

(2018) 10 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 4133 Of 2017, Miscellaneous Application No. 4341 Of 2017

Komal Singh And Anr

APPELLANT

Vs

Central Bureau Of Investigation And Ors

RESPONDENT

Date of Decision : 23-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0047

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

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. We have heard Mr. Ajesh Luthra, counsel for applicants and Mr. Hanu Bhaskar, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In OA, the applicants has prayed for the following reliefs:

"a) Call for the records of the case.

b) Hold and declare that the applicants have been wrongly excluded for further consideration for absorption in the respondent organization and quash and set aside the impugned order dated 21/11/2017 placed at Annexure A/1.

c) Direct the respondent to consider the applicants afresh keeping in view the nature and duties of the post of Constables in the Executive Cadre and absorb the applicants accordingly.

d) Accord all consequential benefits.

e) Award costs of the proceedings; and

f) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants."

3. The relevant facts of the case are that applicant no. 1 joined the respondent-CBI on deputation from ITBP on 5.10.2010 and applicant no.2 joined respondent-CBI from BSF on deputation on 16.08.2010. The maximum period of deputation is 7 years. After completion of 7 years, the process of absorption for 214 posts in CBI was initiated. The applicants had also submitted the required applications and offered to be absorbed in the CBI having worked continuously for 7 years as per the Recruitment Rules (RRs). But, however, the applicants were not absorbed. They filed OA 3890/2017. Vide order dated 7.11.2017 this Tribunal gave liberty to the applicants to preferred a detailed representations to the respondents and further directed the respondents to dispose of the said representations within two weeks after the filing of the representations and till then the respondents were directed not to repatriate the applicants to their parent organizations of ITBP and BSF, respectively. In compliance of the said order dated 7.11.2017 of this Tribunal in OA 3890/2017, the respondents passed a detailed order dated 22.11.2017 which has been challenged in this OA. The order is extracted below:

"The representation of applicants/Constables Sh. Komal Singh and Sh. Jaibir Singh, on deputation for absorption, in terms of order dated 07.11.2017 of Hon'ble CAT in OA No. 3890/2017 was submitted before the undersigned on 14th Nov. 2017.

Having gone through the records, it was found that Sh.Komal Singh and Sh. Jaibir Singh Constables have joined CBI on deputation from ITBP and BSF w.e.f. 05.10.2010 and 16.08.2010 respectively and were posted in CBI/SC-II/New Delhi since then.

CBI issued a circular dated 11.07.2017 for absorption in CBI and both of them applied for the same. The branches have forwarded their applications with the citation and recommendations of the HoZs and HoBs. Sh. Komal Singh and Sh. Jaibir Singh were given equal opportunity as compared to all others to appear for the personal assessment interview before a duly constituted Committee formed for the purpose.

It is not a fact that the main criteria for absorption was Security Aide duties as has been alleged in their representations by Sh. Komal Singh and Sh. Jaibir Singh. Several General Duty personnel who had no experience of Security Aide duties had also made it to the list of recommended personnel for absorption. From the representation of Sh. Komal Singh and Jaibir Singh, it appears that the absorption exercise was undertaken for only Delhi based Constables. However, the fact is that the absorption process had covered all branches and units spread across the length and breadth of the country. Constables who had been recommended for absorption are from different zones and branches of CBI spread across India including remote branches such as Imphal, Jammu, Shillong,

Dhanbad, Goa, Trivandrum, Cochin etc. The committee decided to recommend for absorptions on a broad based criteria keeping in view the future trends in crime, investigation and administrative issues concerning CBI which is a Premier Investigating Agency of the country. The personnel were selected for recommending for absorption considering the overall performance during their tenure in CBI and giving due weightage to each and every aspect of their performance, as mentioned in the citations of the HoBs/HoZs of the concerned branch.

Sh. Komal Singh and Sh. Jaibir Singh not being recommended for absorption in CBI does not mean that they have been found adverse in functioning. They could not relatively make out their place in the final list as the number of constables to be absorbed were far less than the willing candidates. Non-selection in the list of recommended absorption is not to be taken as negative comment on the performance of these two constables in whatsoever manner. In any competitive situation, just as this one, where number of contenders are more and final selections are less, relative performance by others counts. It is expected that once they rejoin their parent organization, they would contribute to the organization in a much better way due to the experience that they had gained in CBI.

The Hon'ble CAT has directed that the representations if submitted by the applicants shall be decided within two weeks from the date of receipt of a certified copy of the order of Hon'ble CAT on the representation of the applicants.

In view of the points as mentioned supra, undersigned being the appointing authority, do not find merit in the representations submitted by Sh. Komal Singh and Sh. Jaibir Singh. Their representations are thus not acceded to.

The applicants may please be informed accordingly."

4. We have perused the impugned order. The respondents have stated that a Committee was constituted as per rules for the assessment of the candidates for recommending for absorption and that the applicants were also given equal opportunity before the said duly constituted Committee. As is evident in the above extracted impugned order that all the grounds raised in the representations of the applicants have been dealt with in para 4 of the order and it has also been stated that non recommendation for absorption does not mean that there is any shortcoming in their functioning nor it has any adverse effect on their service career. The counsel for the applicants vehemently and strenuously contended that the respondents have absorbed several candidates who were not working in the field duty which is considered suitable for absorption. Though in para 4.8 of the OA the applicant has given the names of some officials alleging that they were not eligible but he has not arrayed them as party-respondents.

5. Per-contra, the counsel for the respondents submitted that absorption is done by a duly constituted Committee and recommendation and selection has been done on accepted broad based criteria keeping in view the future trends in crime

investigation and administrative issues concerning CBI and that no malafide is alleged against the respondents in not absorbing the applicants.

6. The counsel for the applicants further submitted that the absorption is in violation of the statutory rules and the selection process is arbitrary. In support of his contention, the counsel for the applicant produced the following judgments of the Hon'ble Supreme Court:

"(1) Rameshwar Prasad Vs. Managing Director, U.P.Rajkiya Nirman Nigam Limited & Ors (JT 1999(7) SC 44)

(2) Kunal Nanda Vs. Union of India and Another (2000) 5 SCC 362) "

7. Per contra, counsel for the respondents relied upon the order passed by this Tribunal in OA No. 3395/2018 dated 12.09.2018 (Sudhir Kumar Vs. Central Bureau of Investigation, through its Director) and the Office orders dated 1st March, 2011, dated 22nd April, 2016, dated 17th February, 2016 and dated 17th June, 2010 of Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, New Delhi. We have perused the impugned order. The impugned order is a reasoned and speaking order. From the perusal of the records, we do not find any violation of any rule or any arbitrariness or unreasonableness in the selection process for the absorption.

8. In the conspectus, we do not find any merit in the claim of the applicants. Accordingly, OA is dismissed. No order as to costs.