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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
Allahabad Bench
Allahabad

Original Application No.1355 of 2005

Allahabad, this the 17th day of Dec., 2007.

Hon'ble Mr. M. Kanthaiah, Member-J
Hon'ble Mr. P.K. Chatterji, Member-A

1. Amarnath son of Sri Ram Nath, R/o Village Mardanpur, Post Office Manauri, District Allahabad.
2. Ramashrey Singh son of Badri Singh R/o Village and Post Office Ganja, District Allahabad.

...Applciants.

(By Advocate :Shri S.K. Singh)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Air Staff, Air Force Staff, Air Force Head Quarter, New Delhi.
3. A.O.C. I.N.C. Maintenance Command, Command House 42/2, Nagpur (Maharashthra).
4. Officer Commanding, 24 E.D. Air Force Station Manauri, Allahabad.

...Respondents.

(By Advocate : Shri S. Singh)

O R D E R

By Hon'ble Mr. P.K. Chatterji, A.M. :

There are two applicants in this OA, both were provisionally appointed as Carpenter under respondent No.4. Their appointment was made following the due procedure beginning from calling from the candidates from the Employment Exchange, subjecting them to necessary test followed by the medical examination. This was in January 1987. Subsequently, the respondents did not allow them to join as Carpenter and it is alleged by the

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applicant that by fresh recruitment process several other persons were appointed as Carpenter.

2. Being aggrieved the applicants approached the Tribunal in OA No.864/89. It is stated by the applicant that the Tribunal passed an order in January 1992, which was in their favor. We would like to reproduce the relevant part of the judgment as follows: -

> *"The plea which has been taken is that the Government of India vide its office memorandum dated 20.5.1986 and 15.7.1986, the ban on creation of post was partially relaxed as a result of which the task of filling up the existing vacancies was undertaken and the applicant were contacted. However, the Head Quarter Maintenance Command, I.A.F. letter, dated 1.1.1987 communicated the Air Head Quarters letter dated 15.12.1986 under paragraph No.3 of which it was disclosed that no post was to be filled up as a clarification on the subject was being sought from the Ministry. Vide letter dated 8.7.1987, it was again intimated by the Headquarter Maintenance Command, that the matter was still under consideration of the Government and the situation on the ban remain the same, and the department was advised not to fill up any post till the clarification is received from the Government, and that is why no appointment has yet been given by the Government. It is not known whether the Government has yet given any reply or not. Though, according to the applicant, the ban has been removed. If that be so, there is no hesitation in making their appointments. Obviously, so long the ban tubs its, appointments cannot be made. The application is being disposed of with the direction that as and when the ban is removed, since the applicants have been duly selected, priority and preference would be given to them by the respondents in the matter of their appointments in comparison to any outsiders. The application is disposed of with the above observations. Parties to bear their own costs."*

3. For clearing certain Para of the judgment a review application was filed before this Tribunal. The Tribunal in disposing of the review application issued clarification in unequivocal terms. We would like to reproduce the relevant part of the decision of the review application as follows :-

> *"As it has been pleaded by the respondents that it may be that not with standing the ban under expectation that the same is going to be removed soon the selection was made. It may be that the ban may be*

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removed on some date. If selection has been made during the subsistence of ban obviously it will be taken to made that those who have been selected will be given appointment as they are the duly selected candidates and they will not be required to go though selection process again or again and there will be no exercise of the refilling the said post in the very same manner. Our judgment is very clear that in case the ban being removed there appears to be no reason why the applicant will not be given appointment and if it has not been removed, whenever it is removed the applicants who were selected and could not get appointment will get the appointment. As such with the conservations the review application is disposed of as our judgment does not call for any modification."

4. The applicant forwarded a certified copy of the judgments of the Tribunal in the OA and review petition for appropriate action by the respondents. The respondents vide letter dated 30.5.92 informed both the applicants that the matter was under consideration. In the letter, the applicants were assured that the respondents would take action in compliance with the decision of the Tribunal as soon as the ban was lifted. It is further stated by the applicant that on 15.12.2003 (Annexure-6 of the OA), the respondents informed that matter was still under consideration of the appropriate authority. It is also pertinent to mention here that an advertisement was issued in the news paper on 25.10.2002 declaring vacancies in the grade of carpenters. When they contacted the respondents' office, they were informed that their matter was still under consideration. It is in that context that the letter dated 15.12.2003 was issued by the respondents to the applicants. In this way, the applicants say, the respondents have been holding out hope to the applicants that their case was under consideration and as soon the ban was lifted necessary action would be taken. Although the ban was lifted, no action was taken by the respondents. With this submission of above mentioned fact, the applicant have asked for following relief: -

(i) That this Hon'ble Tribunal be graciously be pleased direct the respondent No.4 to engage

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the applicant No.1 and 2 as Carpenter after removal of ban on the appointment after 25 October, 2002.

(ii) That this Hon'ble Tribunal be graciously be pleased to direct the respondent No.4 to relax the upper age limit and consider the appointment of the applicant No.1 and 2 who were duly6 selected been issued without exercise of refilling go again and again required formalities for the recruitment formalities. Applicant No.1 and 2 already has been completed several formalities.

