

**Central Administrative Tribunal
Principal Bench**

OA No. 3511/2014

Order reserved on: 19.05.2016

Order pronounced on: 13.07.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

Ratnesh Kumar,
aged 36 years, Asstt. Coordination,
S/o Late Sh. Badri Prasad Sinha,
R/o P.O. Naya Tola, Ward No.20,
House No.19, Distt. Hajipur,
Vaishali,
Bihar-844101.

- Applicant

(By Advocate: Sh. Abhay Kumar with Sh. Tenzing Tsering)

Versus

1. Union of India
Through its Secretary,
Ministry of Steel,
Udyog Bhavan,
New Delhi-07.
2. CEO, BSL and Appellate Authority,
SAIL, Bokaro Steel Plant,
Bokaro Steel City,
ADM Building, District- Bokaro,
Jharkhand-827001.
3. BSL & Disciplinary Authority,
SAIL, Bokaro Steel Plant,
Bokaro Steel City,
ADM Building, District- Bokaro,
Jharkhand-827001.
4. Sh. Prithvi Raj,
The DGM (M/M),
Bokaro Steel Limited, Delhi Office,
Jeevan Bihar, 5th Floor,
Sansad Marg, New Delhi.

5. Sh. P.K.Singh,
AGM (Project)/SPU,
Bokaro Steel Plant,
Bokaro Steel City,
Bokaro, Jharkhand.
6. Jr. Manager (Personnel/Rectt.),
SAIL, Bokaro Steel Plant,
Bokaro Steel City,
Bokaro, Jharkhand.
7. DGM, Personnel Service & FSC,
SAIL, BSC, Bokaro, Jharkhand.

- Respondents

(By Advocate: Sh. K.K.Rai, Sr. counsel with Sh. R.N.Singh,
Sh. Anshul Rai, Sh. Amit Sinha and
Sh. Ashish Rastogi)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The applicant was working as Assistant (Coordination) in Bokaro Steel Plant (BSP) since 22.01.2008 when he was given separation order by the Disciplinary Authority (DA) on 15/17.02.2014. His appeal against the separation order was also rejected by the Appellate Authority (AA) the speaking order dated 22/25.03.2014. He has challenged these two orders in the present OA.

2. The facts in brief are that in response to an advertisement published in the Statesman, Delhi edition on 01.12.2007 for the 4 posts of Assistant (Coordination) and 6 posts of Attendant (Coordination) for an upcoming steel processing unit of BSP, the

applicant applied for the post of Assistant (Coordination). In the advertisement it was mentioned that the posts were on casual basis but likely to be regularised in S-III and S-I grades respectively, after a minimum period of one year. The applicant fulfilled the eligibility conditions mentioned in the advertisement of possessing a graduation degree and one year's experience in liaison work. On the basis of an interview the applicant was selected for the post and he reported for duty to BSP on 22.01.2008. Later the Central Vigilance Commission received complaints about these appointments, which were forwarded to the Steel Authority of India (SAIL) for further action. After investigation the BSP management found that the aforesaid recruitments were made without following the procedure laid down by the Company for such recruitments. The applicant and 8 others, who were selected in similar manner, were chargesheeted. The applicant submitted his reply on 11.01.2012 to the chargesheet dated 04.01.2012 denying all the charges against him. Not satisfied with the reply, the DA constituted an Enquiry Committee which gave its report with a finding that out of three charges only charge no. 2 was proved and other two were not. The DA did not agree with the findings regarding charge no.1 & 3 and gave a final notice to the applicant on 07.02.2014 along with a copy of enquiry report. The applicant submitted his representation on 14.02.2014. The competent authority after

considering the representation and other relevant documents on record passed the impugned order dated 15/17.02.2014 imposing the penalty of dismissal on the applicant. The applicant submitted an appeal on 08.03.2014 to the AA but that was also rejected vide order dated 22/25.03.2014.

3. The applicant has challenged these orders on the following grounds:-

(i) The AA has not applied its mind while passing the order dated 22/25.02.2014 and has simply endorsed the order passed by the DA.

(ii) The DA and AA have not taken into account the factual matrix and contentions raised by the applicant at each stage of enquiry and in his subsequent representations.

(iii) The DA and AA did not consider that the enquiry report had not taken account all the necessary factual and documentary evidences that supported the case of the applicant.

(iv) The finding of the Enquiry Committee was contradictory as though the charge no.2 was held to be proved, the report itself had mentioned that the "CSE has been a beneficiary, but no substantive evidence has been produced in support of his involvement in this process". Similarly, there was no evidence to prove that the applicant adopted fraudulent means for manipulating favouritism to

some pre-selected candidates. The charges levelled against the applicant were vague. Charges against him pertained to a period when he was not an employee of the respondents, and therefore, the charges have no legal basis.

