

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 195/2011

Jodhpur this the 7th day of October, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Naurang Lal S/o Shri Manohar Lal, aged about 33 year, resident of
Gali No.4, Guru Nanak Basti, Sri Ganganagar.

.....Applicant

By Advocate: Mr S.S.Gaur

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.
5. Shri Shiv Darshan Mishra s/o Shri Deeraj Narayan Mishra, MES No.316564, Chowkidar, HQ Commander Works Engineer (Air Force), Military Engineer Service, Tugalakabad, New Delhi, PIN No.110062.

.....Respondents

By Advocate : Ms K. Parveen for resp. 1 to 4

ORDER (Oral)

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

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

[Signature]

- (a) By an appropriate order writ or direction, the impugned order dated 21.12.2004 may kindly be quashed and set aside to the extent of the appointment of the private respondent.
- (b) By an appropriate writ, order or direction the respondent may kindly be directed to provide the appointment to the petitioner on the post of Chowkidar as per the selection list prepared by respondents.
- (c) Any other order, which this Hon'ble Tribunal deems fit, just and proper in the facts circumstances of this case, kindly be passed in favour of the applicant.
- (d) Costs be awarded to the applicant.

2. Brief facts of the case, as averred by the applicant, are that pursuant to the advertisement for recruitment to the post of Chowkidar, the applicant applied and he was called for interview vide letter dated 6.11.2003 and the applicant appeared in the same. After the interviews, the respondents prepared a selection list and name of the applicant had been shown at Sl.No.3 in general category while the name of private respondent Shiv Darshan was kept in reserved list at Sl.No.1 as at Ann.A/3. When the applicant did not get appointment, though he was at Sl.No.3 in the selection list, he filed representation and later, filed OA no.50/2005. In the reply to the OA, the respondents misled the Tribunal while stating that the Department advertised 06 posts but later on one post was withdrawn. The OA was dismissed vide order of this Tribunal dated 4.3.2010 (Ann.A/5). After seeking information under RTI Act, the applicant filed RA No. 5/2010 before this Tribunal which was withdrawn by the applicant with liberty to file a fresh OA, if law permitted. It is further averred that the respondent authorities advertised 06 posts vide advertisement dated 25/31.10.2003 wherein 3 posts were of general category candidates

and one each of SC/OBC/ST categories. As per the proceedings of the Board of Officers the selection list was prepared wherein name of the applicant was shown at Sl.No.3 in the select list of the general category and the name of Shiv Darshan Mishra was shown at Sl.No.1 of the reserved list, but Shri Mishra being a blue eyed person of the higher authorities was provided appointment despite of the fact that the applicant was selected, as such the action of the respondents is arbitrary and illegal. It has been further averred that during pendency of the OA No.50/2005, the applicant submitted a Misc. Application for production of secondary documents and same was allowed by the Tribunal and directed the respondents to produce the record but the respondents have not produced the record of the case and the respondents succeeded in getting the order of dismissal in the OA while stating that they have withdrawn one post of Chowkidar. The respondents misled this Hon'ble Tribunal by submitting wrong facts and provided appointment to a person who was not in select list, thus the impugned order dated 21.12.2004 is liable to be quashed and set-aside to the extent of appointment to the applicant on the post of Chowkidar as per select list. Therefore, the applicant has filed the present OA aggrieved by the order dated 21.12.2004 by which respondents provided appointment to the private respondent Shiv Darshan Mishra under the direction of the higher authorities, praying for the reliefs as extracted above.

3. The counsel appearing for the respondents submits that the reply filed earlier may be considered reply to the amended OA. In the

reply to the OA, the respondents have taken preliminary objection submitting that the OA filed by the applicant is barred by the principles of res-judicata as the controversy involved in the present matter has already been considered by this Tribunal in earlier OA No. 50/2005 vide order dated 4.3.2010. Therefore, the OA is not maintainable. The respondents have further submitted that advertisement was published for recruitment of 6 vacancies but later on vacancy of one Chowkidar was withdrawn by the Chief Engineer (Air Force) Western Air Command, Palam, Delhi. In reply to the Misc. Application No.169/2014, the respondents have submitted that the applicant and private respondent Shiv Darshan Mishra appeared in the appointment process for Chowkidar (Gen. Cat.) under LRS-2003 released vide HQ CE WC letter dated 28.10.2003. both the individuals were not considered for appointment by the Board of Officers dated 11.11.2003 against the LRS-2003 and appointment process was declared completed after exhausting of existing vacancies in LRS-2003. Shri Shiv Darshan Mishra was given appointment on 25.10.2004 against the LRS-2004 under the court's direction prior to finalizing the Board proceedings dated 29.11.2004 and the appointment of Shri Mishra has no relation with LRS-2003, therefore, the averment of the applicant to the effect that the respondent provided the appointment to the private respondent under the influence of the superior authorities, is totally false and fabricated. The applicant has not even applied for appointment against LRS-2004.



