

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT SITTING
AT NAINITAL

Original Application No. 1179 of 1995

Nainital this the 21st day of October, 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Sukhbir Singh, Aged about 31 years, S/o Sardar Fateh Singh, Office of Military Farm, Dehradun Cantt., Dehradun.

Applicant

By Advocate Shri K.C. Sinha

Versus

1. Union of India through Deputy Director General, Army Headquarter, A.M.G.'s Branch, West Block-3, R.K. Puram, New Delhi-66.
2. Officer-Incharge, Military Farm Record, Delhi Cantt. Delhi-110010.
3. Deputy Director Military Farm, Headquarter Central Command, Lucknow.
4. Officer-Incharge, Military Farm, Dehradun Cantt. Dehradun.

Respondents

By Advocate Shri G.R. Gupta

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to appoint him on the post of Lower Divisional Storekeeper

and he may be given the benefit of his seniority also since the date of recruitment on the post of L.D.C., treating ^{which have been} to be appointed on the post of Lower Division Storekeeper(for short L.D.S.K.).

2. The facts of the case are that in 1982 an advertisement was published for the recruitment on the post of Lower Divisional Store Keeper. The minimum qualification for the post was High School. The applicant's educational qualification was Higher Secondary. He applied for the appointment and appeared in the written examination held on 21.1.83. The applicant after ^{being} successful in the written test, ^{was} called for interview on 23.04.1983. He was selected for the post. However, the applicant was appointed as Lower Division Clerk(for short L.D.C.) on 28.03.84. The reason for not appointing ^{him} on the post of L.D.S.K., was that the Central Government had imposed a ban against the appointment of L.D.S.K. The applicant joined as L.D.C. and continued to serve on the post. However, he made applications for appointment as L.D.S.K. The application was rejected vide order dated 18.04.1988(annexure-2). The applicant again made an application, which was rejected on 04.11.94 (annexure-8). Aggrieved by which, the applicant has approached this Tribunal for the reliefs mentioned above.

3. Shri K.C. Sinha, learned counsel appearing for the applicant has submitted that the applicant ^{has} appeared in the written examination and after becoming successful in the said examination, he was

:: 3 ::

interviewed for the post of L.D.S.K. He was, however, informed of the ban and offered appointment to the post of L.D.C., which he accepted in the circumstances then prevailing. Learned counsel submits that the applicant nowhere gave up his claim for appointment against the post of L.D.S.K. The alleged papers of willingness filed as annexures C.A.-1 and C.A.-2 only show that the applicant agreed to join for the time being as L.D.C. It is submitted that the approach of the respondents in denying the relief to the applicant is illegal and arbitrary. Learned counsel for the applicant has invited our attention to the letter dated 17.05.88 written by the Officer-in-charge, M.F.Records and addressed to the applicant. In para-d'whereof it has been stated that the individual can apply to change his cadre as a fresh candidate against the existing vacancy if desired. In para-e'of the said letter, it has been stated that there are 15 vacancies of L.D.S.K. as on date. It is submitted that the applicant may be allowed to change his cadre as L.D.S.K. and he will not claim any seniority for the said change from the date of his appointment as L.D.C.

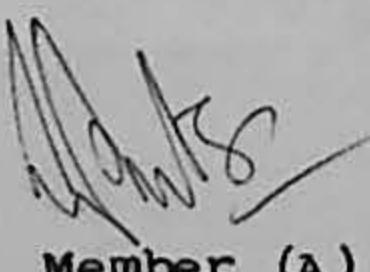
4. Shri G.R. Gupta, learned counsel appearing for the respondents on the other hand submitted that the applicant openly and with full knowledge gave up the claim for appointment as L.D.S.K. and accepted the appointment as L.D.C. and he ~~cannot~~ ^{cannot} claim the change of cadre after more than 18 years. He has referred to the certificates dated 29.11.1983 and 29.12.1983 of the ~~applicant~~ ^{applicant} ~~respondent~~ ^{respondent}.

:: 4 ::

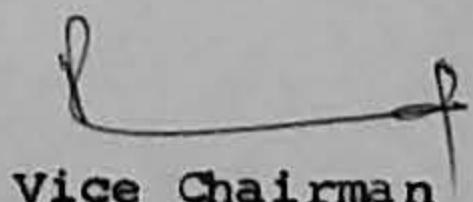
5. We have carefully considered the submissions of the counsel for the parties and perused the record.

6. There is no dispute about the fact that the selection of the applicant was for L.D.S.K. and in normal circumstances, he was entitled to be appointed on the post, for which he was selected. The letter dated 17.11.1988 invites applicant to make an application for change of his cadre. This letter also ~~says~~ ^{said} that there are 15 vacancies of L.D.S.K. as on date. Under the circumstances, the plea taken on behalf of the respondents that the applicant had willingly gave up his claim against the post of L.D.S.K. does not appear to be correct.

7. In the facts and circumstances as mentioned above, in our opinion, the applicant ~~may~~ may be given liberty to give fresh application requesting for change of his cadre, which may be considered and decided in the light of the letter dated 17.05.1988(annexure R.A.-1) within a period of 4 months from the date a copy of this order is filed before the competent authority. The O.A. stands disposed of. However, it is made clear that the change of cadre will be from the date of appointment as L.D.S.K. No order as to costs.



Member (A)



Vice Chairman

/M.M./