

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 265 OF 2011

DISTRICT : NEW DELHI

Shri Arun Vinodkumar Borkar,)
Occupation – Nil.)
R/o: GH-9, Flat No. 667, 2nd floor,)
Paschim Vihar (Behind Sunder Vihar),)
New Delhi.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
General Administration Department,)
Mumbai 400 032.)
2. The Resident Commissioner,)
Govt. of Maharashtra,)
Maharashtra Sadan, Copernicus)
Marg, New Delhi.)

3. Shri Dinesh Kumar Tyagi,)
Director, Ministry of Defence,)
Room No. 318, Air Head Quarters,)
New Delhi.)
4. Shri S.P. Singh,)
Liason Officer,)
Government of Maharashtra,)
Maharashtra Sadan,)
Copernicus Marg)
New Delhi.)...**Respondents**

Smt Neeta Jog, learned advocate for the Applicant.

Shri D.B. Khaire, learned Chief Presenting Officer for the Respondents.

CORAM : Dr Justice S. Radhakrishnan (CHAIRMAN)
Shri Rajiv Agarwal (Vice-Chairman)

DATE : 27.06.2013

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt Neeta Jog, learned advocate for the Applicant and Shri D.B. Khaire, learned Chief Presenting Officer for the Respondents.

2. By this Original Application, the applicant is seeking quashing and setting aside of the order dated 16.11.2006 terminating his services from the post of Receptionist in Maharashtra Sadan, New Delhi by the Respondent No. 2.

3. The Applicant had applied on 20.4.2006 for the post of 'Receptionist' in the office of the Respondent No. 2, pursuant to an advertisement published in Maharashtra Times, Mumbai on 6.4.2006. The Applicant was selected for the aforesaid post and an appointment letter dated 17.7.2006 was issued. The Applicant joined duties on 20.7.2006. As the Respondent No. 2 had some doubts about the Experience Certificates produced by the Applicant, he (the Applicant) was asked to supply address and telephone number of M/s Mazdaar Trips, where he claimed to have worked. He was also asked to supply the address of M/s G.N. Roadlines. Respondent No. 2 made enquiries and concluded that the Applicant did not gain experience of Public relations at these establishments. The Applicant was informed accordingly and was asked to give explanation within seven days from the date of receipt of memorandum dated 30.8.2006. The explanation of the Applicant was received on 15.9.2006. The Respondent No. 2 came to the conclusion that experience Certificates furnished by the Applicant were not genuine and he did not have requisite

experience. His services were put to an end with effect from 16.11.2006.

4. The Applicant challenged the aforesaid termination order before this Tribunal in O.A No 2 of 2007 which was dismissed by order dated 1.11.2007. The Writ Petition challenging the said order of this Tribunal was dismissed by the Hon. Bombay High Court by order dated 16.10.2008.

5. Learned Counsel for the Applicant Adv Ms Neeta Jog, has contended that the Applicant sought information from the State Government under the Right to Information Act and found that the information supplied by the Government was totally contrary to what was stated by the Respondents on affidavit before this Tribunal in O.A No 2 of 2007 and the High Court. There are three main grounds to challenge the termination order dated 16.11.2006, viz.

- (i) That the order was passed with biased mind and with malafide attitude.
- (ii) That the respondents No 4 ought to have refrained from participating in the Selection Process as his daughter was one of the candidates short listed for the same post, and
- (iii) That the respondents have suppressed material facts from the Courts for obtaining favourable orders;

Subsequently, the Original Application was amended to include allegation of fraud against the Respondent No. 3.

6. Learned Counsel for the Applicant argued that the daughter of the Respondent No. 4 was also a candidate for the post of Receptionist. She was, however, not found to be eligible. After the selection of the Applicant to the post, the Respondent No. 4 started verifying the genuineness of the experience Certificates of the Applicant which he was not authorized to do. Despite that fact that his daughter was a candidate, the Respondent No. 4 has fully participated in the selection procedure for the post of Receptionist. After selection of the Applicant for the said post, Respondent No. 4 made a complaint that experience Certificate produced by the Applicant were not genuine. This fact of complaint made by the Respondent No. 4 is not brought/pleaded before any Court by the Respondents till today. As the services of the Applicant were terminated on the report of Respondents No 3 & 4, who had vested interest in the selection, the termination order is malafide and issued with biased mind. Learned Counsel for the Applicant argued that the Applicant had made a representation to the Respondent No. 1 on 4.2.2010. The Respondent No. 1 by letter dated 1.6.2010 raised certain queries with the Respondent No. 2. However, nothing has been done on this letter dated 1.6.2010 till date. Learned Counsel for

the Applicant strongly contended that the order from this Tribunal were obtained by fraudulent means.