(iii) Hon'ble Tribunal may graciously be pleased to direct the respondents to give preference and priority to the applicants on the basis of earlier selection of the applicant No.1 and 2 on the post of Carpenter.

5. The respondents have filed detailed counter in reply. It is seen from the reasons given in the preliminary submission calling for rejection of the case of the two applicants that the applicants are both over age. When the matter was taken up with DOPT for relaxation of their age to accommodate them in terms of decision of the Tribunal (supra), it was rejected by the DOPT saying that no such relaxation would be possible.

6. The respondents have also stated that in pursuance of the decision of Jabalpur Bench of the Tribunal dated 18.5.2005 in connection with a similar case in OA No.625/05 filed by one Shri G.R. Tarpe, the case of the present two applicants have to be rejected (as they are identical). In our view it would be appropriate to reproduce the submission of the respondents in this connection: -

"C. That it is pertinent to mention here that in the year 2002, one vacancy of Carpenter trade was allotted to this Depot under un-reserved category. Accordingly, based upon the various representations by the applicant nos.1

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& 2, this Depot had processed their case for consideration for their candidature to higher authority in compliance of the order of this Hon'ble Tribunal dated 28.3.1992 passed in Original Application dated 864/89 filed by the applicants. It is further submitted that for this purpose, the Air Headquarters, Vayu Bhawan asked for documentary proof of Date of Birth of both the applicants for processing the case to Ministry of Defence for relaxation of upper age limit vide their letter dated 16 July, 2003. Accordingly, this Depot vide letter dated 6.8.2003 had forwarded the required documents for seeking upper age relaxation of the applicants. Photocopy of the letters dated 16.7.2003 and 6.8.2003 are being filed herewith and marked as Annexure No. CA-III and CA-IV respectively to this Counter Affidavit.

D. That it is worthwhile to mention here that the applicants were continuously informed about the position of their case. Finally, Air Headquarters vide their letter dated 12.9.2005 have intimated that the case for relaxation of upper age limit was examined by DOPT and they have clarified that the applicants do not merit age relaxation. Accordingly, this Depot vide letter dated 5.10.2005 had intimated to the

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applicants that their case was taken up with the DOP&T for upper age limit, who have clarified that the applicants do not merit age relaxation. Photocopy of the letters dated 12.9.2005 and 5.10.2005 are being filed herewith and marked as Annexure No.CA-V and CA VI respectively to this Counter Affidavit.

E. That it is also submitted that the applicants were also intimated that the Jabalpur Bench of this Hon'ble Tribunal vide its judgment and order dated 18 May, 2005 have dismissed the OA No.625 of 2005 field by Sri G.R. Tarpe on the ground that the applicant is over age at present. Since their case was similar to Sri G.R. Tarpe, they cannot be given appointment to the post of Carpenter at this Depot."

7. We have seen the pleadings and also heard the arguments of both the counsel and we have applied our mind to the same. The point for decision is whether No.1 the orders of this Tribunal in OA No.864/89 would be subject to the decision of the DOPT in the matter of age relaxation and (2) whether the case of G.R. Tarpe is identical.

8. Latest take the second point first; the judgment in the case of G.R. Tarpe may be reproduced in this connection. The relevant portion is as under:

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> *"After hearing the learned counsel for the parties and perusing the record, we find that when the respondents did not consider the claim of the applicant for the first time, he filed an OA which was withdrawn by him. Thereafter, he filed another OA which was disposed of vide order dated 22.10.1992. We have perused both the orders of the Tribunal. When the OA was filed on 26.7.2004, the age of the applicant was 46 years. The applicant was sleeping for a long period. He has not moved any application for condonation of delay in filing this OA after the disposal of the second OA vide order dated 22.10.1992, i.e. even after more than 11 years."*

It would be clear from the above decision that the OA was dismissed not due to the reason that the applicants were over age, but for the reason that they had slept over the matter for 11 years. The cases of the present applicants are not identical. They persistently agitated the matter before the respondents and even in the year 2005, they were assured that their case was under consideration.

9. Regarding the other observation in the counter that the matter was taken up by the respondents with DOPT for age relaxation for compliance of the direction of the Tribunal, but was rejected by the DOPT, it is not acceptable to us. It would be preposterous to think that the judgment of the Tribunal in OA No.684/89 would be subject to decision of the DOPT in the matter of age relaxation. It is clear that at the time of initial appointment, they were not over age. When they were not given the appointment they quickly approached the Tribunal. The Tribunal gave a clear-cut decision within three years of filing the OA. It is due to other reasons, which are not creation of the applicants, that the case was delayed by over 10 years. So we are of the view that the claim made by the applicant is justified. This view was taken by the tribunal earlier and we reiterated the same. The plea of age at this stage is not tenable. We, therefore, allowed

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this OA with a direction that the applicants be appointed as Carpenter notwithstanding their present age, against the available vacancies in their respective category. If there is no vacancy then they should be provided in the first available vacancy. The first in the merit list between the two against the first available vacancy and the other against the next vacancy.

10. With these directions, the OA is disposed of. No order as to costs.

Member-A

Member-J

RKM/