

Reply
27/7/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

M.A. No. 398 OF 2001

Arising out of -

O.A. No. 90 of 1996

Shri Nanda Dulal Dutta & Ors.

.....Applicants

-Versus-

Union of India and Ors.

.....Respondants

REPLY ON BEHALF OF THE RESPONDENTS

1. That the Misc. application being M.A. No. 398 of 2001 filed by Sri Nanda Dulal Dutta and others (hereinafter referred to as the said Misc. application) is speculative and harassing. The said Misc. application is not maintainable under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987. The said Misc. application is liable to be dismissed with cost.

2. Statements made in paragraphs 1, 2 and 3 of the said Misc. application are matters of record in C.P.(C) No. 4 of 2000, arising out of O.A. No. 90 of 1996 and save what appears therefrom as also from the reply affidavit filed in the said C.P.(C) affirmed by Shri Soumya Kanti Ray, General Manager, Rifle Factory, Ishapore on 12th April, 2001 all other allegations made in the paragraphs under reference are denied.

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General Manager
Rifle Factory, Ishapore

3. With reference to the statements made in paragraph 4 of the said Misc. application, I deny and dispute the allegations made therein, save what appears from Order dated 23rd August, 1999, passed by the Calcutta Bench of the Central Administrative Tribunal, in O.A.No. 90 of 1996. Hon'ble Tribunal while allowing the Original application inter-alia directed the respondents to consider the promotions of the applicants in the Fitter Skilled Grade in R.F.I. against up-graded posts in higher category on the basis of authorised strength as sanctioned by the Ministry of Defence in their Order dated 15th August, 1984 and clarified subsequently by Order dated 19th April, 1985. Hon'ble Tribunal did not direct the respondents to give upgradation benefit to the applicants superseeding the claim of their seniors. It was the specific direction of the Hon'ble Tribunal to consider promotions of the applicants in the Fitter Skilled Grade in the R.F.I. against upgraded posts in higher category on the basis of the authorised strength sanctioned by the Ministry. It is further stated that the applicants were given up-gradation benefit in due compliance with the Order passed by the Hon'ble Tribunal according to their turn against up-graded posts in higher category on the basis of the authorised strength as sanctioned by the Ministry of Defence. Allegations that applicants were given up-gradation benefit violating the Judgement and Order dated 23rd August, 1999 as made in the paragraph under reference and baseless and motivated.

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4. With further reference to paragraph 4 of the said Misc. application it is stated that as per direction of the Hon'ble Tribunal dated 23rd August, 1999, which has been upheld by the Hon'ble High Court, Calcutta vide order dated 12th July, 2000 and the Hon'ble Supreme Court vide Order dated 4th January, 2001 respondents took immediate steps to process the case of the applicants. The previous strength of Fitter(Skd) on application of ratio on the existing strength as on 15th October, 1984 was under -

Fitter (S/Skd)	- 46
Fitter (Skd)	- 726
Fitter(H/S Gr.II)	- 206
Fitter(H/S Gr.I)	- 164

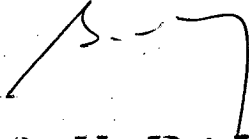
Total	- 1142

The strength of the Fitter as on 15th October, 1984 was changed as per Order of the Hon'ble Tribunal due to application of 15:20:65 on the Sanctioned strength. By applying the ratio of 15:20:65 vacancies in the strength of Fitter as on 15th October, 1984 are as follows -

Fitter H.S.Gr.I	- 262
Fitter H.S.Gr.II	- 349
Fitter Skd	- 1135

Total	- 1746

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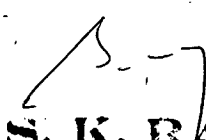
The additional vacancies available on the basis of direction passed by the 'Hon'ble Tribunal are as under -

Fitter H.S. Gr.I	-	262	-	164	=	98
Fitter H.S. Gr.II	-	349	-	206	=	143

						241

The additional vacancies arisen due to the order of the Tribunal in the Grade of H.S. Gr.II are to be filled up by promoting Fitter(Skd) on the basis of Seniority list of Fitter(Skd) as on 15th October, 1984. It is found that there are 289 non-applicants who are senior to the senior-most applicant and there are 379 non-applicants who are senior to junior most applicant. So the applicants could not get promotion from 15th October, 1984 as the additional vacancies available as on 15th October, 1984 are to be filled up by the senior non-applicants and the said posts have been kept vacant for the non-applicants who are eligible for promotion. However, on the basis of seniority, 176 applicants out of 196 applicants who were in the grade of Fitter have been promoted in Fitter H.S.Gr.II on different dates from the year 1989 to 2000. 20 applicants could not be promoted owing to their retirement/death/ Vol.Retirement before they came in the zone of consideration for getting promotion as per their position in the seniority list. The said promotion order was published vide R.F.O. Pt.II No.669 dated 6th April 2001. The applicants have been given notional promotion from

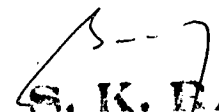
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different dates as mentioned in the order and financial benefit has been given from the date of assumptions of charge of higher post in terms of FR 17(1) and also following the decision of the Hon'ble supreme Court in Palaru Ramkrishna and others -Vs- U.O.I. & Ors reported in (1989) 2 SCR 92.

