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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 50/2005

Date of order: 04-3-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Norang Lal son of Shri Manohar Lal, aged 26 years, r/o Gali No. 4, Guru Nanak Basti, Shri Ganganagar. Applicant applied for appointment on the post of Chowkidar.

...Applicant.

Mr. D.K. Parihar, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Air Force), Bikaner.
3. Chief Engineer, MES (Air Force) Palam, New Delhi.
4. Chief Engineer, Western Command, Chandimandir, Punjab.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. V.K. Kapoor, Administrative Member

Shri Norang Lal has filed the present OA challenging the orders of the respondents for making appointment on the posts of chowkidars. The applicant has sought relief that is as follows:

"The respondents may kindly be directed to issue appointment letter to the applicant forthwith and appoint him with all consequential benefits. Any other relief, as deemed fit in facts and circumstances of the case may kindly be given to the applicant."

2. The factual matrix of the case is that the respondent no. 2 issued advertisement for filling 07 posts of mazdoors & 06 posts

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of chowkidars. The applicant being eligible applied for general posts vide letter dated 06.11.2003, he was called for interview on 19.11.2003 (Ann.A-1), selection panel was finalized in the last week of March, 2004. It is averred that respondents appointed a candidate whose name would appear at sl. 7; applicant's name was at sl. 6. The applicant filed a representation on 11.11.2004 (Ann. A-2); his request for giving appointment to him was ignored by the respondents. The order of the respondents as regards appointment of chowkidars etc. is termed as arbitrary and discriminatory; person in lower merit (sl.7) is given appointment, whereas applicant's name (sl.6) is ignored. The applicant has requested that the respondents be directed to issue appointment letter in his case, thereby give all consequential benefits to him.

3(a). The respondents in reply have narrated that they invited applications for the post of chowkidars by publishing notification in the rozgar samachar dated 25-31 Oct.2003; later one vacancy was withdrawn on 02 Jan, 2004. Respondents invited applications, conducted the interview. The applicant appeared in interview on 19 Nov., 2003; he being lower in merit was not placed in merit list. One post of chowkidar was withdrawn by higher authority; selected persons were issued appointment letters from 30 Jan., 2004 onwards as per their position in merit list. The applicant was never placed in the merit list (sl.6) no candidate mentioned at sl.7 was given appointment. Only five (05) vacancies of chowkidars were available and all these were filled up. No case is made out in applicant's favour, he is not entitled to get any relief.

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3 (b). In rejoinder to reply filed by respondents, the applicant has refuted points mentioned therein. The respondents have not submitted relevant record pertaining to selection/merit list. The respondents have failed to produce on record the order of higher authority about withdrawal of one vacancy & the rules permitting such an authority to withdraw a vacant post after advertisement. He has contended strongly that person at sl.7 was given appointment in preference to the applicant. A duty is cast upon a public servant to respond to the representations of an aggrieved party.

4(a). Learned counsel for applicant argued on lines as narrated in his OA, applications were invited on 06 Nov. 2003 (Ann. A-1) for mazdoors & chowkidars; the oral test/interview & physical test were taken. The applicant was placed at sl.6 in merit list, the person at sl.7 was given appointment; his representation dt. 10 Nov.,2003 (Ann.A-2) was not considered. In MA no. 149/2005 (OA no. 50/2005); by order dt 13.7.2007, the Tribunal directed respondents to produce relevant documents. On 08.10.2009, applicant was permitted to place relevant documents on record, as respondents did not produce the same. In MA no. 56/2009 (in OA 50/2005), no information was provided in RTI, an adverse inference should be drawn against the respondents' act. As per applicant's knowledge, the person at sl.7 was given appointment for chowkidar's post, applicant's name was ignored. The respondents have stated in para 4.5 of reply that only 05 posts for chowkidars were filled up; applicant refers to sixth (6th) post. The applicant is not said to be placed in the merit list, though directions were given by Tribunal to submit relevant record.

