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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 227 of 2010
Cuttack, this the 22nd day of June, 2011


Laxmikanta Mahapatra Applicant

-v-

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?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Laxmikanta Mahapatra, aged about 50 years, Son of Chakradhar Mahapatra permanent resident of At/Po-Sarankul, Dist. Nayagarh (Pin-752080) now residing Plot No. 2442, Behind new State Bank of India Colony, Sastry Nagar, Bhubaneswar, Dist. Khurdas (Pin-751 001).

..Applicant

By legal practitioner: M/s.Bibhuti Bhusan Dash, Counsel

-Versus-

1. Union of India, represented through its Secretary Ministry of Home Affairs, New Delhi-110 001.
2. Director, Central Intelligence Bureau (Ministry of Home Affairs), Government of India, 35 Sardar Patel Marg, Babu Dham, New Delhi-110 021.
3. Assistant Director (G), Central Intelligence Bureau, Ministry of Home Affairs, Government of India, 35 Sardar Patel Marg, New Delhi, Pin 110 021.
4. Officer-in-charge, Air Force Placement Cell (Resettlement of Ex-Serviceman), AIR Head Quarter Bayu Bhawan, New Delhi-110 001.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra,SSC

ORDER

MR.C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicant, a retired Air Force Officer, being aggrieved by the order under Annexure-A/6 dated 04.08.2009 of the Assistant Director

(G), Central Intelligence Bureau, Ministry of Home Affairs, Government of India, in this second round of litigation has approached this Tribunal in which he has prayed for the following relief:

- “(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, after calling for records.
- (b) Further be pleased to quash the order/Memorandum under Annexure-A/6 and Annexure-A/8.
- (c) Further be pleased to direct the respondent NO.3 to accept the joining report of the 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;
And for the said act of kindness, the applicant as in duty bound shall ever pray.”

2. Facts of the matter are that after 20 years of service in the Air Force, the applicant retired from service w.e.f. 31.8.1999. On the request of the Defence Ministry, the Home Ministry prepared a Scheme through 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. Following the guidelines and conditions contained in that Scheme, the Applicant was found eligible to be appointed as Assistant Central Intelligence Officer, Grade-II (Exe). Prior to this, the Applicant had been appointed on contractual basis as Assistant Security Officer in Orissa Mining Corporation Limited. While continuing as such, he received the offer

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of appointment of Assistant Central Intelligence Officer, Grade-II (Exe) in the Central Intelligence Bureau with stipulation that he should report to duty with all original testimonials on or before 08-12-2008. As he could not report for duty within the time stipulated, he filed representations to allow him to join the post condoning the delay occurred in reporting to duty. The said representation was considered but rejected and communicated to him vide Memorandum dated 04-08-2009. It reads as under:

“Pleas refer to our memo of even number dated 24-11-2008 offering you the post of ACIO-II (Exe.) on re-employment basis in IB, with directions to get medical examination done and join on 89-12-2008. Since you have failed to join within the stipulated time period, your offer of appointment stands cancelled as per para ‘11’ of the offer of appointment. No further communication in this regard will be entertained.”

3. He challenged the aforesaid Memorandum dated 04-08-2009 in OA No. 475 of 2009. The said OA, in order dated 2nd October, 2009 was disposed of by this Tribunal – relevant portion of the order reads as under:

“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 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 is to be noted that the applicant's representation dated 23.01.2009, 24.04.2009 & 28.05.2009 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 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 04.08.2009 standing that the offer of appointment given to him stood cancelled, he has not preferred any representations either to Respondent No.1, the Secretary, Ministry of Home Affairs, Government 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 OA can be disposed of by giving direction to the 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 a representation is made to Respondent No.1, the Secretary, Ministry of Home Affairs, Government of India, New Delhi the same shall be considered sympathetically giving weightage to the applicant and dispose of within a reasonable time at any rate within 45 days from the date of receipt of representation." [emphasis supplied].

4. The Applicant was satisfied with the above order and accordingly submitted his representation for consideration on consideration

of which the Respondents intimated the applicant in letter under Annexure-A/8 dated 22nd January, 2010 as under:

“I have been directed by the competent authority (MHA) to refer to your application dated 3/11/2009 addressed to the Secretary, MHA in the matter of appointment to the post of ACIO-II/Exe on re-employment basis and to convey that his request cannot be acceded to as the offer of appointment has already lapsed because he failed to join the duty within the period stipulated in the offer of appointment.”

5. The Respondents, in their counter have stoutly opposed the contentions made by the applicant in support of the relief referred to above. The contention of the Respondents is that to meet the functional requirement of IB recruitment of ex-servicemen was initiated in January, 2008 on war footing to strengthen the intelligence/security apparatus of the country. The candidates who were selected in the interview were uniformly given 15 days time to join the post. Giving time span of 15 days was in consonance with the Government of India's instruction on the subject which stipulates that an offer of appointment should clearly specify the period after which the offer would lapse immediately if the candidate did not join within the specified period. As regard the contention of the applicant that he had to give one month notice to the OMC and wait for one month for its acceptance, it was contended that the applicant submitted his resignation only on 16.12.2008 and deposited pay in lieu of notice period only on 25.12.2008 Thereafter it was accepted by OMC on 29.12.2008 and he was relieved w.e.f. 31.12.2008. The offer of appointment was issued to the Applicant on 24.11.2008


received by the applicant on 01-12-2008. After receipt of the offer the applicant took 15 days time to submit his resignation. As such, his intention of not joining the post by the stipulated date i.e. as on 08.12.2008 is clearly discernible. Further contention of the Respondents is that the offer of appointment was issued to the applicant on 24.11.2008. As the applicant did not report to duty within the stipulated period the offer stands invalidated. There is no provision for revival of offer of appointment after it lapses except in exceptional circumstances and on grounds of public interest in consultation with UPSC. Since in the instant case no public interest is involved, there is no justification for revival of offer of appointment of the Applicant.

6. The Applicant has also filed rejoinder more or less reiterating his stand taken in the OA and clarifying some of the issues raised by the Respondents in their counter.

7. We have heard Learned Counsel for both sides and perused the materials placed on record. It is found that the arguments advanced by the applicant in support of the relief were the arguments advanced before this Tribunal when the earlier OA was considered. Finally this Tribunal disposed of the earlier OA with specific direction that **'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....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.' However, opportunity was granted to the applicant to make representation to the competent authority for considering the matter sympathetically. Accordingly, Applicant submitted representation but the authority turned down the grievance of the applicant in the light of the decision already taken. No new material has been produced by the Applicant to take any other view than the view already taken by this Tribunal. Hence the earlier order of this Tribunal is final and binding and calls for no interference.

8. Hence, for the reasons discussed above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)