7. Learned Chief Presenting Officer Shri D.B. Khaire on behalf of the Respondents No 1 & 2 raised a preliminary objection regarding maintainability of the present Original Application. He argued that the present Original Application is barred by the principle of 'res judicata' as per section 11 of the Code of Civil Procedure. Identical facts and grounds were raised by the Applicant earlier in O.A No 2/2007 before this Tribunal. The aforesaid Original Application was dismissed by this Tribunal by order dated 1.11.2007. The Writ Petition No. 848/2008 against the order of this Tribunal was also dismissed by Hon. Bombay High Court by order dated 16.10.2008. The Applicant is making another attempt to get his way on the same set of facts and no new facts have been submitted in the present Original Application. Learned Chief Presenting Officer denied that any facts were concealed from this Tribunal in the Original Application No 2 of 2007. He further denied that there was any fraudulent action on the part of the Respondents.

8. The present Original Application clearly comes within the purview of the principle of Res Judicata as strongly contended by the Learned Chief Presenting Officer. However, we decided to hear the Applicant as he

has made allegations against the Respondents No 3 & 4 and alleged that their conduct was biased and they took action against the Applicant, which they were not authorized to do. Respondent No. 3, Shri Dinesh Kumar Tyagi was Additional Resident Commissioner, Maharashtra Sadan, New Delhi, at the relevant time. Respondent No. 4 Shri S.P. Singh, is Liaison Officer in Maharashtra Sadan. It is stated by the Applicant that Kumari Barkha Singh, daughter of the Respondent No. 4 has also applied for the post of the Receptionist to which the Applicant was selected. The Applicant has alleged that the Respondent No. 4, therefore tried to block the appointment of the Applicant. The Respondent No. 4 should not have associated himself with the selection process on moral and ethical ground. However, he was involved in the selection process throughout. This has caused prejudice to the Applicant.

9. Learned Counsel for the Applicant argued that the applicant joined as Receptionist in the office of the Respondent No. 4 on 20.7.2006 and within 11 days, the Respondent No. 4 made a complaint against the Applicant and he himself made inquiries regarding experience certificate of the Applicant with M/s G.N. Road Lines.

10. The Learned Counsel for the Applicant has objected to the inquiry about the experience Certificate of the Applicant on two counts viz.

(i) Shri S.P Singh, Respondent No. 4 was not given any written instructions by the Respondent No. 2 to conduct such an inquiry, and

(ii) There was no need for such an inquiry as Certificates of the Applicant were verified thrice earlier on 24.4.2006, 17.5.2006 and 29.6.2006 and there was no need to verify them further.

11. Learned Counsel for the Applicant argued that these facts were not placed before this Tribunal in earlier Original Application and it amounts to playing fraud on the court. The Supreme Court has held in Union of India and others Vs. Ramesh Gandhi, reported in (2012) 1 SCC 476, that a judgment obtained by playing fraud on court cannot be sustained. The issue before us is whether the Respondents have played fraud upon this Tribunal in O.A 2/2007 and deliberately suppressed material facts which could have influenced the judgment of this Tribunal in the aforesaid Original Application. On perusal of judgment of this Court dated 1.11.2007, it is seen that the question regarding genuineness or otherwise of the experience Certificate produced by the Applicant were examined in detail by the Tribunal. Para 15 of the said order reads:-

“15. The Original Application is opposed by 2nd Respondent by filing his reply, bringing out before this Tribunal the true and correct facts. It is contended that the certificates produced by the applicant were doubtful and on enquiry, it was noted that the establishments from which the certificates were issued are not in existence and are not carrying out business at that place where the address is given by the applicant. In response to the 1st affidavit dated 25th January 2007, the applicant has submitted his rejoinder and explained why they are not functioning at the given address. Along with Rejoinder the applicant has also filed the affidavits of Shri R.K. Kocher and Shri Narender Singhal to establish that the applicant has worked with them and gained necessary experience and it is explained by Shri Kocher that the premises where the activities of transport were carried out previously was shifted to other premises and it is not functioning at the original address. Shri Singhal the Proprietor of M/s Mazedaar Trips in his affidavit stated that the applicant was not on the pay role of M/s Mazedaar Trips and has worked as a Trainee with the Manager of M/s Mazedaar Trips. He also accepted that the applicant was not engaged as employee. After receipt of the Rejoinder by the applicant, the 2nd Respondent has submitted his sur-rejoinder.”

