

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3644/2013

Order Reserved on: 07.09.2018

Pronounced on:25.09.2018

Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Pawan Kumar,
S/o Sh. A.S. Sharma,
R/o 10/32-A, Yogmaya Mandir,
Mehrauli, New Delhi-110030.

-Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through:

1. The Secretary,
Ministry of Women & Child Development,
Shastri Bhawan, New Delhi.
2. The National Institute of Public Corporation &
Child Development, through its Director,
5, Siri Institutional Area,
Hauz Khas, New Delhi.
3. The Secretary,
Department of Expenditure,
Ministry of Finance, North Block,
New Delhi.
4. Puspendra Pratap Singh Sengar,
Serving as Associate Librarian,
National Institute of Public Corporation
& Child Development,
5, Siri Institutional Area, Hauz Khas,
New Delhi.

- Respondents

(By Advocates: Shri Sanjiv Joshi, Shri L.K. Jha and Shri Ashok Kumar)

ORDER

Hon'ble Shri K.N.Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs in the OA:

- "i) To declare the action of respondents in filling up the post of Associate Librarian from open market by appointing Respondent No.4, as illegal, arbitrary and unjustified.
- ii) To direct the respondents to consider the applicant's claim for appointment to the post of Associate Librarian as per Order No.163/2002 dated 27.12.2002/03.01.2003.
- iii) To quash and set-aside the appointment of R-4 as Associate Librarian being illegal and arbitrary and consider the claim of applicant against the aforesaid post for appointment with all consequential benefits including arrears of pay.
- iv) To direct the respondents to implement their own office order No.163/2002 dated 27.12.2002/03.01.2003 in true letter and spirit."

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

2.1 The applicant joined the National Institute of Public Corporation & Child Development (NIPC&CD)-respondent no.2 as Data Entry Operator (DEO) on 27.03.1991. Respondent no.2 comes under the administrative control of respondent no.1.

2.2 Later, the applicant acquired some higher qualifications, namely, Post Graduate Diploma in Computer Application, MA

(Economics) and B. Lib. Science. Apparently, the Executive Council of NIPC&CD in its 51st meeting held on 14.03.2002 decided to abolish various posts, including the post of DEO. Annexure A-2 Office Order dated 03.01.2003 came to be issued to that effect.

2.3 It was further stipulated in the Annexure A-2 order that the Executive Council had also approved creation of 32 supernumerary posts to accommodate the incumbents of certain abolished posts till the incumbents of these posts were adjusted in other vacant posts or cease to be in service of NIPC&CD. The name of the applicant appears in the list of such incumbents. Accordingly, the applicant has been adjusted against a supernumerary post and thus continues to work in NIPC&CD.

2.4 The applicant submitted Annexure A-4 representation to Director, NIPC&CD dated 12.03.2003, requesting therein that he may be adjusted against the post of Technical Assistant (TA) (Library) in DWCD, NIPC&CD (HQ). Apparently, his request was not considered. Respondent no.2 brought an open advertisement for filling up the post of Associate Librarian. The selection comprised of written examination and interview. Only those who secured more than 50 marks in the written examination were to be called for interview. The applicant participated in the selection process. He qualified written examination and was called for interview. However, in the final selection, respondent no.4, namely

Shri Pushpendra Pratap Singh Sengar was selected against the said post and accordingly vide Annexure A-1 memorandum dated 31.10.2012 offer of appointment was issued to respondent no.4; pursuant to which he has already joined.

2.5 The applicant challenged the selection in OA No.1936/2012 before this Tribunal, which was dismissed vide Annexure A-10 order dated 05.10.2012. The applicant challenged the Tribunal's order before the Hon'ble High Court of Delhi in W.P. (C) No.7281/2012, which was disposed of vide order dated 13.05.2013. The Hon'ble High Court noted that the petitioner besides other grounds had also questioned the selection on the ground that interviews were to be video-graphed but that had not been done and thus intended to allude that, that manipulation had taken place at interview level. The High Court refused to adjudicate upon the said aspect of the matter and noted that the very nature of the interview was oral. The relevant portion of the Hon'ble High Court's judgment for the adjudication of this OA is extracted below:

"7. We refuse to entertain any arguments based thereon for the reason, pleadings before the Tribunal make reference to in the office order and the same does not even find mention in the writ petition.

8. Petitioner states that he may be granted liberty to raise an issue in respect to the office order dated January 02, 2003 before the Tribunal.

9. If petitioner does so, the Tribunal shall decide as per its jurisdiction."

2.6 Availing the liberty granted by the Hon'ble High Court, the applicant has approached the Tribunal in the instant OA, praying for the reliefs as indicated in para-1 supra.

3. In support of the reliefs claimed, the applicant has pleaded the following important grounds:

3.1 The selection of respondent no.4 is in contravention of the Annexure A-3 OM dated 30.10.2003 of Department of Expenditure, Ministry of Finance, wherein it is clearly stated that no autonomous bodies could go for direct recruitment from open market without getting 'No Objection Certificate' from the Staff Inspection Unit (SIU) of Ministry of Finance.

