

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 475 OF 2009

Cuttack, this the 218th day of October, 2009

Laxmikanta Mohapatra Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

4

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 475 OF 2008

Cuttack, this the 21st day of October, 2009

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)**

.....

Laxmikanta Mohapatra, aged about 49 years, S/o-Chakradhar Mohapatra, Permanent resident of At/Po-Sarankul, Dist-Nayagarh (Pin-752080), now residing Plot No.1442, Behind new State Bank of India Colony, Sastry Nagar, Bhubaneswar, Dist-Khurda-751001.

..... **Applicant**

By the Advocate(s) Mr. B.B. Dash

Vs.

1. Union of India, represented through Secretary, Ministry of Home Affairs, New Delhi-110001.
2. Director, Central Intelligence Bureau, (Ministry of Home Affairs), Government of India, 35, Sardar Patel Marg, Bapu Dham, New Delhi-110021.
3. assistant Director(G), Central Intelligence Bureau, Ministry of Home Affairs, Government of India, 35, Sardar Patel Marg, New Delhi-110021.
4. Officer-in-Charge, Air Force placement Cell (Recruitment of Ex-Service Man), A.I.R. Head Quarter, Bayu Bhawan, New Delhi-110001.

..... **Respondents**

By the Advocate(s) Mr. S. Mishra,



ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

The applicant, a retired Air Force Officer, being aggrieved by Annexure-A/7 order, dated 04.08.09, of Respondent No.3, the Assistant Director (G), Central Intelligence Bureau, Ministry of Home Affairs, Government of India, has filed this Original Application with the following prayers:-

- a) It is therefore prayed that under the facts and circumstances of the case narrated above your Lordship would be graciously pleased to admit this Original Application.
- b) Further be pleased to quash the order/memorandum under Annexure-A/7.
- c) Further be pleased to direct the Respondent No.3 to accept the joining report of applicant with regard to appointment in the post of Assistant Central Intelligence Officer-Grade II (Exe) in Intelligence Bureau.
- d) Further be pleased in alternative to award compensation to the applicant.
- e) And pass any order/orders, direction/directions as this Hon'ble Court deem fit and proper for the ends of justice.

2. The brief facts leading to filing of this O.A. are as follows:-

After 20 years of service in the Air Force the applicant retired from service w.e.f. 31.08.1999. While so, on



the request of the Defence Ministry, the Home Ministry prepared a Scheme through Respondent No.4 the Officer-in-Charge, Air Force Placement Cell (Resettlement of Ex-Service man), AIR Head Quarters, New Delhi to appoint the Ex-Air Force Personnel on rehabilitation. The copy of the said Scheme would show that all retired Air Force Officers are found suitable and eligible for appointment as Security Officer or Assistant Central Intelligence Officer Grade-II (Exe) in the Central Intelligence Bureau. Following the guidelines and conditions contained in that Scheme the applicant was also found eligible to be appointed as Assistant Central Intelligence Officer Grade-II (Exe) as evidenced from Annexure-A/2 Memorandum dated 24.11.2008. Prior to this appointment as aforesaid the applicant was appointed on contractual basis as Assistant Security Officer (in short 'A.S.O.') in Orissa Mining Corporation Limited. However, as per the selection made, the applicant has received an offer of appointment with a condition that he should join the post of Assistant Central Intelligence Officer Grade-II (Exe) in the Central Intelligence Bureau with the original of all the testimonials on or before 08.12.2008.

DB

However, the applicant could not report for joining within the stipulated time. Hence the applicant filed representations to Respondents No.2 & 3 to allow him to join the post condoning the delay occurred in reporting for joining. However, the representations have been rejected and finally a Memorandum dated 04.08.09 has been received by the applicant. Aggrieved by the said Memorandum, the present O.A. has been filed.

3. When the O.A. came up for admission, we heard Mr. B.B. Dash, Ld. Counsel for the applicant and Mr. S. Mishra, A.S.C. for the Respondents and perused all the documents produced in the O.A. In the light of the contentions raised in the O.A. and on the basis of the argument of the Ld. Counsel for the applicant, the question to be decided is whether the applicant has made out a case to issue any direction as he prayed in the O.A. or not. The facts as revealed are that after retirement from Air Force during 1999, he was working as Assistant Security Officer on contractual basis in the Orissa Mining Corporation Ltd. (a Govt. of Orissa undertaking). While so, the application for the post of Assistant Central Intelligence Officer Grade-II (Exe) in the Central Intelligence

Bureau has been called for and the selection has been made after considering the service records of the applicant as he retired from Air Force. Consequently, the applicant was issued with Annexure-A/2 appointment with certain conditions contained therein. We are now concerned only with Clauses 3 & 11 of Annexure-A/2 which read as follows:-

