
(2020) 01 CAT CK 0036

In the Central Administrative Tribunal

Case No : Original Application No. 2162 Of 2014, Miscellaneous Application No. 3987 Of 2015

Pramod Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0036

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : M.P. Dixit, Amit Anand

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J

1. By means of instant OA, the applicant has challenged the order dated 29.6.2011, issued by respondent no.6, whereby the applicant has not been given regular appointment to the post of Safaiwala at Patna Bench of Central Administrative Tribunal.

2. We have heard learned counsel for the applicant, learned counsel for the respondents and have carefully gone through the records.

3. The brief facts giving rise to the controversy involved in this case are that the applicant was appointed to the post of Safaiwala on Daily Wages at Patna Bench of CAT in the year 2008 after facing an interview. The appointment initially was for a period of 89 days, which continued for more than one year and the applicant received salary for the entire period. (In support of the aforesaid facts, the photocopies of the orders dated 17.4.2009 and 11.5.2009, which are office orders of Central Administrative Tribunal, Patna Bench, showing the engagement of the applicant to the post of Safaiwala on daily wage basis, have been annexed with the OA as Annexures A/1 and A/2 respectively). According to the averments mentioned in the OA, in the month of November, 2010, vacancy for appointment

of Safaiwala was issued by the respondent No.5 for which the applicant submitted his candidature on 24/25.11.2010. The applicant was called to appear in interview on 19.2.2011, in which he appeared but he was not appointed. Being aggrieved, the applicant submitted a representation on 23.4.2011 but when no reply was received, he moved an application under RTI Act. In the meanwhile, he received a letter dated 29.6.2011 issued by respondent No.6 (Annexure A/5) whereby he was informed that his candidature for appointment to the post of Safaiwala was duly considered in the interview held on 19.2.2011 along with other candidates but he was not selected in the said interview by the Section Committee. Hence this OA.

4. The contention of the learned counsel for the applicant is that the applicant has been denied regular appointment to the post of Safaiwala without any rhyme and reason in most arbitrary & unconstitutional manner and against the provisions as laid down in Central Administrative Tribunal Rules, which provides that a person, having been appointed earlier and worked for a certain period, will be given preference over outsiders. The grievance of the applicant is that despite the fact that he had continuously worked for more than one year under the official respondents, his regular appointment to the post of Safaiwala was rejected by them without any reason.

5. The respondents have filed counter affidavit and have denied all the allegations made in the OA. Learned counsel for the respondents has contended that the applicant was appointed as a Daily Wager for 89 days only. Therefore, he cannot claim his further appointment as a matter of right. It is further contended that the appointments to the post of Safaiwala in the year 2011 were made in accordance with the rules, regulations and practice followed.

6. Referring to the Recruitment Rules of CAT, learned counsel for the respondents has submitted that Schedule 8 of the Recruitment Rules of CAT provides for filling up of the post of Groups 'C' and 'D', which stipulates that 50% of the said post shall be filled up by direct recruitment and 50% shall be through transfer/transfer on deputation. Learned counsel for the respondents has submitted that the post of Safaiwala falls under Group 'D' post and for filling up the said post, vacancy was notified to nearest Employment Exchange under direct recruitment quota and applications were invited by displaying the notification on the notice board. The applicant applied and he was called for interview along with other candidates. The applicant appeared before the Interview Board but he was not found fit by the Selection Committee. Accordingly, he was not offered appointment letter to the post of Safaiwala. As there was no provision in the Recruitment Rules to give weightage to Daily Wage Workers in regular appointment to the post in question, no weightage was given to the applicant. The appointment in 2011 was done as per Rules and there is no illegality or arbitrariness.

7. Learned counsel for respondents has further submitted that past experience of the applicant was not counted because Recruitment Rules of CAT prescribe that

Daily Wagers who have rendered at least three years regular service in that capacity will only be considered for promotion, whereas the applicant has not rendered three years regular service.

8. Insofar as the mode of examination is concerned, the Recruitment Rules of CAT prescribes that whichever mode of recruitment may be considered appropriate by the Chairman of CAT in the circumstances of each case, may be adopted.

9. Learned counsel for respondents has further contended that the applicant himself has stated that he was initially appointed after facing an interview only and now he is challenging the same mode of appointment by the CAT.

10. It is lastly contended by learned counsel for the respondents that as per settled legal position, the applicant having appeared in the examination but having failed, cannot be permitted to challenge the same examination.

11. We have considered the rival contentions advanced by the learned counsel for the parties. It is an admitted fact that applicant had appeared in the interview for the post in question. However, as he was not found fit by the Selection Committee, he was not selected. Having failed in the selection, the applicant in the instant OA has challenged the legality of the selection process.

12. Almost, under the similar circumstances, the Hon'ble Apex Court in the case of Manish Kumar Shahi Vs. State of Bihar (2010) 12 SCC 576, has held that a candidate who has participated in the selection process and failed to qualify cannot be permitted to turn around and challenge the process of selection. Para 16 of the said Judgment reads as under:-

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

Further in Dhananjay Malik Vs. State of Uttaranchal (2008) 4 SCC 171, the Apex Court has held that,

"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite

educational qualifications were contrary to the Rules.

Also in the case of *Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others*, reported in (2011) 1 SCC 510, the Apex Court has held that it is impermissible for the candidates to approbate and reprobate. Head Note D of the said decision is extracted hereinbelow:

"D. Service Law - Recruitment process -

Challenge to recruitment process - Acquiescence - Challenge to selection criteria after participating in selection process - Impermissibility of - Appellant appeared for examinations and was declared to be successful in written examinations - Appellant then participated in interview and in tests to determine his computer knowledge

- Appellant was not selected as he lacked basic knowledge of computer operations - Held, appellant appeared in interview knowing selection criteria that too without any protest at any stage - Now he cannot turn back to state that procedure adopted for selection was wrong and without jurisdiction

- Uttaranchal Judicial Service Rules, 2005 -

Rr.8, 14, 17, 18 and 19 - Estoppel, Acquiescence and Waiver - Acquiescence - Doctrines - Doctrine of approbate and reprobate."

13. The aforesaid judgments of the Supreme Court in *Dhananjay Malik and Ors.* (supra), *Manish Kumar Shahi* (supra), and *Vijendra Kumar Verma* (supra) clearly lay down the principle that an unsuccessful candidate, who had gone through the selection process knowing fully well the selection process, is estopped and precluded from questioning the above selection process, the only exception being when the applicant is able to demonstrate lucidly that the action taken by the Selection Committee was not done in good faith and was a result of bias or ulterior motive. It is imperative that the person who alleges malice/malafide/arbitrariness should furnish particulars that would prove the same. Ambiguous reasons unsupported by hard facts cannot lead to a conclusion of malafide or arbitrariness.

14. In view of the above facts and circumstances of the case and for the reasons stated above, we find that this OA appears to be devoid of merit and is liable to be dismissed. Accordingly, the OA is dismissed. No costs.