuable rights for seeking appointment on the post of Secretary had been infringed. He had, therefore, taken the ground that the appointment of Private Respondent R-3 was *de-hors* the rules, and deserves to be set aside, as her appointment had been made by waiving the essential qualifications, which amounts to colourable exercise of power, and makes the entire action of respondents violative of Article 14 and 16 of the Constitution, as well as illegal, arbitrary, malafide and violative of principles of natural justice.

5. In respect of details of remedies exhausted, it was stated that the applicant has exhausted all remedies available to him, but he has no other way but to approach this Tribunal. In the same paragraph, it was mentioned that he was approaching this Tribunal for speedy and efficacious remedy, for staying the finalization of appointment of Executive Engineers, ignoring the case of the applicant, while the OA actually does not relate to the subject of appointment of Ex. Engineers at all. In the result, he had prayed for the following reliefs:

- "(A). Issue appropriate direction to the Respondent no.1, to quash the appointment of Respondent no.3 and to take out process for appointment of suitable candidates afresh, strictly in terms of the Recruitment Rules.
- (B). Allow the cost of this application in favour of the applicant.
- (C). Pass such further order's / relief's as deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of this case in the favour of the applicant and against the respondent."

6. Vide Annexure P-3, he had enclosed a copy of letter written by his Advocate to the RTI Act. CPIO officer under respondent no.1 on 30.06.2014, in reply to which Annexure P-4 had been issued. Notices were issued in this OA on 26.09.2014, and after completion of

pleadings, and many adjournments, the case was heard and reserved for orders.

7. On 13.10.2015, when none was present for the applicant, learned counsel for the respondents had pressed for disposal of the OA submitting that it is a frivolous petition, as the applicant had not even applied for the post in question, and, therefore, he cannot assail the selection made. Later, on 20.01.2016, it was submitted that by mistake the counsel for official respondents R-1 and R-2 had also filed counter reply on behalf of Private Respondent R-3, which she had sought to withdraw, and inform Private Respondent R-3 to file a separate counter reply. Such separate counter reply was filed by Private Respondent R-3 on 9.02.2016, before the case was heard and reserved for orders.

8. In their counter reply dated 11.12.2014, on behalf of the respondents R-1 and R-2, it was submitted that this OA is without any basis or justification, and in gross misuse of process of law, as under the garb of challenging the appointment of Private Respondent R-3, the applicant had filed the present OA only to humiliate her, as an after thought, and with an ulterior motive, and/or at the behest of someone with certain vested interests. They had further challenged the *locus standi* of the applicant to challenge the appointment of Private respondent R-3, when admittedly the applicant had not even applied for the said post, because of which he could have alleged violation of his fundamental rights.

9. It was further submitted that it is a settled principle of law that the Court cannot sit in appeal over the decision of a duly constituted Selection Committee unless any material irregularity, procedural

violation, bias, or malafide, is specially attributed, regarding which aspects there is not even a whisper in the OA as it has been filed. It was further submitted that OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, and if the applicant had any grievance regarding the selection process for the post of Secretary, nothing had prevented him from approaching this Tribunal at the appropriate point of time, and he cannot be permitted to enlarge the period of limitation on the basis of a reply to his RTI application, as has been sought to be done by him. Thereafter, parawise replies to the OA had been submitted, which, for the time being, we do not wish to record here.

10. His rejoinder was filed on 25.02.2015, which was somehow accepted by the registry on 25.02.2015 without there being any signatures either of the counsel of the applicant, or the signature of the applicant, with the affidavit and verification, and, therefore, we do not consider it as valid and legal to be filed. However, in this it was submitted that this OA was not a Writ Petition under Articles 226 or 32 of the Constitution, and that the applicant has a right not only to show any violation of his fundamental rights, but also any illegality committed by a public authority, amounting to violation of any legal rights of any citizen, which gives rise to a *locus standi* to the applicant to challenge the same. Thereafter, he had commented upon the parawise reply filed by the respondents. As already mentioned above, Private Respondent R-3 had filed a separate affidavit on 09.02.2016.

11. Heard. The case was also argued in detail, but before we take up the case on merits, we have to follow the law of land in regard to limitation, as well as *locus standi* of the applicant.

12. As was held by the Hon'ble Supreme Court in **D.C.S.Negi Vs. Union of India and Others** (Civil Appeal No. 7956/2011), before deciding any case on merit, this Tribunal has to first consider the aspect of limitation. In this particular case, undeniably the cause of action had emanated when the Private Respondent R-3 had been selected as Secretary during the interview conducted on 15.01.2010, and had then been appointed thereafter. Therefore, the cause of action, if any, to challenge her selection could have accrued to anybody only in the year 2010.