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4 (b). Learned counsel for the respondents contended that applications were invited for the post of chowkidars; physical test, interview was conducted; applicant's name did not figure in the merit list. As regards giving service to a person at sl.7, no court order was there on record; no specific directions were given to produce the concerned documents as such. The appointments were strictly made as per merit list/seniority in the selection.

5. The records reveal that the respondents invited applications from rozgar samachar etc. by which 07 posts of mazdoors & 06 posts for chowkidars were advertised, beside one post of khansama chowkidar (SC-reserve category). In chowkidars, out of 06 nos., the general category candidate were 03, rest OBC-1, SC-1, ST-1 were notified. The advertisement was made in the Employment News on 25-31 Oct., 2003; applications were invited upto 05 Nov., 2003; wherein 1200 nos. of applications were for mazdoors & 1507 nos. for chowkidars; for khansama chowkidar 160 nos. On record perusal, various norms such as basic qualifications (education), experience, physical fitness, interview etc. were prescribed; test was conducted by a group of officers. As applicant's name was on lower merit in general category, his name could not find place in the selection. There appears to be no person at sl.7, who was given appointment. In the merit list of general candidates, the applicant was at sl.3; 04 others names were there by order of merit/waiting list. Finally, only two persons in the general category were selected for chowkidars' posts.

6. The applicant has given much stress on the fact that even after directions by Tribunal; relevant records were not submitted

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before the Court. On perusal of record in MA no. 149/2005 (in OA no.50/2005), respondents were directed to produce the relevant documents on next date of hearing/arguments in the present OA, but these directions were not complied with for quite sometime. Later, on 08.10.2009 in MA no.56/2009 (in OA no.50/2005), as respondents did not provide/submit documents asked for, the present MA no.56/2009 was allowed. Accordingly, the applicant was permitted to place the documents on record; he followed suit. In rejoinder, applicant's counsel wanted to know about directions from the superior officers for withdrawing one post of chowkidar. One message from HQCE (AF), WAC, Palam is produced, addressed to CWE (AF), Bikaner on 27 Dec.,2003 that one post of mazdoor and one post of chowkidar are withdrawn for filling up these posts by deceased quota on compassionate appointments. Learned counsel for applicant has argued mainly on the point of rules permitting such an authority to withdraw vacant posts after advertisement. Normally, the competent or concerned authority should not withdraw posts or reduce the number of appointments on each post; reduction in these posts was made so as to accommodate the persons to be appointed on compassionate grounds. In fact, this exercise should have been conducted by the HQ prior to sending/releasing the posts for advertisement, so that no dispute arises later. The respondents have spoken about 05 posts of chowkidars to be filled up in their reply; clearly enough the advertised posts of chowkidars contained 02 posts of general category in which applicant was placed at sl.3.

7. On record perusal, no person/candidate appears at sl.7, (above applicant at sl.6) who was given an appointment on the

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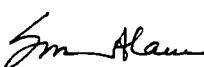


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chowkidar's post. In respondents' reply, the applicant was not placed at sl.6, thus the name of said candidate selected does not find place at sl.7 in the merit list. After filling up 05 posts of chowkidars, no other post was presently lying vacant. After withdrawal of one post of chowkidar in the general category, only 02 posts were left; the selected candidates on these posts were given appointment letters on 30 Jan.,2004. Thus, there is no question of drawing an adverse inference for non-production of record or not furnishing details in RTI in the prevailing circumstances. As such, no malafides or arbitrary action is manifest after peeping through the record. Clearly enough, the applicant's name was no.3 in rating in the general category list, thus he could not be appointed as there were only two (02) vacant posts in general category. Thus no malafides or colourful exercise of power need be attributed to the respondents in this regard; the applicant has definitely failed to prove his case.

8. As per the deliberations made above, no interference is called for in the present OA. Resultantly, the present OA is dismissed with no order as to costs.


(V.K. KAPOOR)
ADMINISTRATIVE MEMBER


JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

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