(v) The advertisement for recruitment was issued in the year 2007 in accordance with the procedure followed at that time, while the management witness during the enquiry referred to the procedure after some changes were effected in the year 2011.

(vi) The allegation that his application did not bear any date was answered by MW-1 stating that it was nothing but a human error.

(vii) His application did not bear the postal stamp as well as the stamp of post office because he had personally placed the application in the box at the office of the newspaper.

(viii) The allegation that qualification criteria was liberal in nature does not have any basis as the applicant has worked for 6 years in the post of Assistant (Coordination) to the satisfaction of the management.

(ix) It was also not true that 15 days' time given for submission of the application was not according to the provision of the Recruitment Manual of BSP, as the Recruitment Manual to which a reference has been made is actually for the post of executive while the post in question

is a non-executive post. Even for the executive post the provision is that “generally” one month time has to be given for receipt of application, thus, the one month time is also not mandatory.

(x) The management has produced only one witness who joined the recruitment department in 2009 whereas the recruitment in question was initiated in the year 2007. Therefore, his evidence is not relevant. The penalty of dismissal imposed on the applicant is shockingly disproportionate.

4. The learned counsel for the applicant submitted that the respondents have falsely set up a case under the influence of the Vigilance Department and penalised the applicant who was appointed to the post of Assistant (Coordination) through a valid recruitment process. According to him, there was nothing wrong in publishing the advertisement in the Statesman, New Delhi because it was a national newspaper having a wide reach. He also pointed out that the applicant in order to avoid any postal delay, after obtaining the required bank draft to be attached with the application, personally went to the office of the newspaper and dropped the application in the appropriate box. Therefore, the question of any postal stamp or date stamp did not arise. The applicant was assessed through an interview and only thereafter he was given the appointment letter. After joining at the place of

posting, the applicant has been serving the respondents with full devotion to his duty and there has been no cause for any complaint. Therefore, raising the controversy of inappropriate qualification was not based on any logic. The management had sent a requisition to the employment exchange before advertising the post in the newspaper. However, the recruitment procedure does not mention any mandatory 'No Objection Certificate' from employment exchange before going for advertisement. According to learned counsel even if there was any procedural irregularity it was an internal matter of the management and there is nothing that has been placed on record during the enquiry to show that the applicant was in any manner involved in the irregularities if any, with a view to manage his appointment. The order passed by the DA and AA therefore deserves to be set aside.

5. Learned counsel for the respondents refuted the contentions of learned counsel for the applicant and submitted that after a detailed enquiry by the vigilance it was found that there was collusion between the applicant and other candidates, and some people in the management that led to manipulation of the entire recruitment process. According to the learned counsel, the management had sent a notification to the employment exchange but without even waiting for a reply, they went ahead and published the advertisement, that also in a national newspaper when place of posting was at Bokaro. It clearly shows that the

intention was to limit the applications only to those who were pre-selected. The advertisement in the Statesman was published in the classified column with the heading 'Situation Vacant' and without giving the name of the employer, the candidates were given only 15 days' time for applying through post. In response only 9 applications were received against 10 vacancies, and all the 9 persons were selected. The entire sequence of events clearly shows a conspiracy by the candidates and some employees of the company with a view to secure employment through fraudulent means. According to learned counsel, the applicant cannot be allowed to enjoy the fruits of an appointment secured through illegal means. He relied on the following judgments of Hon'ble Supreme Court:

- (1) **Secretary, State of Karnataka vs. Uma Devi**, (2006) 4 SCC 1
- (2) **Satya Prakash & Ors. Vs. State of Bihar**, (2010) 4 SCC 179
- (3) **State of M.P. & ors. Vs. Lalit Kumar Verma**, (2007) 1 SCC 575
- (4) **Superintendent of Post Offices & ors. Vs. R. Valasina Babu**, (2007) 2 SCC 335
- (5) **Pankaj Gupta and Ors., etc. Vs. State of Jammu and Kashmir and Ors.** (2004) 8 SCC 353.

6. Learned counsel for the respondents further submitted that some of the candidates, who were appointed through the same recruitment process as the applicant, were dismissed by the

management in a similar manner. They had approached the Ranchi Bench of the Tribunal challenging the orders passed by the respondents and these OAs. 146/2014, 147/2014, 148/2014, 151/2014, 153/2014, 158/2015 were dismissed on 22.04.2015 and OAs 152/2014, 157/2014 on 08.05.2015.

