

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

THIS THE 5TH DAY OF JANUARY, 2006

Original Application No. 945 of 1998

HON'BLE MR. D.R. TIWARI, MEMBER (A)

HON. MR. K.B.S. RAJAN, MEMBER (J)

K.P. Dubey, Ticket no. 1439, S/o late G.N. Dubey, R/o 10/102, Golabazar, New Jhunsi, Post Jhunsi, Allahabad.

.. Applicant

By Advocate : Sri G.D. Mukherjee.

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, DHQ. Post Office, New Delhi.
2. Director General, Ordnance Services, Army Headquarters, DHQ, Post Office, New Delhi.
3. Officer In charge, Army Ordnance Corps Records, Thrimulgiri, Secunderabad.
4. Commandant, OD Fort, Allahabad.
5. A.K. Rai, Personnel No. 6967992 Store Keeper, COD, Kanpur.

.. Respondents

By Advocate : S/Sri Satish Madhyan and R. Verma

ORDER

By K.B.S. Rajan, Member (J)

The following decisions of the Apex Court would clinch the issue involved in this OA.

- (a) There is no right vested in the candidates for particular appointment on compassionate grounds.

State of Bihar v. Samsuz Zoha, (1996) 4 SCC 546,

- (b) Even assuming that Rajiv Dwivedi's case was similar to that of the respondent, the applicant has no right to any particular post of his choice,

he can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the two cases. If a mistake was committed in an earlier case, that cannot be a ground for directing the State to perpetuate the error for all times to come.

State of M.P. v. Ramesh Kumar Sharma, 1994 Supp (3) SCC 661, at page 662 :

2. Now the Facts Capsule as contained in the O.A.,
Rejoinder and the supplementary rejoinder:-

- (a) The applicant's father a packer in the Arms Engineers and Signal Group died on 20.2.1988.
- (b) The applicant applied for employment in relaxation of normal rules for recruitment vide his letter dated 26.7.1988.
- (c) The respondent no. 4 vide letter dated 4.10.95 issued an appointment letter for the post of Mazdoor at Rs. 750/- per month in the pay scale of Rs. 750-940/-.
- (d) The applicant requested for conversion of his trade as a Store Keeper/ Lower Division Clerk vide his application dated 8/12.3.1996, that was forwarded to the Master General of the Army Ordnance Corps duly recommended.
- (e) The Head quarters, Central Command vide letter dated 17.5.96 forwarded the application for conversion of trade from Group D to Group C to the Director General of Ordnance

Services, but the respondent no.2 did not reply at all.

(f) In between one Mazdoor also got employment in relaxation of the normal rules of recruitment as his father late B.D. Rai died in harness and his request for conversion was approved.

(g) The applicant represented his case vide petition dated 26.8.97. Sri A.K. Rai got his appointment after the applicant and as such he was junior to the applicant and also his educational qualification was much lower than that of the present applicant.

(h) The supersession of the applicant is wholly arbitrary and he has been left out for no fault of his

3. Reply of the Official respondents as contained in the Counter, Supplementary counter etc.,

(a) It is settled position of law as enunciated by various judgments of this Hon'ble Tribunal as well as of the Hon'ble Supreme Court that when an appointment on compassionate ground is offered and accepted, one cannot again apply for another post or seek conversion to upper post in spite of the said post being vacant.

(b) It is stated that Sri Rai was not promoted to the post of Store Keeper. In fact he was appointed as Store Keeper on his

application dated 16.11.1994 after obtaining the sanction of DGOS.

- (c) The case of the applicant is not similar to that of Sri Rai. Both the cases are different and no parity can be claimed.

4. Reply of the Private Respondents as contained in the counter.

- (a) It is submitted that an application dated 16.11.1994 for appointment as LDC/ Store Keeper was given to the respondent no.3 as per the Army Headquarters policy dated 8.7.1989 and was duly screened by the Board of Officers held on 25.7.1995 and was duly forwarded by AOC Records.

5. Arguments were heard and opportunity also given for filing of the written submission. However, save certain documents furnished by the official respondents, no other documents were furnished within the time granted. The pleadings have been perused.

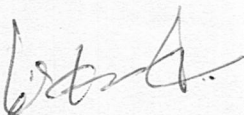
6. Admittedly the applicant's appointment as Mazdoor was in relaxation of the normal rules and the same was a compassionate appointment. Once the applicant is appointed in one post under the scheme of compassionate appointment, he cannot ask for any conversion. Decision of the Apex Court in the case of State of Bihar Vs Samsus Zoha (Supra) applies.

7. Contention of the applicant, however, is not on the basis of any provisions available or not under the scheme of compassionate appointment but one on

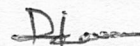
the ground that a similarly situated individual, Shri A.K. Roy, the private respondent, who was also given compassionate appointment as Mazdoor, had been permitted to convert his cadre from mazdoor to Store Keeper.

8. Now, the facts as contained on records. Certainly Shri A.K. Roy was appointed on compassionate grounds as a Mazdoor. However, his appointment as Store Keeper was not a conversion of his position from Mazdoor to Store Keeper. He applied separately for the post of Store Keeper under a particular scheme and was screened and appointed by a separate fresh appointment order, without any link with his appointment as Mazdoor. If his appointment were as a conversion as contended by the applicant then again, it is not on the basis of any rule but a clear mistake. Here exactly applies the dictum of the Apex Court in the case of State of M.P. Vs Ramesh Kumar Sharma (supra).

9. In view of the above, there is no merit in the OA and the same is therefore, rejected. No cost.



MEMBER-J



MEMBER-A

GIRISH/-