12. It was contended in O.A No 2 of 2007 on behalf of the Applicant that the inquiry was conducted behind his back. This contention was refuted on behalf of the Respondents. Para 17 of the aforesaid order clearly shows that the Applicant was given repeated and full opportunity to show that his experience certificates were genuine but failed to do so. Para 17 is reproduced below:-

“17. Shri Bharat Bhushan then contended that in given case, it may be permissible for 2nd Respondent to conduct a preliminary enquiry and after such enquiry if some material, so called, is to be used against the applicant, the 2nd Respondent was obliged to conduct the enquiry by issuing a charge sheet, as required by the M.C.S (D & A) Rules, 1979. But having not done so, the order is passed which involves civil consequences. The order, if is to be passed, must be consistent with the rules of natural justice. For this proposition, the learned counsel relied on the judgment of the Apex Court in the case of State of Orissa Vs. Dr (Miss) Binapani Devi & Ors reported in AIR 1967 S.C 1269. He contended that while issuing the impugned order, the 2nd Respondent has referred in the order itself that the certificates produced by the applicant regarding his experience are not true and thus, he took a decision to remove the applicant from

service. He, therefore, contended that prima facie the order being a punitive one, the same cannot be issued unless a detailed enquiry is conducted against the applicant. To support this contention, the learned Counsel relied on the judgment of Apex Court in case of Samsher Singh Vs. State of Punjab reported in AIR 1974 SC 2192. Lastly the learned Counsel relying on the judgment of the Apex Court in case of A.K Kraipak Vs. Union of India reported in AIR 1970 SC 150 = (1969) 2 SCC 262, with help of these authorities and on the basis of contentions raised by Shri Bharat Bhushan prayed that the impugned order be set aside and the applicant be reinstated in service.”

13. It is thus seen that the Applicant was given full opportunity by the Respondent No. 2 to present his case. The Applicant has not been able to show that the involvement of the Respondent No. 4 has caused any prejudice to him. Just because the Respondent No. 4's daughter was also a candidate does not mean that he should be made a target, when there is no evidence at all that the Respondent No. 2 deliberately suppressed any material from this Tribunal at his (Respondent No. 4) instance or otherwise. The fact that doubts were raised by the Respondent No. 4 about the genuineness of the experience certificate submitted by the Applicant which were later found to be correct, inasmuch as the

Respondent No 2 found that the Applicant did not have requisite experience, does not fall in the category of fraud or bias. The Applicant has filed document with his additional affidavit dated 6.5.2013. These documents do not bring out any new facts which were not considered by the Respondent No. 2 when deciding not to continue the services of the Applicant. In fact, one document attached to the aforesaid affidavit, viz email from one Santosh Jha was already there before the Respondents (P.45 of O.A). Other documents also reveal nothing new which was not before the Respondents earlier. The Applicant has leveled allegations against Respondent No. 3 also. It is stated by the Applicant in Ground (c)(a) that "The Respondent No. 3 has made a statement that he has no concern with the proceedings. This is a totally false and incorrect statement, since the appointment order issued in favour of the applicant is issued by the Respondent No. 3 himself". From the perusal of the record, it is seen that the Respondent No. 3 has no personal interest in the proceedings. It is true that appointment letter dated 17.7.2006 is signed by him. However, the said appointment letter has been signed on behalf of the Respondent No. 2. Similarly, the Respondent No. 3 made inquiries about the experience Certificates from the concerned institutions, viz M/s G. N Road Lines and M/s Mazedaar Trips. This was part of his duties as Additional Resident Commissioner. He submitted his report to the Resident Commissioner, who decided not to continue the

services of the Applicant by order dated 16.11.2006. Perusal of the said order makes it clear that it is issued on behalf of the Respondent No. 2. We could not find any material to sustain the charge of the Applicant that the Respondent No. 3 has misled this Tribunal in any way in O.A No. 2/2007. There is no evidence to show any malafide on the part of the Respondent No. 3. There is nothing to suggest that he acted fraudulently.

14. The learned counsel for the Applicant has stated that the Respondent No. 1 has called for some information from the Assistant Resident Commissioner, Maharashtra Sadan, New Delhi, by letter dated 1.6.2010. She argued that reply has not yet been submitted by the Respondent No. 2 to the Respondent No. 1. However, it is seen that by letter dated 22.7.2010, the Resident Commissioner had submitted a report to the Respondent No. 1 enclosing fact finding report in the matter of Shri Arun Borkar, the present Applicant. The aforesaid fact finding report concluded in para 5.1 that:

“The matter was taken by Shir Arun Borkar for legal remedy in Administrative Tribunal and Bombay High Court where he had full and fair opportunity of pleading his case, placing all material evidence and cross examining the respondent. From Respondent side affidavits were filed giving entire gamut of the facts along with documentary evidence”.

The fact finding report recommended to close the matter. We found that in the present Original Application, the Applicant has failed to provide any material or ground which will warrant reopening of the case.

15. In view of the above facts and circumstances, we hold that the Applicant has failed to show any bias, malafide or fraudulent acts on behalf of any of the Respondents. The Original Application is, therefore, not maintainable as the matter has already been decided by this Tribunal in O.A No 2/2007 by judgment and order dated 1.11.2007. The said judgment and order was confirmed by the Hon. Bombay High Court in Writ Petition No. 848/2008. The Original Application therefore, stands dismissed. There will be no order as to costs.

(Dr. S. Radhakrishnan)
Chairman.

Place : Mumbai
Date : 27.06.2013
Typed by : A.K. Nair.

(Rajiv Agarwal)
Vice-Chairman.