4. The applicant has filed additional affidavit and the respondents have also filed additional affidavit annexing certain documents.

5. Heard both the parties. Counsel for the applicant contended that respondent No.2 issued advertisement for recruitment to the post of Chowkidar and the applicant being eligible submitted his application for the same. He was later on called for interview vide letter dated 5.11.2003. The applicant appeared in the interview and his name has been shown at Sl.no.3 of the select list and name of private respondent Shiv Darshan Mishra was kept in the reserved list at Sl.No.1. However, no appointment was given to the applicant. Therefore, he filed OA bearing No.50/2005. The respondents while filing reply to the OA misled the Tribunal stating that the department advertised six post of Chowkidar but later on one post was withdrawn by the higher authority. The said OA was dismissed vide order dated 4.3.2010. Counsel for the applicant further contended that he filed a Review Application in OA No.50/2005 but the same was withdrawn on 11.5.2011 with liberty to file fresh OA, if law permits. It was emphasized that the applicant was not given appointment though he stood 3rd in the select panel in the general category and the respondents provided appointment to private respondent Shiv Darshan Mishra vide order dated 21.12.2004 who was not in the merit list of the selected candidates but was in the reserved list. Therefore, the appointment of private respondent Shiv Darshan Mishra is arbitrary and illegal and liable to be quashed and the applicant is

entitled to appointment to the post of Chowkidar being in the select panel.

6. Counsel for the respondents contended that the issue of giving appointment to the applicant on the post of Chowkidar has already been adjudicated upon in OA No.50/2005 and the same was dismissed. The Review Application No.05/2010 filed in the said OA was withdrawn by the applicant with permission to file a fresh OA, if law permits. Counsel for the respondent submits that since the matter of giving appointment to the applicant on the post of Chowkidar has already been adjudicated upon, therefore, the principle of res-judicata is applicable and the OA is not sustainable in the eyes of law. Further, appointment of respondent No.5 is a separate issue which has been made as per the direction of the Delhi High Court and there is no irregularity or illegality in the same and, therefore, question of cancellation does not arise.

7. We have given our thoughtful consideration to the rival contention of both the counsels. It is seen that in OA No.50/2005 decided by this Tribunal on 4.3.2010, the same issue was agitated by the applicant seeking following reliefs:-

“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.”

8. After considering the entire case, the Tribunal came to the following conclusion:-



"7. On record perusal, no person/candidate appears at sl.7, (above applicant at sl.6) who was given an appointment on the 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 Chowkidar, 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 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 deliberations made above, no interference is called for in the present OA. Resultantly, the present OA is dismissed with no order as to costs."

9. The applicant also filed a Review Application No.05/2010 in OA No.50/2005 which was decided on 11.05.2011 by this Tribunal as under:-

"After some arguments, the learned advocate of the applicant seeks permission to withdraw this Review Application with liberty to the applicant to file fresh Original Application, if so advised. The learned advocate of the respondents has got no objection.

Considering the submission of the learned advocate of the applicant, he is permitted to withdraw this Review Application with permission to file fresh Original Application if law permits and if the applicant is so advised.

The Review Application is disposed of accordingly."

10. Thus, the applicant was permitted to withdraw the Review Application with liberty to file fresh OA, if law permits and if the applicant is so advised. It is seen that as far as the question of law is

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concerned, the applicant is seeking same relief 8(b) i.e. seeking direction to the respondents to provide appointment to the applicant on the post of Chowkidar as per the select list prepared earlier, in the present OA which has already been adjudicated upon. As the selection and appointment pertaining to the LRS-2003 has already been adjudicated upon by this Tribunal vide its order dated 4.3.2010 in OA No.50/2005, therefore, the relief 8 (b) cannot be granted as per the law. He has also sought the relief of cancellation of the order dated 21.12.2004 by which respondent No.5 was appointed as Chowkidar. As the appointment of respondent No.5 relates to the subsequent selection in which appointment order was issued to respondent No.5 in view of Delhi High Court order dated 28th May, 2004, therefore, the relief sought in para 8(a) cannot be granted.

11. In view of above, the OA being devoid of merit is dismissed with no order as to costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
Administrative Member

K.C.Joshi
(JUSTICE K.C.JOSHI)
Judicial Member

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