

क्र.प्र. (श्रीमान) निवासकरी के नियम-१२ के अन्वेषण नियम-१२

Date of order : 10.2.2000

1. O.A.NO. 320/97
- ✓ 2. O.A.NO. 363/97

Anda Ram S/o Shri Poona Ram aged about 30 years, R/o Vill and PO Gura Visnoi via Luni Distt. Jodhpur at present employed on the post of Watchman, in Security Section, Guard Room Air Force Station, Jodhpur.

.....Applicant in OAs

VERSUS

1. The Union of India through Secretary to Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
2. Air Officer Commanding in Chief, Hqrs South Western Air Command, IAF, Ratanada, Jodhpur.
3. Air Officer Commanding, Air Force Station, Jodhpur.
4. Chief Administrative Officer, Air Force Station, Jodhpur.

.....Respondents in O.A.No.320/97

1. The Union of India through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Commanding, Air Force Station, Ratanada, Jodhpur.

.....Respondents in O.A.No.363/97

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Mr.J.K.Kaushik, Advocate, for the applicant.

Mr.Vineet Mathur, Advocate, for the respondents

CORAM :

HON'BLE MR.AK.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

These two OAs were presented by the applicant. The facts are almost similar but prayers are different, therefore, these two OAs are disposed of by one single order.

2. In O.A. No. 320/97, the applicant had prayed that respondents be directed to consider the candidature of the applicant to the post of Civilian MTD Grade II at par with his next junior with all consequential benefits.

3. In O.A. No. 363/97, the applicant had prayed that the Chargesheet dated 16.9.1997 Annex.A/1 issued by the second respondent be declared illegal and the same be quashed with consequential benefits.

4. Notice of these OAs were issued to the respondents who have filed their separate replies to which no rejoinder was filed by the applicant.

5. We have heard the learned counsel for the parties and have gone through the case file. It is alleged by the applicant that he was initially appointed to the post of Laskar on 1.6.88 in the Air Force Station, Jodhpur and was given permanent appointment to the post of Watchman on 1.12.88. He is VIII class pass and possesses light and heavy vehicle licence. The respondents invited applications from the eligible group 'D' employees possessing valid licence for heavy vehicle for filling up the vacant posts of Civilian MTD Grade II. The applicant being fully eligible applied for the same and was allowed to undertake the test. The applicant was declared successful and was sent for



.3.

(11)

medical examination in which he was found fit. However, the candidature of the applicant was kept out of consideration. The result of the trade test was declared by the respondents in which the name of the applicant has not been included and out of the successful candidates four persons were promoted in September 1996. The applicant was again subjected to medical test in which he was declared fit but the applicant has not been given appointment. Hence, the first O.A. The applicant has alleged in the second OA that the applicant has been served with a chargesheet alleging therein that he had manipulated in the medical certificate in which the concerned Doctor had declared him not fit but in order to secure promotion for which he was trade tested he had erased "not" from the medical certificate and has thus forged the medical certificate, but this allegation of the respondents is incorrect. The applicant has been falsely implicated. The medical report is not handed over to the candidates and, therefore, whatever manipulation is alleged against the applicant is wrong and not supported by facts and therefore he has filed the second OA for quashing the chargesheet.

6. The respondents in their reply have only stated that the candidature of the applicant was considered for promotional post but he was not found medically fit and the manipulation in medical certificate was discovered hence his name was not included in the panel and for the manipulation in the certificate inquiry was conducted in which it was *prima facie* established that the medical certificate issued by the medical officer was tempered with hence applicant was served with a chargesheet.

7. We have considered the rival arguments which were advanced as per the respective pleadings of the parties. In order to

verify the allegations of the respondents we had also called for the original record relating to the applicant's medical examination and also the list of the participants for the promotional post who were medically examined. It is not disputed that the applicant is facing departmental action for having manipulated the medical certificate. Whether the certificate is delivered to the candidate by the medical officer for onward delivery to the competent officer or not is a question of fact. Likewise, whether the medical certificate issued by the medical officer who examined the applicant was manipulated or not is question of fact relating to the departmental inquiry and expressing opinion one way or the other might influence the result of the departmental inquiry to the prejudice of the either of the parties. Therefore, we would like to restrain ourselves from expressing any opinion relating to the chargesheet which has been challenged in OA No. 363/97. However, we come to the conclusion that the chargesheet served to the applicant is not absolutely baseless.

8. The applicant was called for the trade test of the promotional post which he himself admits. He also admits that he was subjected to medical test, therefore, we cannot conclude that the candidature of the applicant was not considered by the departmental authorities organising the trade test for the promotional post of Civilian MTD Grade II. A prospective candidate has only a right to be considered. He has no right to get promotion. Since the applicant's candidature was considered by the departmental authorities for the said post the grievance of the applicant is devoid of merits.

9. The learned counsel for the respondents has argued that the applicant was declared not fit by the medical officer and



therefore he was not given an appointment on the promotional post. On the other hand the learned counsel for the applicant has argued that the medical officer who is alleged to have declared the applicant medically un-fit has issued a certificate to the applicant in which he has been declared medically fit and therefore the applicant has a right to be declared medically fit to be promoted on the promotional post. We have considered this argument also. There is nothing on record to show that the applicant was subjected to a second medical test on requisition by the departmental authorities. If the applicant himself appeared before the medical officer and was subjected to examination at his own request then this would be a different matter. But on the basis of such suo moto request medical examination the applicant cannot bank upon for such appointment. However this aspect too is not required to be discussed in detail at this stage because in our opinion in respect of applicant's second medical examination would not be complete without examining the first medical report and therefore we would not like to discuss this matter any further.

10. In our opinion both the OAs of the applicant are devoid of merits and deserve to be dismissed. Therefore, the aforesaid both the OAs are hereby dismissed with no orders as to cost.

SD/- (GOPAL SINGH) ADM. MEMBER			
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SD/-
(A.K.MISRA)
JUDL. MEMBER

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प्रमाणित सही प्रतिलिपि
11/12/2000
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोषपुर

Copy issued to Applicant =

One Respondent from

OA 320/97

Chand
11-2-2002

Part II and III destroyed
in my presence on 26.9.2006
under the supervision of
Section Officer () as per
order dated 23/8/06

Section officer (Record)