

T/S

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 299/2007

Date of order: 23.11.2007.

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. Tarsem Lal, Member (A)

Kanhiya Lal son of Shri Durga Ram, aged 55 years, FGM - HS in the office of the Garrison Engineer, (Air Force), Jodhpur R/o 1, Lala Lajpat Rai Colony, Jodhpur.

...Applicant(s).

By advocate Shri J.C. Singhvi.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES Air Force, Jodhpur.
3. Garrison Engineer, MES (Air Force), Jodhpur.

... Respondent(s).

ORDER

Justice A.K. Yog, Member (J)

Heard learned counsel for the applicant. In view of the facts pleaded in the present O.A. - it is disposed of finally at 'admission' stage itself without calling upon the Respondents.

The applicant had earlier filed before this Tribunal O.A. No. 333/2005 on similar facts, grounds and claiming similar relief. The said O.A. was dismissed 'as not pressed' on the statement of the counsel representing the applicant vide order dated 24.01.2007/(annexure A/5 to the present O.A.), which reads -



(Signature)

"O.A. No: 333/2005
Date of order: 24.01.2007.

Mr. J.C. Singhyi, counsel for applicant.
Mr. Vinit Mathur, counsel for respondents.

At the very outset, learned counsel for the applicant submits that he has instructions from the applicant that the applicant does not wish to press this O.A. Learned counsel for the respondents has no objection. The prayer of the applicant is accepted. The O.A. is dismissed having not been pressed but with no order as to costs.

Sd/-
[R.R. Bhandari]
Member (A)

Sd/-
[J.K. Kaushik]
Member (I)"

Understandably, the aforesaid order of the Tribunal was obtained by the Applicant in the back-drop of letter No. 11093/ACP/1156/E1NB dated 08th December, 2006/Annexure A/2 to this O.A., written by one Shri M.S. Meena, Tech Officer, Offg AO-II for CWE (AF) Jodhpur addressed to GE (AF), Jodhpur; relevant extract of said letter is reproduced -

"Tele : 2521 (AF)

Headquarters
Commander Works Engineers
(Air Force) Jodhpur

11093/ACP/1156/E1NB

08 DEC 2006

GE (AF) Jodhpur

FINANCIAL UPGRADATION UNDER ACP SCHEME GRANT OF 2ND ACP AFTER COMPLETION OF 24 YEARS

1. Reference your letter No. 1156/ACP/386/E1D Dated 07 Nov 2006.
2. You are requested to submit Complete ACP Proforma in respect of Shri Kanhiya Lal, FGM HS-I alongwith Assessment Report and Integrity Certificate for Grant of IInd ACP.
3. It is seen the individual has filed a Court Case (OA-333 of 2006 at CAT Jodhpur) and now he is agreed to withdraw of above Court Case. You are requested to submit a copy of the same to this HQ immediately as and when individual withdraw his court case so that financial up-gradation may be finalised by this HQ.



(M S MEENA)
Tech Officer
Offg AO-II
For CWE (AF) Jodhpur"

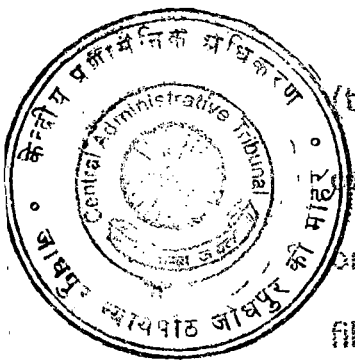
Relying upon aforesaid documents/material (Annex. A-2 & A-5 to the O.A.) - it is alleged that the Respondents had represented / assured to concede his demand and extend to him the relief claimed in said O.A. No. 333/2005.

Para 4.6 of the present O.A. reads -

"4.6. That the respondent Nos. 2 and 3 assured the applicant that in case he withdraws the OA he will be granted benefits of ACP. The respondent No. 2 vide his letter dated 8/12/2006 directed the respondent No. 3 to send him copy of the order of allowing withdrawal of the case as and when the applicant withdraws his court case so that financial up-gradation may be finalized. A copy of letter dated 8/12/2006 is filed herewith and is marked as ANNEXURE A 2."

The applicant obviously as an afterthought, now, alleges (vide para 4.6 quoted above) that previous OA No. 333/2005 was withdrawn on 'assurance' being given to him by the Respondents to extend ACP benefit provided OA/Court case pending in Court/Tribunal was withdrawn and that he withdrew said OA acting on alleged assurance.

