

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA.  
OA/050/00248/2016

Date of order : 5<sup>th</sup> Nov., 2019

**C O R A M**

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]  
Hon'ble Shri Dinesh Sharma, Member [Administrative]

Md. Sakir, S/o Md. Isha Khan, Mohalla – Maulabagh, PO – Phulwari Sharif, District – Patna.

Applicant.

.....

By advocate : Shri J.K.Karn

Vs.

1. The Union of India, through the Comptroller and Auditor General, New Delhi.
2. The Principal Accountant General [Audit], Office of the Principal Accountant General, Birchand Patel Marg, Patna.
3. The Accountant General [Accounts & Establishment] 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 : Shri S.K.Tiwary.

**O R D E R** [oral]

**Per Jayesh V. Bhairavia , Member [J]** : In the instant OA, the applicant has prayed for a direction upon the respondents to consider his candidature for appointment against one of the vacant post out of the 6 vacant posts of General Category, as communicated, vide letter dated 07.03.2012 [Annexure-A/3] or any other vacant post by extending the benefits of order and judgment of this Tribunal passed in OA 459/2012, upheld by Hon'ble Patna High Court on 28.07.2015 in CWJC No. 8820/2014.

2. The brief facts of the applicant's case is as under : -

[i] The applicant submitted that he was engaged in the department as Casual Workers and rendered long period. In the Employment News of April 3-9, 2010 Edition, notice was issued calling applications to fill up the posts in Pay Band – I [Rs.5200-20200 with grade pay of Rs.

1800/- in the office of the Principal Accountant General [Audit], Bihar Patna including office of Examiner, Local Audit Wing of the Principal Accountant General [Audit], Bihar, Patna, Accountant General [Accounts & Entitlement] Bihar, Patna and Principal Director of Audit, E.C. Railway, Hajipur [Annexure-A/1].

[ii] The applicant submitted his application and was directed to appear in the interview on 14<sup>th</sup> of June, 2011, vide letter dated 27<sup>th</sup> May, 2011 [Annexure-A/2], but finally declared unsuccessful.

[iii] It is the case of the applicant that altogether six posts in general category remained vacant from the date of declaration of result and since the candidates selected for the post did not join as also several other posts became vacant as the appointed candidates quit their job on account of getting appointments against better posts. The applicant fairly submitted that he secured only 61 marks.

[iv] The applicant submitted that five candidates who had secured 69 and 70 marks, filed an OA No. 459/2012 which was decided on 15.1.2014 with directions to the respondents to consider their candidatures against six vacant posts of general category, which was confirmed by the Hon'ble High Court, vide order dated 28.07.2015 passed in CWJC No.8820/2014. The applicant submitted that since his case is exactly similar to those aforesaid five candidates who were applicants in OA 459/2012 and out of six vacant posts, only five posts have been filled up by appointing the aforesaid applicants, his candidature ought to have been considered by the respondents, since he just next to Shri Rakesh Kumar, the fifth applicant of OA No. 459/2012.

[v] The applicant has filed MA/050/00123/2016 for condonation of delay in filing the original application on the ground that the applicant is unemployed having various liabilities on his shoulder. He is too poor to survive in these hard days due to his unemployment and since his claim is based on exactly similarly circumstanced five candidates of OA No.459/2012, which was decided on 15.01.2014 and complied with by the respondents after confirmation by the Hon'ble High Court of Patna

in CWJC No.8820/2014 on 28.07.2015. Hence, the present OA along with instant MA.

3. The respondents filed their written statement and denied the contentions of the applicant. They submitted that the OA is devoid of merit as also barred by limitation under Section 21 of the A.T. Act, 1985, and accordingly the OA is fit to be dismissed on the following grounds :-

- [i] The number of vacant posts in various categories to the post of MTS due to non-joining of the candidates was UR-06, OBC -03, SC-01 and ST – Nil. In the light of judgement rendered by CAT dated 25.09.2013 in OA No.798/2012 [Shri Nagendra Kumar vs. UOI & Ors.], one UR Seat was filled up by the OBC candidate Nagendra Kumar as he had secured 75 marks which was equal to the cut off marks for UR candidates. Rest five vacancies were filled up in the light of judgement passed in OA 459/2012 and upheld by Hon'ble High Court of Patna in CWJC No. 8820/2014. At present there is no vacancy under UR category exists.
  - [ii] Out of three vacancies in OBC, 01 seat was filled up in compliance of judgment passed in OA 878/2012 [Kundan Kuamr vs. UOI & Ors.]. At present three vacancies exists [OBC-02 and SC - 01].
  - [iii] The recruitment was made from the merit list of 176 candidates. There was no list of wait listed candidates. Moreover, since the applicant had secured only 61 marks, he cannot claim that his case is similar to the applicants of OA No.459/2012, since the applicants of that OA had secured 69 and 70 marks as also with Mr. Rakesh Kumar who had secured 67 marks. However, the OA/050/00065/2016 filed by Shri Rakesh Kumar has been dismissed vide order dated 01.08.2019.
4. Heard the learned counsel for the parties and gone through the pleadings.
5. The Tribunal noticed that five persons were given appointment in compliance of the order passed by this Tribunal in OA No.459/2012 on 14.01.2014. The applicant claims for the sixth post, since the

aforesaid judgment was passed mentioning six such posts remaining vacant and these vacancies not being future vacancies to be referred to the Staff Selection Commission. It is also noticed that, vide order dated 25.09.2013 passed in OA 798/2012, one Nagendra Kumar was appointed under UR category since he had secured 75 marks. Accordingly, all six vacancies were duly filled up by the respondents. One Mr. Rakesh Kumar, who belonged to UR category having secured 67 marks, had also filed OA/050/00065/2016, which was dismissed by this Tribunal vide order dated 01.08.2019.

In view of the categorical explanation given by the respondents in their written statement about the sixth vacancy having been filled by OBC candidate [Nagendra Kumar] who had secured 75 marks as against 61 marks secured by the applicant, the case of the applicant cannot be considered for want of vacancy.

6. In view of the aforesaid observations, the relief prayed for by the applicant in OA cannot be granted even if choose to condone the delay as prayed for by him. Therefore, the OA as also MA stands dismissed. No costs.

Sd/-

[ Dinesh Sharma ]M[A]

Sd/-

[ Jayesh V. Bhairavia ]M[J]

mps.