13. It is trite law that mere receipt of information under the RTI Act cannot be stated to give rise to a cause of action. Therefore, this OA is liable to be dismissed on the ground of delay itself.

14. On merits also, without going into all other aspects of the pleadings, the contention of the applicant that this Tribunal can take up cases in respect of any illegality committed by a public authority, amounting to any violation of any legal right of any citizen, which would give rise to a *locus standi* to the applicant to challenge the same, is also not correct.

15. As has been held by the Hon'ble Apex Court in **Vijay Shankar Pande Vs. Union of India and Ors** (2014) 10 SCC 589), any subject (citizen or non-citizen) can certainly file even a petition in the nature of Public Interest Litigation, if there has been violation of any legal rights of citizens, and it can be claimed to have given rise to a *locus standi* to the applicant to challenge the same in a Public Interest Litigation (PIL).

16. But, firstly that power to entertain such PILs is not available to this Tribunal, and the powers of this Tribunal are confined to those

who can seek relief from this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. The applicant of this OA was not even an applicant for the said post of Secretary, and, therefore, he certainly cannot be held to be entitled to file such an OA before this Tribunal, in which his own individual fundamental rights had not been trampled upon by the respondents in any manner whatsoever.

17. In the case of **Vijay Shankar Pandey** (supra), the Honble Apex Court had held as follows:-

"49. The Constitution declares that India is a sovereign democratic Republic. The requirement of such democratic republic is that every action of the State is to be informed with reason. State is not a hierarchy of regressively genuflecting coterie of bureaucracy.

50. The right to judicial remedies for the redressal of either personal or public grievances is a constitutional right of the subjects (both citizens and non-citizens) of this country. Employees of the State cannot become members of a different and inferior class to whom such right is not available. The respondents consider that a complaint to this Court of executive malfeasance causing debilitating economic and security concerns for the country amounts to inappropriate conduct for a civil servant is astounding."

18. However, the Hon'ble Supreme Court has since watered down the law as laid down above, while considering the Petition for Special Leave to Appeal (Crl.) No.5000/2016, arising out of the impugned final judgment and order dated 11.03.2016 in Criminal Appeal No.1248/2015 passed by the Hon'ble High Court of Bombay in **Harsh Mandar Vs. Amit Anilchandra Shah & Ors.**, when, on 01.08.2016, a Division Bench of the Hon'ble Supreme Court saw no reason to entertain the Petition under Article 136 of the Constitution directed against executive malfeasance, affecting the administration of the Criminal Justice system in the country, and it was accordingly dismissed.

19. However, as has been reported in connection with the matter, during the course of hearing of that case, the Hon'ble Supreme Court had first considered the *locus standi* of the petitioner in that case, as it did not consider it the constitutional right of all the subjects of this country. It was argued on behalf of the petitioner, on the basis of some earlier judgments of the Hon'ble Supreme Court, in which it was held that any member of the Society can have a *locus* in the case of an administrative malfeasance affecting the administration of the Criminal Justice system of the country, which stand was countered on behalf of the respondents by submitting that if someone was not connected to the case, he cannot interfere with anyone's criminal case trial, unless the third party involved is an aggrieved party, and that it cannot be a case that if the State is not going to file an appeal, I will file the appeal. The words which fell from the Bench were reported to have been as follows:-

"When the person is genuinely aggrieved then the issue takes a different colour but when the person is not remotely connected and wants to revive the case then it is a different matter."

20. Therefore, by dismissing the SLP on 01.08.2016, the Hon'ble Supreme Court denied the right to a citizen subject of the country to question any kind of executive malfeasance in the administration of the Criminal Justice system of the country, thus retracting a notch from the law as laid down on 22.09.2014 in the case "Vijay Shankar Pandey" (supra), which case also, incidentally, concerned a serving Civil Servant having joined in pointing out executive malfeasance in the administration of the Criminal Justice system in the country. Therefore, though the mere dismissal of an SLP does not lay down any law, in effect, it has now been held that even when there is wrong-

doing, or lack of probity, or executive malfeasance on the part of either the Government of a State, or a Governmental agency, it does not give rise to a *locus standi* to any citizen to challenge such action or inaction.

21. However, both these judgments in **Vijay Shankar Pande** (supra) and **Harsh Mandar** (supra), applied to Writ Petitions etc. before the Hon'ble High Court, as well as Hon'ble Supreme Court, and this law would not apply to the original applications to be filed before this Tribunal, the scope of which is limited squarely by Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985.

22. Therefore, both on the point of limitation, and on the point of *locus standi* to file this OA, which is in the nature of a PIL, and does not fall within the ambit of Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985, the OA is dismissed, and a cost of Rs.25,000/- (Rupees twenty five thousand only) is imposed on the applicant, payable to respondent no.1, for indulging in frivolous litigation, and taking up precious time of Tribunal.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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