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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1767/1995

New Delhi, this 22nd day of March, 1996

Hon'ble Shri B.K. Singh, Member(A)
Hon'ble Dr. A.Vedavalli, Member(A)

Shri Rajendra Singh
RZS-135, New Roshanpura Colony
Near BDO Office, Najafgarh,
New Delhi-110 043 .. Applicant

By Shri K.B. S.Rajan, Advocate

Versus

The Director General
Border Security Force, FHQ
CGO Complex, Block No.10
Lodi Road, New Delhi-110 003 .. Respondents

By Mrs. Protima K. Gupta, Advocate

ORDER

Hon'ble Shri B.K. Singh

This application is directed against the order dated 22.2.95 (Annexure A-1) and order dated 21.6.95 (Annexure A-2) by which the applicant has been denied the pay scale of Rs.1400-2300 as admissible to Draughtsman(DM in short) Grade II in the Border Security Force (BSF in short). The admitted facts are that the applicant while serving the Army had been granted trade proficiency certificate in August, 1989 (Annexure A-4). As an ex-serviceman he was offered the post of DM Grade II in the BSF in the pay scale of Rs.1200-2040 vide order at Annexure A-5 of the paper book. As a result of the initiative taken by the DMs of other departments to allow CPWD revised pay scale (RPS in short) irrespective of recruitment qualification, the Ministry of Finance vide their OM No.13(1)-IC/91 dated 19.10.94 (Annexure A-7) decided that the DM Grade I, II and III in offices of the departments of Govt. of India other than CPWD may be placed under the RPS



with the condition that they have put in 7, 5 and 4 years regular service in the grade of DM Grade I, II and III, respectively.

2. The respondents have denied the RPS to the applicant based on the interpretation of the OM issued by the Deptt. of Expenditure dated 19.10.94. The applicant filed a representation and the same has been rejected.

3. Aggrieved by this order of rejection, the applicant filed this OA on 20.9.95 seeking the following reliefs:

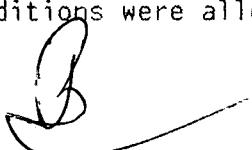
(a) To call for the concerned file to examine and confirm that the respondents have not applied their mind properly to interpret the provisions of the extant rules;

(b) To fix the pay of the applicant in the pay scale of Rs.1400-2300 with effect from the date of revision; and

(c) To pay arrears for the period alongwith interest @ 18%

4. On notice, the respondents contested the application and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the records of the case.

5. It is not disputed that the Deptt. of Expenditure OM dated 19.10.94 decided that the DM Grade I, II and III will have a right to place in the RPS subject to the condition of having completed 7, 5 and 4 years of regular service in the grade of I, II and III, respectively. It was pointed out by the learned counsel for the applicant that the technical qualification at the time of entry, /the trade proficiency certificate was treated as equivalent to Diploma in Civil/Mechanical Engineering. This was, however, rebutted by the learned counsel for the respondents saying that the DMs who fulfilled the eligibility conditions were allowed RPS as



per the OM dated 19.10.94. It was further argued that the applicant has not completed 5 years regular service in the grade for placement in the RPS of Rs.1400-2300 and that is the reason why the RPS was not allowed to him and that the applicant was informed accordingly by letters dated 22.2.95, 4.4.95, 21.6.95 and 17.7.95 (Annexure R-III to R-VI to the reply). It was argued that since he was appointed on 3.2.93, he has not completed the requisite length of service i.e. 5 years in the grade and therefore he is not entitled to be placed in the RPS.

6. The order contained in the OM dated 19.10.94 has not been challenged by the learned counsel for the applicant. He only averred that the respondents are interpreting this circular wrongly. A perusal of the said OM shows that the conditions are not fulfilled in case of the applicant since he was appointed on 3.2.93 and as such he has not completed 5 years of regular service. The benefit of that OM can be granted only on that condition and unless the virus of the OM is challenged, the applicant will not be entitled to the relief sought for by him.

7. The respondents in their reply have categorically stated that ~~for~~ minimum period is 7 years for placement from the post carrying scale of Rs.975-1500 to Rs.1200-2040 (pre-revised Rs.260-430 to 350-560), 5 years for placement from Rs.1200-2040 to 1400-2300 (pre-revised Rs.350-560 to Rs.425-700) and 4 years for placement from Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750). Thus, the learned counsel for the respondents vehemently argued that the rejection orders are based on the correct interpretation of the conditions laid down by the Department of Expenditure in ^{their} OM dated 19.10.94.



8. After hearing the submissions made by the parties and after going through the records of the case, it is clear that the applicant did not raise any objection when he was appointed on 3.2.93 in pay scale of Rs.1200-2040 and the records do not show that there is any equivalence declared between the trade proficiency certificate granted to the applicant in 1989 and the Diploma in Civil/Mechanical engineering. Thirdly, if the applicant accepted the lower scale of Rs.1200-2040 without any howl or protest, he is estopped from raising that issue now, as has been held by the Hon'ble Supreme Court in case of Om Prakash Shukla Vs. Akhileshwar Shukla AIR 1986 SC 1043.

9. The applicant has filed rejoinder to the reply reiterating the facts as stated in the OA.

10. Taking a synoptic view of the facts and circumstances of the case, we find no merit in the application and the same is dismissed leaving the parties to bear their own costs.



(Dr. A. Vedavalli)
Member(A)



(B.K. Singh)
Member(A)

/gtv/