7. In the rejoinder the applicant has reiterated that he was appointed on casual basis by a due process of recruitment and confirmed after successfully completing the probation, and that he had served the company for about 6 years without any complaint from any side. It was further submitted that one of the officers involved in the appointment of the applicant and other candidates, namely Sh. Hemrom, had been let off with a punishment of withholding of one year increment and later, according to his information, he was given promotion as DGM. This fact clearly shows that the respondents actually believe that there was no serious irregularity in the recruitment process through which the applicant and some others were appointed. It was also stated that the Hon'ble Supreme Court's judgment in **Uma Devi** (supra), **Lalit Kumar Verma** (supra) and **R. Valasina Babu** (supra) cited by the respondents are not relevant to this case because his appointment was on casual basis and was not a regular appointment. He was appointed through a procedure in accordance with the recruitment rules and the manual of a company.

8. We have heard the learned counsel for the parties and perused the record. A perusal of the sequence of undisputed events leading to the appointment of the applicant would give an impression of too many coincidences taking place right from the beginning. Let us consider this. The management sent a requisition to the employment exchange in accordance with clause 3.4.1 of Recruitment Manual, which, as reproduced in the counter filed by respondent nos.2 to 7, reads as follows:

“3.4.1 Notification to Employment Exchange:

In case it is not possible to get the vacancy filled in through internal candidates in non-executive category, notification to the Employment Exchange shall be sent incorporating Designation of vacant post, pay scale, no. of vacancy to be filled-in, job specification (keeping in view multi-trade concept), age limit, reservation for SC/ST/Ex-Serviceman, relaxation of age for such category etc. the Employment Exchange shall be advised to forward names in the ratio not less than 1:7 within 15 days of the receipt of the notification.

No supplementary lists shall be entertained. On expiry of 15 days, a Non-Availability Certificate shall be obtained from the Employment Exchange and the post shall be advertised in Newspaper as per guidelines laid down for the purpose. No application shall be accepted which has been received beyond the stipulated period.”

9. In the rejoinder the applicant has not questioned the applicability of the above clause to the process initiated in 2007 leading to his recruitment. He has taken a plea that since this is not discussed in the inquiry report, it cannot be relied upon by the respondents. The records, however, show that the issue of fast tracking of advertisement without NOC from Employment Exchange is a part of the charge sheet; it is part of the brief of the

Presenting Officer, and has been discussed in the Enquiry Report. There is a clear provision in the above clause that after expiry of 15 days, if no list has been received from the Employment Exchange, a non-availability certificate has to be obtained from the Employment Exchange before advertising the post in the newspaper. In the present case the notification was sent to the Employment Exchange, New Delhi on 27.11.2007 and without waiting for 15 days, and obtaining non-availability certificate, the vacancies were advertised in the Statesman, New Delhi edition on 01.12.2007 that too in a classified column with the heading 'Situation Vacant'. The name of the company was also not revealed.

10. According to the instruction given in the Advertisement, the "interested candidates should post their resume (along with testimonials) to reach Box 9389, Statesman, New Delhi – 110001, on or before 15-12-2007..."(*emphasis supplied*). The applicant however, did not send the application through the normal 'post' but claims that he had personally dropped the application in the box kept in the newspaper office. It is also a coincidence that he forgot to put date on the application. Again it so happens that for 10 posts only 9 applications were received and all of them are found suitable.

11. It is obvious that the above stated scenario is not believable. Notwithstanding that, the respondents have gone through the process of disciplinary action in a manner that meets the requirement of the rules and the principles of natural justice. The applicant was chargesheeted after considering his representation. Enquiry was conducted following the laid down procedure. The applicant has alleged that the EO did not consider the evidence in support of the applicant. A perusal of the Enquiry Report does not lend credence to this contention of the applicant. The respondents did not agree with the finding of the enquiry officer about the finding on the charges no.1 & 3, and gave a disagreement note along with the enquiry report to the applicant. After considering his reply, the DA has passed the order imposing the penalty of dismissal on the applicant. The AA has also considered his appeal and has rejected the same. In these orders DA and AA have considered the pleas of the applicant and it cannot be said that there was no application of mind. The plea of 'no evidence' is also misplaced as there is sufficient evidence, as discussed above, to prove that the whole process of recruitment was tailored to recruit the applicant and other candidates, who alone could apply for the post. The applicant has no right to continue in the service when his recruitment was done through a legally invalid process. It has also been argued by the learned counsel that the applicant was not an employee when the alleged

irregularities were committed and therefore he cannot be held liable for the same. This argument has no substance since his employment is a consequence of the manipulation of the recruitment process for which there is sufficient evidence. Further, on the day of imposing penalty the applicant was an employee of the Company and the DA was competent to take action against him.