3.2 Non-consideration of the applicant for the post of Associate Librarian is violative of equality principles enshrined under Articles 14 and 16 of the Constitution of India. The respondent no.2 in the case of Ashok Dhawan, who was holding the post of Dark Room Assistant earlier, on abolition of the said post, appointed him against the vacant post of Photographer-cum-Operator vide order dated 11.05.2005 whereas such dispensation was not extended to the applicant, albeit the applicant had fulfilled all the eligibility criteria for the post of Assistant Librarian and a post of Assistant Librarian was also lying vacant.

3.3 The respondents were not justified in subjecting the applicant to the selection process for the post of Associate Librarian where

the applicant was serving as DEO. Furthermore, the entire selection for the post of Associate Librarian was vitiated in view of not video recording the interview which was required to be done as per Annexure A-8 intimation dated 10.05.2012 by respondent no.2 to all the candidates.

4. Pursuant to the notices issued, the respondents entered appearance and filed the reply. The respondent no.2, NIPC&CD in its reply has broadly averred as under:

4.1 The OA is not maintainable on the ground that the applicant is seeking the same reliefs that he had sought in OA No.1936/2012, which had been denied by the Tribunal vide order dated 05.10.2012 in terms of 'doctrine of estoppel'.

4.2 The applicant having participated in the selection process for the post of Assistant Librarian cannot question the selection process in terms of the ratio laid down by the Hon'ble Apex Court in **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand & Ors.**, [(2011) 1 SCC 150 and **Union of India & Ors. v. Vinod Kumar & Ors.**], [(2007) 8 SCC 100].

4.3 No cadre restructuring exercise for NIPC&CD had been undertaken by SIU of Department of Expenditure, Ministry of Finance. However, many posts including the post of DEO, held by the applicant were abolished consequent to the direction of the Government to reduce 10% staff as an economy measure. For this,

approval of the Executive Council of NIPC&CD was obtained. 56 posts were abolished and to accommodate the incumbents of 32 abolished posts, equal number of supernumerary posts were created.

5. Private respondent no.4, who was selected against the post of Associate Librarian in his reply has primarily supported the contention of the official respondent no.2.

6. The applicant has also filed rejoinder, in which, more or less, he has re-affirmed the averments made in the OA.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 07.09.2018. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicant and that of Shri Ashok Kumar, Shri Sanjiv Joshi and Shri L.K. Jha, learned counsel for the respondents were heard.

8. Besides reiterating the contentions of the applicant in the OA, Shri Bhardwaj argued that following abolition of his post of DEO, the applicant was intending to be adjusted against the vacant post of Assistant Librarian in DWCD of NIPC&CD for which he had the requisite qualification. Elaborating further, Shri Bhardwaj stated that in terms of V CPC pay scales, the post of DEO was in the scale of Rs.4000-6000 and that of TA (Liby.) in the pay scale of Rs.4500-7000. After getting the MACP financial upgradation, the applicant had reached in the pay scale of TA (Liby.). Hence, the respondents

were not justified in not considering the applicant for absorption against the post of TA (Lib.).

9. The next argument of Shri Bhardwaj was that the respondents could have considered the applicant for selection to the post of TA (Liby.) for which he was duly qualified but did not do so. He further stated that selection of respondent no.4 to the post of Assistant Librarian is flawed as videography was not done.

10. *Per contra*, Shri Ashok Kumar, learned counsel for the official respondents submitted that the OA is not maintainable, as the applicant has claimed the same reliefs that he had claimed in the earlier OA, which had been denied by the Tribunal vide order dated 05.10.2012 in OA No.1936/2012. He submitted that the applicant after having participated in the selection process for the post of Associate Librarian cannot subsequently question the selection process in terms of the ratio of law laid down by Hon'ble Apex Court in the cases of **Vijendra Kumar Verma** and **Vinod Kumar** (supra).

11. We have considered the arguments of the learned counsel for the parties and have perused the pleadings. It is not in dispute that the applicant, who was holding the post of DEO, on abolition of the post of DEO, has been accommodated against a supernumerary post and that 32 supernumerary posts were created to accommodate the incumbents of posts which have been abolished. The onus of accommodating the officials working on supernumerary

posts against the regular posts entirely lies within the functional domain of respondent no.2. It is understandable that before adjusting such officials against regular posts certain procedures and rules are to be followed. The applicant's contention that he is eligible for adjustment against the post of TA (Liby.), for which he is possessing the requisite qualification, could be separately looked into by respondent no.2 on its merit. Regarding filling up the post of Associate Librarian by appointing respondent no.4 against the said post, it is not in dispute that there was a proper selection process followed in which the applicant had also participated. However, he was declared unsuccessful and respondent no.4 was selected. As observed by the Hon'ble High Court of Delhi in its judgement referred to in para-2.5 supra, the interviews are oral, their video recording would not make any material difference. Even though for selection to the post of Associate Librarian, there was a stipulation that interviews will be video-graphed but by not doing so, in our view, it cannot be said that the selection process has been vitiated. Accordingly, we repel the contention of the applicant in this regard.

12. We are in agreement with the learned counsel for the official respondents that the applicant's challenge to the selection of respondent no.4 to the post of Associate Librarian had already been considered by the Tribunal in OA No.1936/2012 vide order dated 05.10.2012. Hence, the applicant is estopped from raising the

same issue in the instant OA, which had already been adjudicated by the Tribunal.

13. In the conspectus of the discussions in the foregoing paras, we do not find any merit in this OA. Accordingly, the OA is dismissed.

14. No order as to costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

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