

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.1333 of 2018

This the 13th Day of March, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Adesh Kumar
S/o sh. Azad Vir
R/o E-378, 3rd Floor, E-Block
New Ashok Nagar, Delhi-110096
Aged about 23 years
(Group 'C')

(Candidate towards Combined Higher Secondary Level
Examination -2014)

....Applicant

(By Advocate : Shri Ajesh Luthra)

VERSUS

1. Union of India
Through its Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievance & Pension
North Block, New Delhi.
2. Staff Selection Commission
Through its Chairman
(Head Quarter), Block No. 12, C.G.O. Complex
Lodhi Colony, New Delhi.
3. Staff Selection Commission
Through Regional Director (CR)
Staff Selection Commission
2123, Lowther Road, Allahabad-211 002.
4. Income Tax Settlement Commission
Through its Secretary, 4th Floor, Lok Nayak
C-Wing Bhawan, Khan Market
New Delhi-110003.
5. Union of India
Through its Secretary,
Ministry of Finance
Department of Revenue,
North Block, New Delhi

(Respondent No.3 to be served through Respondent No.2)

.....Respondents

(By Advocate : Shri C. Bheemana)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- (a) Hold and declare that the applicant has been wrongly denied allotment of Delhi state in pursuance to his selection and rank in the Combined Higher Secondary Level (10+2) Exam.- 2014;
- (b) Direct the respondents to allot Delhi State to the applicant and appoint him in said state itself.
- (c) Direct the respondents to either arrange for applicant's allotment to Delhi State or to any other equivalent service but within the state allocation of Delhi itself.
- (d) Award all consequential benefits and
- (e) Pass any other order/ direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.

3. Brief facts of the case are that in response to a notification issued by Staff Selection Commission towards the Combined Higher Secondary Level (10+2) Examination, 2014 to fill up various posts of Data Entry Operators and Lower Division Clerks under the Union, applied for the same and participated in the said examination. His roll number is 3011603585. The applicant appeared in Tier-I Examination conducted in the month of November 2014 and also in Tier-II

(descriptive type) Examination conducted in the month of August and has scored 170 and 127 marks respectively.

3.1 Thereafter while others have been appointed in the year 2015 itself, the applicant was not appointed. On the contrary, the applicant was issued a show cause notice dated 20.11.2015 on a misconceived and false premise that he has resorted to malpractice/unfair means in the written examination and he was directed to submit written explanation as to why his candidature be not canceled and he be debarred for future examination of SSC for three years.

3.2 In response thereto, applicant on 30.11.2015 submitted his written explanation and also submitted the documents sought from him vide aforesaid show cause notice and his handwriting/signature were obtained by SSC for expert opinion.

3.3 As per status uploaded by SSC on its website, applicant got to know that his case has been referred to CFSL for investigation and further directions in the matter on 5.9.2016. Thereafter by this time, the applicant was allocated to Income Tax Settlement Commission (ITSC) Department for appointment to the post of LDC and secured 16th rank in all India.

3.4 A letter dated 19.7.2017 was received by the applicant for the nomination process of the applicant. In this letter, respondents nominated the applicant for the post of DEO in

CAG instead of LDC in ITSC. Immediately applicant submitted his grievance to the respondents over phone. The respondents realized their mistake and vide letter dated 28.8.2017 (Annexure A/7) nominated the applicant for the post of LDC in ITSC. Thereafter applicant went to ITSC, Delhi to know the status of his appointment matter, where, according to the applicant, he was assured that they are trying to get things done and let him know by way of a letter. Even though options for State/region were required to be taken from the applicant, but no option was taken from the applicant.

3.5 Thereafter applicant receive an appointment letter dated 31.10.2017 from ITSC, Additional Branch Kolkata. Other candidates who got selected for ITSC and posted at Delhi State in the same recruitment process were lower in rank as compared to the applicant as the applicant secured 16th Rank in all India and rank 1st for ITSC, Delhi, which sufficiently shows that applicant had higher marks. As per applicant's ranking, he is entitled for allotment to Delhi State but no state preference was taken from him and he has been unilaterally allotted to Kolkatta. Applicant further stated that initially respondents delayed the appointment process of the applicant for years altogether without any mistake on the part of the applicant and now, no option/state preference has been taken from him.