5. Statements made in paragraph 5 of the said Misc. application are incorrect and misleading and those are denied. Case of the applicants were duly considered as per Order of the Hon'ble Tribunal dated 23rd August, 1999 passed in O.A. No.90 of 1996 and they have been given up-gradation benefit according to their entitlement on the basis of the authorised strength as sanctioned by the Ministry of Defence under their Order dated 15th October, 1984 and clarified subsequently by Order date 19th April, 1985. Allegations of resorting to nasty tricks against the respondents as made in the paragraph under reference are absolutely baseless, motivated and after thoughts. Hon'ble Tribunal did not direct to give promotions to the applicants superseeding their seniors. Hon'ble Tribunal directed the respondents to consider the case of the applicants and such consideration has been made in due compliance with the rules and the allegations that the applicants were not given promotion with effect from 15th October, 1984 to compel them to submit to the illegal demands of the respondents as made in the paragraph under reference are absolutely baseless and motivated. It may further be mentioned

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that the Hon'ble Tribunal did not direct the respondents to give promotion to the applicants with effect from 15th October, 1984 as suggested in the paragraph under reference. Allegations of committing deliberate contumacious act of violation of the order of this Hon'ble Tribunal dated, 23rd August, 1999 as made in the paragraph under reference are absolutely baseless and those are denied.

6. With further reference to paragraph 5 of the said Misc. application it is stated that the applicants have been promoted on the basis of their seniority position of Fitter (Skd) vide R.F.O. Pt.II No.669 dated 6th April, 2001. Applicants so promoted have been intimated to exercise their option for fixation of pay either from the date of promotion or from the date of increment in the lower grade as per rules in accordance with the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel & Training) Office Memo No.1/2/87 Estt. (Pay -1) dt.9.11.87. A copy of the said Office Memo is ~~enclosed~~ ^{annexed} herewith and marked as Annexure - "R-1" to this reply. According to the said Office Memorandum, option should be exercised within one month from the date of promotion and as such applicants were asked to submit their undertaking by letter dated 3rd May, 2001. Action taken by the respondents is in due compliance with the rules and not in violation of the solemn Order passed by this Hon'ble Tribunal in O.A. No.90 of 1996.

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7. Statements made in paragraph 6 of the said Misc. application are incorrect and misleading and those are denied. It is incorrect to say or suggest that the promotion order was issued to cause prejudice to the applicants and for frustrating the very object of the Contempt application. Allegations of harassment and discrimination made in the paragraph under reference are all baseless and after thoughts. There has not been any violation of the solemn order passed by this Hon'ble Tribunal in O.A. No.90 of 1996 on issuance of the promotion order of the applicants and as such question of stopping such violation did not arise at all.

8. Statements made in paragraph 7 of the said Misc. application are vague and misleading and those are denied. It is incorrect to say or suggest that the applicants were forced to accept any order issued by the respondents in violation of the order dated 23rd August, 1999 passed in O.A. No.90 of 1996. That the order dated 23rd August, 1999 passed by this Hon'ble Tribunal has been implemented and on such implementation applicants got promotion to higher post and as such they have been asked to exercise their option regarding pay fixation in the higher post as per Office Memorandum issued by the Government of India as stated hereinbefore. Applicants were never forced to accept any order of

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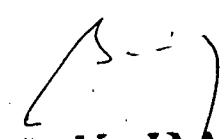

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the respondents as vaguely suggested in the paragraph under reference. It is incorrect to say or suggest that any action on the part of respondents is totaly illegal, arbitrary, discriminatory and in excess of power. It is further denied that the respondents made themselves liable to be punished with severe cost for implementing order dated 23rd August, 1999 giving promotion to the applicants according to their entitlement after considering their cases as directed by the Hon'ble Tribunal by Order dated 23rd August, 1999.

9. Statements made in paragraph 8 of the said Misc. application are incorrect and misleading and those are denied. If the applicants are aggrieved by the Order promotion given to them in terms of the Order dated 23rd August, 1999 passed by this Hon'ble Tribunal in O.A. No.90 of 1996, their remedy lies in challenging the said Order by filing an original application and not by filing a Misc. application under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.

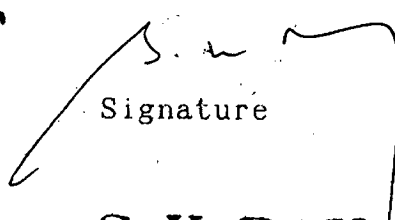
10. In the facts and circumstances stated hereinabove it is sbmitted that the applicants are not entitled to get any of the reliefs sought for in the said Misc. application.

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General Manager
Rifle Factory, Ishapore

V E R I F I C A T I O N

I, Shri Soumya Kanti Ray, son of Late K.M. Ray, aged about 56 years, by occupation service, holding the post of General Manager, residing at Qtr. No.3, The Park, P.O. Ichapore-Nawabganj, P.S. Noapara, District - 24 Parganas (North) do hereby verify that the statements made in paragraphs 2 are true to my knowledge, those made in paragraphs 3, 4, 5, 6, 7 and 8 are true to my information derived from the records, which I verily believe to be true and those made in paragraphs 1, 9 and 10 are my respectful submissions before this Hon'ble Tribunal. I am authorised to sign this verification on behalf of the respondents.


Signature

Place : Ichapore

Date : 24/7/2001

S. K. RAY
General Manager
Rifle Factory, Ichapore