

(17)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.211 OF 2006

ALLAHABAD THIS THE 5TH DAY OF NOVEMBER 2008

HON'BLE MR. JUSTICE A. K. YOG, MEMBER-J

Dinesh Kumar Sharma,
Son of Radha Shyam Sharma,
Resident of 45/2-B, Nagla Ajita near Ram Singh Bagia,
Jagdishpura, Agra.

. Applicant

By Advocate : Shri R. S. Gupta

Versus

1. Union of India through Secretary,
Ministry of Defence, Raksha Bhawan,
South Block, New Delhi.
2. The Commandant, 509, Army Base Workshop
Agra.

. Respondents

By Advocate : Shri Saumitra Singh

O R D E R

1. Heard Shri O.N. Mishra Advocate, holding brief of Shri R.S. Gupta Advocate, representing the applicant and Shri S. Singh, learned counsel for the respondents.
2. In order to appreciate the controversy, it will be useful to have the history, in brief, of the case. Applicant in the present OA earlier filed OA No.1059/98, (Dinesh Kumar Sharma Versus Union of India and Others). Division Bench of this Tribunal disposed of said OA with certain directions contained in para 4 and 5 of its order dated 06.05.2004, which are reproduced for ready reference:-


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"4. However, having regard to the fact that one post is lying vacant pursuant to the order of the Tribunal, we direct the respondents to consider the applicant, if he is otherwise eligible or qualified and appoint him if found suitable. The order shall be implemented within three months.

5. The OA is accordingly disposed of with no order as to costs".

3. According to the applicant above referred order of Tribunal was not complied with and hence, contempt petition no.01 of 2005 was filed which was disposed of vide order dated 09.08.2005. Bench dismissing said contempt petition observed that in case applicant was aggrieved he could approach the Tribunal on 'original side'.

4. It will be recalled that applicant's grievance was that he was deprived of being considered for appointment as Mazdoor even though he had applied in pursuance of the advertisement in question issued in March 2005 by Ministry of Defence, Senior Depot, Delhi Cantt/Annexure-11 to the OA.

5. Applicant was admittedly given an opportunity by the respondents and subjected to test he was not found suitable.

6. An affidavit has been filed in compliance to the Tribunal order dated 03.03.2008 by the respondents sworn by Lt. Col. R.L. Ram, which shows that test held on 25.02.2005 but the applicant failed in 'Endurance Test' and 'General Test' and also secured only 10 whereas qualifying marks were 'Forty'.

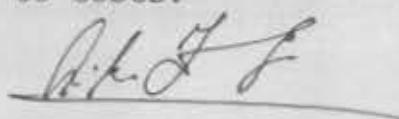
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7. In the present OA applicant has come up with the plea that he has been discriminated that he has been put to test on different criterion/standards because of malice on the part of respondent no.2/Commandant, 509, Army Base Workshop Agra. It will be seen that in the contempt petition (referred to above) the opposite party had impleaded 'Brig Harprit Ikbal Singh Arora', the then Commandant, 509, Army Base Workshop Agra. In the present OA said Brig Harprit Ikbal Singh Arora has not been impleaded. Plea of malice therefore fails. Moreover there is no material to satisfy that candidates selected were put to different criteria as compared to the applicant in the present OA. The applicant himself admits that he has become overage and he should have been subjected to lenient test (reference made be made to para 4 (S) in OA).

8. Considering the nature of what normally require to be performed by Mazdoor it is necessary and essential that he is physically fit. The applicant not found 'physically' fit is not entitled to the relief claimed.

9. OA has no merit, it is accordingly dismissed.

There shall be no order as to costs.



(JUSTICE A. K. YOG
Member-J

/ns/