3.6 Applicant has also represented to the SSC and other authorities dated 15.12.2017. When no decision was taken by the respondents on his aforesaid representation, the applicant filed OA 4580/2017, which was disposed of by this Tribunal vide Order dated 22.12.2017 at the admission stage with a direction to the respondents to take a conscious decision on the representation made by the applicant within 1 month from the date of receipt of certified copy of the said order and till that time, they shall not force him to join at Kolkata.

3.7. In compliance of the aforesaid directions of this Tribunal, the respondents have passed the impugned order dated 6.3.2018 rejecting the representation of the applicant. Being aggrieved by the aforesaid order dated 6.3.2018, the applicant has filed this OA seeking the reliefs as quoted above.

4. Pursuant to notice issued to the respondents they have filed their reply in which they have stated that for the said examination of 2014, ITSC had intimated the following vacancies of LDC to the SSC:-

Sl. No.	Office	SC	ST	OBC	UR	Total
1.	Principal/Additional Bench,	-	-	-	03	03
2.	Additional Bench Mumbai	-	-	01	01	02
3.	Additional Bench, Kolkata	-	-	-	01	01
4.	Additional Bench, Chennai	-	-	-	-	-
5.	Total :	-	-	-	-	06

The ITSC (respondent no.4) in the month of October, 2015 received dossiers of four candidates from the SSC (3 General + 1 OBC), namely, Shri Anurag (S/L 34), Shri Mahender (S/L 43), Shri Ankit (S/L 50) and Shri Jugal Kishore Saini (S/L 57). First three General category candidates were adjusted/posted in the Principal/Additional Bench of ITSC at Delhi and the dossier of fourth candidates, namely, Shri Jugal Kishore Saini, belonging to OBC category was forwarded to Additional Bench, of ITSC at Mumbai. The dossier of Ms. Riyanka (S/L 5) belonging to General category was received in the ITSC in November 2015 and the same was forwarded to Additional Bench, Mumbai for adjusting her in the General category vacancy at Mumbai.

4.1 No preferences were sought from any candidate and postings were made on the basis of availability of vacant posts in different category so that no dispute arises. The dossier of the applicant was received in ITSC only in the month of September 2017. There was no vacancy of LDC belonging to General category available at Principal/Additional Bench at New Delhi. The dossier of applicant was, therefore, forwarded to ITSC, Additional Bench at Kolkata and he was offered appointment vide Memorandum dated 31.10.2017 for the post of LDC in ITSC and posted at Kolkata. The applicant had submitted a representation dated 15.12.2017 seeking his appointment at Head office of ITSC at Delhi. The applicant

without waiting for response filed OA 4580/2017 before this Tribunal seeking the relief of his posting at Principle/Additional Bench of ITSC at Delhi and this Tribunal disposed of the same vide Order dated 22.12.2017 with directions to the respondents to take a conscious decision on the representation made by the applicant within 1 month from the date of receipt of certified copy of the said Order. In compliance of the aforesaid directions, the representation of the applicant was duly considered and the decision of the ITSC was conveyed to the applicant vide letter dated 6.3.2018.

4.2 They further stated that even now there is no vacancy of LDC belonging to the General category in the Head Office, i.e., Principal/Additional Bench at Delhi of ITSC for posting/adjustment of the applicant at Delhi, if the applicant is interested to serve in ITSC as LDC, he has to report for the duties at Additional Bench of Income Tax Settlement Commission at Kolkata as per the offer of appointment issued to him.

5. The main contention of the applicant is that applicant cannot be made to suffer on any count whatsoever as he has a higher mark than his counterparts from whom state preferences were sought for and allotments made accordingly. No options or state preference of the applicant has been taken

to the prejudice of the applicant and as such the action of the respondents is arbitrary and discriminatory.

