

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00065/16
With
MA/050/00035/16

Reserved on: 29.07.2019
Date of Order: 01.08.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Rakesh Kumar, S/o Late Kedar Nath Rai, Mohalla- Track Syndicate Golambar, Near Ambassador Hotel, P.O.- Buxar, District- Buxar.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Comptroller and Auditor General, New Delhi.
2. The Principal Accountant General (Audit), Office of Principal Accountant General, Birchand Patel Marg, Patna.
3. The Accountant General (Accounts & Entitlement), Bihar, Birchand Patel Marg, Patna.
4. The Sr. Audit Officer (Administration), O/o the Principal Accountant General (Audit), Bihar, Indian Audit & Accounts Department, Birchand Patel Marg, Patna.

.... Respondents.

By Advocate: - Mr. S.K. Tiwary

O R D E R

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for direction to the respondent authorities to consider the candidature of applicant for appointment against one post out of the six vacant posts in general category by extending the benefits of the judgment of this Tribunal in OA 459 of 2012 which was later upheld by Hon'ble Patna High Court on 28.07.2015 in CWJC No. 8820 of 2014 and implemented by the respondents

on 24.11.2015. The applicant has also filed an MA (No. 35/2016) for condonation of delay since he had submitted his application before Principal AG, Patna on 16.12.2015, but was told (verbally) on 11.12.2016 that he has to get an individual order in his favour from CAT, Patna. He has prayed for condonation of delay admitting that though the cause of action arose in the year 2012 his claim has got strength from the judgment in case of exactly similarly circumstanced five candidates in December, 2015.

2. The respondents have filed their written statement in which they have denied the claim of the applicant both on ground of period of limitation and also stating categorically that there was no further vacant post to be filled in the unreserved category following the CAT judgment in OA 459 of 2012 since the sixth vacancy (after filling the five vacancies in the light of the CAT judgment) was filled by an OBC candidate Shri Nagendra Kumar who had secured 75 marks which was equal to the cut off marks for unreserved candidate (75). They have prayed for dismissing the present OA on being devoid of merit.

3. We have gone through the pleadings and heard the learned counsels of both the parties. It is clear that five persons were given appointment following the judgment of this Tribunal on OA 459 of 2012 delivered on 14.01.2014. The claim of the applicant is for the sixth post since the above judgment was passed while mentioning six such posts remaining vacant and these vacancies not being future vacancies to be referred to the Staff Selection Commission. In such a situation, the applicant would have had a legitimate right to be considered since he claims to be the next in the

list of UR candidates after the five applicants in the aforementioned OA. However, in the light of categorical explanation given in the written statement about the sixth vacancy having been filled by an OBC candidate (Nagendra Kumar) who had more marks (75) as against 67 secured by the applicant the case of the applicant obviously cannot be considered for want of vacancy. It appears that Shri Nagendra Kumar was also given this appointment following a judgment by this Tribunal in OA 798/2012. No rejoinder has been filed denying the categorical assertion made by the respondents above.

4. Under these circumstances, the relief as prayed by the applicant cannot be granted even if we choose to condone the delay prayed by him. The OA and MA are, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member