12. The judgments cited by the learned counsel for the respondents namely, **Uma Devi, Lalit Kumar Verma, R. Valasina Babu, Staya Prakash** and **Pankaj Gupta** (all supra) have the common strand of law that a person cannot be allowed to benefit from an illegal appointment. In the present case it has been established that the process of recruitment of the applicant was in violation of the prescribed procedure, and thereby denying equal opportunity to all other candidates who were eligible but could not apply for the lack of proper publicity etc. The applicant therefore cannot be allowed to enjoy the fruits of an illegal appointment.

13. The applicant has relied on the judgments in **Raj Kumar Singh vs. State of Rajasthan**, (2013) 5 SCC 722, **Ranjit Thakur vs. Union of India**, (1987) 4 SCC 611, **Council of Civil Service Unions vs. Minister for the Civil Service**, (1984) 3 WLR 1174 (HL), which are not relevant in this case as the applicant has not

been able to establish that he was penalised on the basis of suspicion alone, or that it was a case of disproportionate punishment.

14. It is trite that in a disciplinary matter the scope for intervention by the Tribunal is very limited as has been laid down by the Hon'ble Supreme Court in **B.C.Chaturvedi vs. Union of India**, (1995) 6 SCC 749 and the Hon'ble Delhi High Court of Delhi in **Ram Chander and ors. Vs. Union of India and ors.**, WPC no.6632/2011. The Tribunal has to confine itself to the enquiry whether the authorities have complied with the statutory processes and the delinquent had been given full opportunity to defend himself.

15. In an identical matter the circuit bench of this Tribunal's Patna Bench at Ranchi in the order dated 22.04.2015 inOA No.158/2014 and other similar cases quoted in para 6 above has taken the following view:

"15. Taking a cumulative picture of the entire scenario, we have no doubt in our mind that there was a bigger conspiracy by some public servant in-charge of recruitment in making a mockery of a recruitment process and allowing some persons through back door. Since the entire recruitment was fraudulent, no right flows and the applicant cannot be treated or mistaken as an innocent participant as he was part and parcel of a bigger scam. We do not find anything illegal or irrational in the approach of the Disciplinary Authority so also of the Appellate Authority calling for interference, because the back-drop scenario is so crystal clear that any sensible person can smell foul play in the entire recruitment process and if such persons are given protection of law under judicial activism, there is every possibility of creating an atmosphere of distrust and disbelief in the system. Legitimate expectations of general aspirants

should not be guillotined and a situation created where hope ends in despair, rather an atmosphere of trust should be created and everything done fairly. A Public Sector Undertaking of Govt. of India is expected to be a model employer and should act fairly giving due regard to equal opportunity and statutory rules.

16. In course of argument, learned counsel for the respondents confirmed that the public servant who was instrumental in all these misdeeds, has been departmentally proceeded and punished. Learned counsel for the applicant submitted that the said official has also been promoted in the meantime. These submissions lend to our further conclusion that the entire hierarchy is involved in a vicious circle or else, such a defect could not have gone undetected for all these years. Before dismissing the applicant and others to be a part of fraud, the higher authorities should have dismissed the errant employees for such gross misconduct bringing disrepute to an organization, even though belatedly since truth has come out and the vicious circle of the recruitment process has been exposed.

17. Learned counsel for the applicant submitted that since the applicant served the Organization more than five years after confirmation in service, he deserves all sympathy and that his bread and butter and future survival is at stake. In the case of **Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and Others, [2003] SCC 311**, Their Lordships have emphatically held that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby and delay in detection or taking action will raise no equities. This answers the gamut of all the contentious issues involved in this OA. Hence ordered.

18. The OA being devoid of merit, is dismissed and in the peculiar circumstances, without any costs. Before parting with this judgment, we would like to keep on record the valuable assistance rendered by Mr. Anil Kumar, learned counsel for the applicant and Shri Indrajit Sinha, learned counsel for the respondents.”

16. Considering the facts of the present case, the grounds taken, the arguments presented by both sides and the law, we come to the conclusion that the whole process of the recruitment of the applicant smacks of gross irregularities as established in the

departmental enquiry and the applicant has no right to continue in the post to which he was appointed by the respondent-BSP..

17. In the light of the above, we find the present OA devoid of merit and the same is dismissed. No costs.

(V.N.Gaur)
Member (A)

(M.S.Sullar)
Member (J)

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