5.1 Counsel for the applicant further submitted that delay in the appointment of the applicant due to the aforesaid action of the respondents without any genuine case and now he is being victimized by not seeking his state preference and unilaterally he has been allotted to Kolkata State, which action of the respondents is absolutely illegal.

5.2 Counsel further submitted that family circumstances of the applicant compel him to be present at Delhi to be with his old age parents so that he can take their proper care.

5.3 Counsel also submitted that the respondents must either arrange for applicant's allotment to Delhi State or to any other equivalent service but within the State preference of Delhi itself.

5.3 Counsel further submitted that identical situated candidate, namely Honey Garg filed OA 3218/2016 and after filing of the said OA, Honey Garg was appointed in Delhi State itself instead of other state and subsequently the said OA was dismissed as withdrawn.

6. On the other hand, counsel for the respondents submitted that the applicant was finally selected for the post of LDC with Rank No.SL/16, he was allotted to ITSC for posting. The Commission sent the documents of the finally selected applicant to the allocated department vide Office

letter dated 19.7.2017 for issuing offer of appointment after observing due formalities/procedures as required by the User Department, i.e., ITSC. The role of the Commission ends with the nomination of the selected candidates to the allocated department.

6.1 Counsel further submitted that ITSC is not responsible for the delay occurred in issuing offer of appointment to the applicant and the applicant has not been victimized in any manner by posting to Additional Bench of ITSC, Kolkata.

6.2 Counsel for the respondents further submitted that applicant competed for the examination in the SSC and sought appointment in the Central Govt. departments, he has expressed his willingness to abide by the condition of All-India transfer liability.

6.3 Counsel also submitted that the applicant has not clarified in what way the order delivered by this Tribunal in OA No.3218/2016 is applicable to him for getting posting in Delhi as the said OA was disposed of on 13.1.2017 as the applicant withdrew the same.

7. After hearing the contentions of learned counsel for the parties and having perused the material placed on record, we first of all observe that in para 4.1, the respondents have refuted the contention of the applicant with regard to seeking preferences from any candidate selected in the said selection and have averred that postings were made on the basis of

available vacant posts in different category so that no dispute arises.

8. In view of the above averment of the respondents, we do not find any illegality in the action of the respondents. We also find that the applicant was finally selected for the post of LDC with Rank No.SL/16 and he was allotted to ITSC for positing. ITSC posted him in Additional Bench of ITSC at Kolkatta. Quite clearly the ITSC cannot be held responsible for whatever delay that occurred due to procedural formalities undertaken and the delay which occurred in issuance of posting order to the present applicant. At the time when his posting was under consideration, the only post available as per the information given by the respondents was at Additional Bench of ITSC at Kolkatta. Hence, there was no illegality in the order given to him and especially in view of the fact that counsel for the respondents has pointed out that applicant competed for the examination in the SSC and sought appointment in the Central Govt. departments, he has expressed his willingness to abide by the condition of All-India transfer liability and the applicant has not clarified that in what way the order passed by this Tribunal in OA No.3218/2016 is applicable to him for getting posting in Delhi as the said OA was disposed of on 13.1.2017 as the applicant in the said case withdrew the same.

9. From the above, it is quite clear that the prayer made of the applicant in that OA has already been disposed of in OA No.3218/2016. Now the prayer made by him in this OA can at best be treated as representation for consideration by the respondents as and when a vacancy in ITSC at Delhi arise and the respondents are directed to decide his representation at the time of annual transfer whenever undertaken or whenever any vacancy becomes available at Delhi.

10. In view of the above position, this OA is partly allowed with a direction to the respondents to consider the prayer made by the applicant in this OA as a representation at the time of annual transfers whenever undertaken or whenever any vacancy becomes available at Delhi.

11. It is made clear that if the applicant does not choose to follow the offer of appointment, the respondents shall proceed in the matter as per the procedure laid down by the DOP&T for such matters.

12. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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