

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.222/2010

Jodhpur, this the 3rd day of December, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Birbal Singh Raiwar s/o Shri B.R.Raiwar, by caste Jat, aged about 57 years, resident of 69 Abhaygarh Scheme, Opposite KV No.1, Air Force Area, Jodhpur at present working as a Assistant under Res. No.4.

.....Applicant

Mr.S.S.Gaur, counsel for applicant

Vs.

1. Union of India through Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Engineer in Chief, Director General (Pers.) Army Branch, Kashmir House, New Delhi.
3. Chief Engineer, Southern Command, Army MES, Pune.
4. Commander Works Engineer, Air Force, Jodhpur.

...Respondents

Ms. K. Parveen, counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicant has filed the present OA challenging the seniority list dated 26.9.2005, order dated 30.6.2007 and subsequent order dated 24.6.2010 passed by the CWE, Air Force, Jodhpur and prayed for the following reliefs :-

- i) by an appropriate order or direction, impugned orders dated 12.2.2010 and 24.6.2010 may kindly be quashed and set aside;
- ii) respondents may kindly be directed to include the name of the applicant in the seniority list dated 26.9.2005 after the name of Shri John G. Assistant;
- iii) Respondents may kindly be further directed to promote the applicant on the post of Office Superintendent with effect from the date persons junior to him were promoted.
- iv) Any other appropriate order or direction which may be considered to be just and proper may be granted in favour of the applicant.
- v) Cost of the application may kindly be awarded to the applicant.

2. Short facts, as stated by the applicant, are that the applicant was appointed to the post of LDC vide appointment letter dated 30.8.1972 in the Military Engineering Service. The Chief Engineer (Pers.) prepared a promotion cum posting list from the grade of UDC/Steno Gr.III to the post of Assistant against the existing vacancies in the Command and posting to the stations indicated against their names. The applicant was shown serving at GE(A) Central, Jodhpur and after promotion he was posted to CWE (AF), Jodhpur. The Garrison Engineer (Army), Central, Jodhpur did not relieve the applicant for long and after several exchange of correspondence between the authorities, the applicant was relieved on 11.3.2005 from the office of GE(A) Central to join at CWE (AF), Jodhpur. In the seniority list dated 26.9.2005 of Assistants for promotion to the post of Office Superintendent, name of the applicant was not shown. The applicant submitted representations but no heed was paid. The Chief Engineer Southern Command also wrote a letter on 29.9.2008 for considering name of the applicant in the panel of promotion for the post of Office Superintendent. The applicant also submitted a detailed representation on 16.2.2010 to review the decision taken but the CWE, AF, Jodhpur turned down the

request of the applicant vide order dated 24.6.2010. Therefore, aggrieved with the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned in para-1 above.

3. The respondents by filing reply submitted that the applicant did not approach the authorities to get him relieved due to his personal interest as he was working as Cashier and since he belongs to clerical cadre he was well aware of the policies in this regard. It is further submitted that the Chief Engineer directed to relieve but due to deficiency of staff as well as critical appointment of Cashier, the same could not be implemented, but at the same time, the applicant did not make any serious efforts to get himself relieved. Respondents have further submitted that the movement order was cancelled on the request of the applicant and the action of the respondents is perfectly just and proper being in accordance with the rules on the subject. The grievance of the applicant has already been redressed by passing the order dated 24.6.2010.

By way of filing additional affidavit, the respondents have submitted that the applicant has assumed the post of Assistant after 2 years, therefore, the service of the applicant should be reckoned from the date of joining and not from the date of issue of panel.

4. Heard both the parties. Counsel for the applicant contended that the applicant has not been relieved by the competent authority to join on the promotional post even after continuously requesting the concerned authorities to relieve him to join the next promotional post. The Headquarters' authorities and Commander Works Engineer (Air Force) Jodhpur never relieved him for joining the promotional post and thereafter they did not consider his candidature for promotion from the post of

Assistant to Office Superintendent on the ground that the applicant has not been relieved from the post of UDC to join as an Assistant and had not completed the requisite period of two years as Assistant.

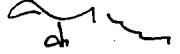
5. Per contra, counsel for the respondents while reiterating the points brought out in the reply contended that the respondent department passed a reasoned speaking order dated 24th June, 2010 at Annexure-A/1 for non-consideration of his candidature for the post of Office Superintendent as the applicant never worked on the post of Assistant for the requisite period of two years.

6. We have considered the rival contentions of both the parties. Counsel for the applicant drew our attention towards Annexure-A/4, i.e. the representation dated 08.10.2003 submitted by the applicant to the Garrison Engineer (Army) Central, Jodhpur, by which he requested the concerned authorities to relieve him to join his new place of posting and after that he never requested the competent authority for relieving him. It is seen that the impugned order of Annexure-A/1 has been passed by the Colonel, Commander Works Engineer (Air Force) Jodhpur, in which the averments made in this original application and made earlier also to relieve him have not been duly considered by the concerned authorities. Therefore, in view of the facts and circumstances of the case, we are intending to dispose of this application with certain directions.

7. Accordingly, the OA is disposed of with a direction to the applicant to file a detailed representation stating all the reasons/grounds which have been averred in this OA and the competent authority shall decide all the reasons/grounds averred in the representation after considering each and

every aspect raised by the applicant in support of his case. The applicant is directed to file the said representation within a period of one month from the date of receipt of copy of this order and the competent authority is directed to decide the representation within a period of four months from the date of receipt of a copy of the representation. If any grievance remains after the decision on the representation, the applicant may approach this Tribunal, if so advised. No order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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