Importantly, it is to be noted that the averment in question (that the Applicant was 'assured of being given 'benefit' of ACP' on withdrawing O.A.), finds no mention in afore-quoted letter or order (Annexure A-2 and Annexure A-5). Applicant has failed to file relevant evidence/material to substantiate above allegation of "assurance" appearing in afore-quoted para 4.6.



Am.

There is no other pleading or material to support the case of the applicant - pleaded in para 4.6 of O.A. or to suggest, much less than proving as of fact, that the Respondents changed their 'stand' on the issue in question.

Even at the risk of repetition, we note that there is nothing in annexure A/2 / letter dated 08.12.2006 (quoted above) or the order dated 24.01.2007 passed in O.A. No. 333/2005 / Annexure A-5 (quoted above) or elsewhere, nor referred to by the learned counsel for the Applicant, to indicate that there was any alleged assurance.

Documents annexed with the present O.A. (particularly Annex. A-2 and A-5) only go to show that the department required the applicant to withdraw Court case to pave the way and enable it to consider his grievance.

There is nothing to infer or extract from the above documents (relied upon by the petitioner) to arrive at the conclusion that any 'assurance' to 'extend benefits under ACP', was given or even remotely represented by the Respondents - as pleaded in the present O.A. Pleadings, to the above extent, contained in the O.A. are clearly at variance from the facts stated in the documents relied upon by the Applicant. Case pleaded by the applicant that there was 'assurance' (as pleaded vide para 4.6 of the O.A.) is not substantiated. Pleading of 'assurance' is false, incorrect and an afterthought.



lu

From the pleadings and the documents annexed with present O.A., as they stand today on record, it is not possible to infer 'estoppel' / 'acquiescence' or 'waiver' on the part of the respondents which may warrant this Tribunal to issue direction for extending benefit / claim in ACP (as prayed in the O.A.).

Para 4.13 and 4.14 of O.A. filed by the applicant reads -

"4.13 That the applicant repeatedly personally requested the respondent Nos. 2 and 3 to grant him benefits of ACP since he had withdrawn the OA on their assurance. He requested them to finalize the case submitted vide ANN A 4 and as assured vide ANN A 2. The said respondents assured the applicant every time that his case of up gradation shall be finalized soon as and when clarification about certain quarries are received from higher authorities. He was also told that this may take some time. The applicant had no reasons to disbelieve the said respondents.

4.14 That the applicant also submitted representations but without any result. A copy of the latest representation dated 14/7/2007 is filed herewith and is marked as ANNEXURE A 9."

The above pleadings are not very clear and specific. It is evident that the applicant did not approach the Department promptly after above referred 'O.A. No. 333/2005 was withdrawn as not pressed' vide order dated 24.01.2007 and or the grievance of the petitioner is still not considered as per department letter dated 08th December, 2006/Annexure A/2.



According to the applicant himself, his representation dated 14th July, 2007 (Annexure A/9 to the O.A.) has not been decided.

Am.

In view of the facts noticed above, the applicant is not entitled, at this stage, to any of the relief as claimed in the present O.A.

In the interest of justice and fair play, we, however, direct the applicant to file a certified copy of this order along with a complete copy of the present O.A. (with all annexures) as well as additional representation, if so advised within four weeks from today before concerned competent authority / CWE, MES, Air Force, Jodhpur (Respondent No. 2) and if certified copy, as stipulated above, is filed, the said authority shall decide the grievance of the applicant / representation / additional representation, if any, by passing a reasoned order in accordance with law / relevant rules / scheme / circulars etc. and the relevant record / material before him, within three months of receipt of certified copy of this order exercising unfettered jurisdiction on the basis of record and relevant rules / circulars on the subject without being influenced by any of the observations made in this order and communicate its decision to the applicant forthwith.


Original Application is disposed of by moulding the reliefs to the extent indicated above.

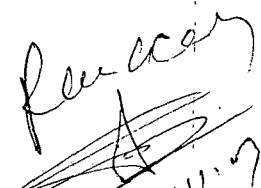


"No order as to costs".

Tarsem Lal
(Tarsem Lal)
Member (A)

A.K. Yog
(A.K. Yog)
Member (J)

Part II and III destroyed
in my presence on 05-06-14
under the supervision of
section officer (J) as per
order dated 26-02-14

Section officer (Records)


28/11/17