“3. The appointment will be further subject to:-

- (i) Production of certificate of medical fitness in the enclosed form from the Civil Surgeon (Gr.1/MDO/MS)/ Competent equivalent medical authority for whom a covering memorandum is enclosed herewith. He/Shr will not be allowed to join unless he/she produces a certificate of medical Fitness, which he/she may obtain from the Medicl Authority at the time of his/her medical examination.
- (ii) Taking of an Oath of Allegiance to the Constitution of India in the prescribed form (Copy enclosed).
- (iii) Submission of declarations in the forms enclosed that (a) he/she does not have more than one living wife/husband as the case may be (copy enclosed) (b) He/She does not belong to persons/sections (creamy layer) mentioned in col. No.3 of the schedule to the DOP&T OM No.36012/22/93- Estt(SCT) dated 08.09.93 (copy enclosed) (Applicable only in the case of OBC candidates).
- (iv) Production of the following original certificates and Mark sheets:-
 - (a) Certificate of Matriculation containing DOB for age (with one attested copy).
 - (b) Certificate of educational & other technical qualification (with one attested copy each).

(c) Character Certificates from two Gazetted Officers (forms attached).

(d) Certificate in the prescribed form in support of candidates claim of belonging to a Scheduled Caste/Scheduled Tribe and OBC category. In case of OBC candidates the certificates should be in the Central Govt. format (form enclosed), clearly indicating that it should be applicable for reservation under jobs of Central Govt. Services (with one attested copy)

(e) Discharge certificate from Defence Service (with one attested copy).

(f) Discharge certificate of previous employment, if any.

(g) Any other documents (to be specified).

(h) While serving in this office, he/she can apply for posts elsewhere only after obtaining due permission.

11. If he accepts the offer on the terms and conditions mentioned above, he/she should report to the Assistant Director (G), 35, Sardar Patel Marg, Bapu Dham, New Delhi-110021 immediately but not later than 8th December 2008. If he/she fails to report for duty by the prescribed date, the offer will be treated as cancelled. He/She should inform the Assistant Director/G, IB, MHA, Govt. of India, New Delhi, immediately by telephone (T. No.011-24191370 7 72) followed with telegram within 7 days from the date of issue of this offer whether he is willing to join the Bureau on this post otherwise it will be treated that he/she is not willing to join."

4. As per Clause 3 of Annexure-A/2 the candidates selected for appointment should produce all necessary testimonials narrated therein and Clause 11



specifically stated that the selected candidates should report immediately, but not later than 8th December 2008, for joining duty. Reading of Clause 3 along with Clause 11 makes it clear that it is imperative on the part of the applicant to report for joining with all the testimonials on the fixed date. But the case of the applicant is that though he was ready to report for joining, he was not in a position to produce all the documents required under Clause-3 as the discharge certificate and some other documents were not received by him from Orissa Mining Corporation Ltd., and hence the applicant could not report for joining duty within the stipulated time. However, according to the applicant, he had filed certain documents to allow him to join at a later stage and he had stated all the reasons as to why he could not join within the time specified in Annexure-A/2. In this context, it has to be noted that the applicant's representations dated 23.01.09, 24.04.09 & 28.05.09 contained his request for extension of joining time. But as per the conditions laid down in Annexure-A/2 it is the duty of the applicant to convince the authority about his inability, impossibility or non-feasibility to comply with the conditions

00

and it is the discretion of the authority to accept his request, and this Tribunal is not expected to go into it at all. We cannot consider the case of the applicant in the light of the prayer as legally the applicant has to comply with the conditions contained in Annexure-A/2. Even if any relaxation has to be made, it can be considered only by the authorities. In this context, we have also seen that though the applicant had received Annexure-A/7 Memorandum dated 04.08.09 stating that the offer of appointment given to him stood cancelled, he has not preferred any representation either to Respondent No.1, the Secretary, Ministry of Home Affairs, Govt. of India, or to any other authority competent to consider his case. That apart, it is not expected of this Tribunal to arrive at any finding as to whether the applicant was justified in not joining the post on time, as the Respondent - Department is the competent authority to arrive at such conclusion on the basis of materials placed before it. In the above circumstances, we are of the view that though the applicant is not entitled for any relief as claimed, yet we feel that the O.A. can be disposed of by giving direction to Respondent No.1 to consider his representation, if



any, against Annexure-A/7, which he has to file within one month from today, in which the applicant shall take all his grounds for extension of joining time. If such representation is made to Respondent No.1, the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi, the same shall be considered sympathetically giving weightage to the applicant and disposed of within a reasonable time, at any rate within 45 days from the date of receipt of the representation.

5. With the above observation and direction, this O.A. is disposed of. No costs.

(C. R. MOHAPATRA)
ADMN. MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER