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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
BENCH:
HYDERABAD

O.A.NO.870 OF 1999.

DATE OF DECISION: 27/10/99

BETWEEN:

B.K.Nagpal. ..Applicant

And

1. Union of India, represented by Secretary, (Defence Production), Ministry of Defence, South Block, DHQ PO, New Delhi-110 001.
2. Director General of Quality Assurance, Department of Defence Production and Supplies, Ministry of Defence, South Block, DHQ PO, New Delhi-110 011.
3. Controller of Quality Assurance Systems, Ministry of Defence (DGQA), 156, Gough Lines, Tirmulgherry PO, Secunderabad-500 015. ..Respondents

COUNSEL FOR THE APPLICANT :: Mr. V.Jogayya Sarma

COUNSEL FOR THE RESPONDENTS :: Mr.B.Narasimha Sharma

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

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1. The applicant joined as Foreman in the Chief Inspectorate of Systems, now re-designated as Controllerate of Quality Assurance Systems under the Director General of Inspection (now re-designated as Directorate General of Quality Assurance), Ministry of Defence in the year 1970. He was promoted in the subject of Flight Science in the year 1976 as Junior Scientific Officer. Subsequently on the applicant's representation, orders were issued by the Director General of Inspection changing the subject of the applicant from Flight Science to Electronics and transferred him to an establishment dealing with technical functions relating to Electronics by Office Order No.97497/DG1/Adm-6/RTS/Elec, dated 25-6-1986. The same was questioned by the applicant in this Tribunal by filing OA.No.184 of 1987. In the said OA it was contended by the respondents that the applicant had not submitted his Option Form within the time prescribed when trifurcation of the Defence Science Services was resorted to.

2. On the OA being filed, the Tribunal came to a conclusion that the Option Forms were submitted in time. The Tribunal took into consideration the Full Bench Judgment of this Tribunal in TA.No.18 of 1987 (R.S.CHIMNI Vs. UNION OF INDIA & OTHERS) dated 17-6-1988. By the said Judgment the respondents were directed to absorb the applicant into the cadres for which he opted. The Tribunal also held that it was not necessary to subject the applicant to screening when he was seeking transfer to other cadre in DSS. While giving the said direction the Tribunal observed that it was evident that as the knowledge of the applicant in Aeronautics was not useful for discharging his duties in various branches in DQAS and his knowledge was useful for some other branches in DTD & P(Air) or DRDO, it was held by the same Bench in OA.No.184 of 1987 that it was not established that the applicant's option to DTD & P(Air) was belated and hence his case had to be

considered afresh. It was further observed that having regard to the fact that the Full Bench in the Judgment referred to above held that the optee should not be subjected to screening and the applicant had approached the Tribunal at a late stage, any order which may be passed in his favour should not cause prejudice to the Officers in the other cadres and the Tribunal felt it just and proper to pass the following Order:-

"8. The applicant has to be transferred in the grade of SSO-II to DTD &P(AIR) to DRDO in the next available vacancy (for which proficiency in aeronautics is necessary) whichever arose earlier. On such transfer the applicant has to take the bottom seniority in the grade of SSO-II."

3. Inspite of the situation being as stated above as submitted by the learned Counsel Mr.V.Jogayya Sarma for the Applicant, an Order dated 4-5-1999 was issued by the respondents transferring the applicant to an establishment dealing with technical functions of Radars. The applicant therefore submitted a representation dated 11-5-1999 stating interalia that:-

- i) The Hon'ble CAT, Hyderabad Bench had directed long back that the applicant should be posted to an immediate available vacancy of SSO-II in either DRDO or DTD &P(Air) where the knowledge of Flights Science subject/Aero Engineering was useful and that he should be absorbed in the above Organisations without any pre-conditions, scrutiny or screening;
- ii) Instead the posting out had been issued vide Head Quarter Letter No.98969/RTS(JSO)/99/DGQA/ADM.6A, dated 4-5-1999 to CQA(Radar), Bangalore.

4. The learned Counsel for the Applicant further submitted that the applicant did not want posting to any particular establishment as long as it was in line with the directions given by this Tribunal. To post the applicant

to CQA (R) was not as per the directions of the Tribunal, according to the learned Counsel for the Applicant.

5. After the receipt of the representation dated 11-5-1999, Movement Order was also issued by the 3rd respondent stating that the applicant would be relieved of his duties in the After-Noon of 21-6-1999. The applicant submitted that he was entitled to be posted as SSO-II in any of the Organisations having Flight Science subject. He was deprived of his promotion to SSO-II in his own branch.

6. Further according to the learned Counsel for the Applicant the contention that the applicant had to be screened was not correct and contended that there should be no screening before posting to the Organization having Flight Science. Since the Orders of this Tribunal were not complied with, according to the learned Counsel for the Applicant, and on the otherhand the applicant was transferred to Bangalore, which was an establishment dealing with technical functions of Radar, it became necessary for the applicant to take this fresh proceeding seeking a declaration that the Order of the Director General of Quality Assurance, New Delhi, dated 4-5-1999 was illegal and void and to direct the respondents to continue the applicant at Secunderabad in accordance with the directions given in the Judgment in OA.No.749 of 1992, dated 22-3-1995 of this Tribunal and also to direct the respondents to post the applicant to the post of SSO-II in DTD&P(Air) or DRDO without insisting on screening as directed by the Tribunal in OA.No.749 of 1992, dated 22-3-1995.

7. The OA is seriously contested by the respondents. Certain facts, however, are not disputed inasmuch as, according to the respondents, the applicant did not give his option to go over to DTD&P(Air), which was

rejected as belated and he was retained in the DGQA Organization with a change of his subject from "Flight Science" to "Electronics", which was challenged by the applicant before this Tribunal, vide OA.No.184 of 1987, which was disposed of by this Tribunal by Order dated 1-3-1990 with the directions for re-consideration of the case of the applicant for transfer to any of the establishments in the Ministry of Defence having Flight Science subject in order to have his promotion in that Group. The matter was thereafter examined in consultation with the DGAQA and DRDO, but it was not found feasible to transfer the applicant to any of the two organisations.

8. Subsequently when the applicant was approved for promotion to the grade of Senior Scientific Officer Grade-II of the DQAS and ordered for transfer on promotion to Head Quarters, Missile Systems Quality Assurance Agency (MSQAA), New Delhi, in September, 1991, the applicant again filed an application (OA.No.749 of 1992) in this Tribunal, which was disposed of by an order dated 22-3-1995 with the directions to the respondents that the applicant be transferred in the grade of SSO-II to DGAQA or DRDO in the next available vacancy (for which proficiency in Aeronautics was necessary), whichever arose earlier. On such transfer the applicant had to take the bottom seniority in the grade of SSO-II. The matter was accordingly referred to DRDO and DGAQA and the latter agreed to take up the case of the applicant for absorption in their Organization. However, it was pointed out by them that theirs being a sensitive Organization, necessary Intelligence Bureau (IB) clearance was to be sought from the Ministry of Home Affairs, Special Security Questionnaire (SSQ) and attestation forms for the said purpose were made available by them for completion by the applicant.

9. Further according to the learned Counsel Mr.B.Narasimha Sharma for the Respondents, after the above requirement of furnishing

SSQ/Attestation Forms was conveyed to the applicant, he had been representing against the same on the ground that the requirement should be insisted upon only in respect of fresh entrants (in DGAQA) and not in his case in view of the fact that he had already served in Defence for a number of years. DGAQA, on the otherhand, according to Mr.Sharma, had been insisting that IB Clearance was a must and unless the individual furnished the requisite forms, no action in regard to his appointment in their Organization could be taken. Further according to the learned Sr.Standing Counsel the instructions based on which DGAQA had been insisting on IB Clearance of the applicant were contained in the Department of Personnel & Training OM dated 4-9-1986, and in view of the fact that the said OM was a classified document, the copy thereof was not annexed to the respondents' counter affidavit. The instructions interalia stipulated making of a special verification through IB in respect of persons to be appointed in posts in the Sensitive Departments/Ministries enumerated in the said OM dated 4-9-1986, and DTD&P(Air), Ministry of Defence was included in the list of these Sensitive Departments.

10. Mr.B.Narasimha Sharma further submitted that the representation submitted by the applicant in November,1998 was again considered in consultation with the DGAQA and a copy of their communication dated 7-1-1999 was produced along with the counter at Annexure.R-XI. The gist of the relevant instructions was set out in the reply given to the applicant vide letter dated 8-4-1999 and the applicant was afforded last opportunity to furnish the requisite forms within one month. He was also informed that in case he did not do so, the Head Quarters would be constrained to presume that he was no longer interested in his transfer to DGAQA and in his consequent promotion and that based on his existing station seniority, he would have to be considered for transfer to some other station in terms of the



Rotational Transfer Policy of the DGAQ. The learned Sr. Standing Counsel further submitted that the applicant instead of meeting the simple requirement of completing the forms required for processing his case of transfer to DGAQA, chose to make representation dated 6-5-1999 against the letter dated 16-4-1999. He also made a representation dated 11-5-1999 against the Order dated 4-5-1999 of posting/transfer of JSOs under the Rotational Transfer Scheme for the year 1999, vide which he had been transferred to the Controllerate of Quality Assurance (Radar), Bangalore, in the DGQA Organization. However, his representation dated 6-5-1999 and 11-5-1999 were rejected after due consideration by Orders dated 9-6-1999 and 18-6-1999 respectively.

11. From these pleadings and contentions, it appears that the only point attracting attention of this Tribunal in this proceeding is whether in the case of the applicant having regard to his length of service and association spread over a long period of time, the requirement of screening test and submission of Attestation Forms could be dispensed with. The learned Sr. Standing Counsel Mr. B. Narasimha Sharma had no ambiguity in his mind that the applicant may not be screened for the reasons stated by him but he cannot be spared from submitting the Attestation Forms as the same were required by the authorities before the applicant could be allowed to take charge of his new post. It need hardly be stated that various limbs of the Department with which we are concerned in this OA are all of a sensitive nature and no relaxation could be allowed even if the same are construed as mere formalities.

12. When I myself examined the proforma and the format of the Attestation Forms (blank), I could see that vital information of a comprehensive nature was contemplated and it may be disastrous if such

information or particulars are not available on the record relating to the incumbent in question. If screening could be dispensed with, as conceded by the learned Sr. Standing Counsel, the necessity of obtaining the Attestation Forms from the concerned incumbent cannot and should not be dispensed with. True indeed the applicant may have been associated with the respondent-departments and his skill on one hand and integrity on the other may not have given any anxious moments to his Superiors, the basic facts particularly in relation to intelligence which are contemplated in the Attestation Forms could hardly be omitted from being brought on record even if such particulars were obtained and available on the record of the applicant's case and it would not be prudent and expedient on part of this Tribunal to direct the respondents to exempt the applicant from furnishing the required particulars by way of Attestation Forms. The Department would be accused of culpable negligence of the first order if it omits to bring on record such particulars.

13. Some of the communications which have come on the record of the case with regard to the necessity of IB Clearance would give us a clear perspective how such IB Clearance is necessary. In the confidential communication dated 27-10-1995 from the Joint Director (ADM) of the Ministry of Defence, it is stated that the case of Sri B.K.Nagpal (applicant) was under active consideration at the Head Quarters. However, since DTD & P(Air) was a sensitive Organization, necessary IB Clearance had to be sought from the Ministry of Home Affairs. In a subsequent letter dated 3-11-1995, addressed to the applicant it is stated that DTD&P(Air) had intimated that the applicant's transfer was under active consideration and that since DTD&P(Air) was a sensitive Organization, necessary IB Clearance was required to be obtained from the Ministry of Home Affairs and therefore SSQ and AF were forwarded to the applicant with a direction to complete

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the said forms in all respect and to submit the same to ADMIN at the earliest for onward transmission to HQ, DTD&P(Air) for further necessary action. By a further letter dated 20-11-1995 addressed to the applicant by the same authority, the same requirement as stated in the earlier letter dated 27-10-1995 was called for. In a letter dated 20-12-1995 issued by the Director General of Quality Assurance (Systems), New Delhi, addressed to the Controllerate of Quality Assurance (Systems), Secunderabad, it is stated that the case was taken up with DTD&P(Air), who had intimated that it had been declared as a sensitive Organization and any Officer posted to that Organization had to have a special scrutiny verification and therefore it was urged in the said letter that the applicant may be advised to fill the SSQ and Attestation Forms immediately for further action at the Head Quarters. Again by a letter dated 22-1-1996, the same authority impressed upon the applicant that DGQA, vide their letters dated 20-12-1995 and 9-1-1996 had stated that the SSQ and AFs in triplicate had to be filled at the earliest and forwarded to them for further action. In paragraph 3 of the said letter it is pointed out that the forms duly completed in all respects be submitted to ADMIN immediately for onward transmission to HQ, DGQA. The Assistant Director in the office of the Director General of Quality Assurance, New Delhi, by his letter dated 23-2-1996 informed the Controllerate of Quality Assurance (Systems), Secunderabad, that the case regarding absorption of Sri B.K.Nagpal, JSO(applicant) in DTD&P(Air) on promotion as SSO-II was again discussed in the light of the representation made by the Officer and they reiterated that as per the policy issued by the Ministry of Defence, the forms were required to be filled in by all posted to DTD&P(Air) and that this was a requirement for all concerned before they were taken into DTD&P(Air). It is further pointed out that the previous service, if any, rendered was not a criteria and filling up the form was a must for DTD&P(Air). In paragraph 3 of the said letter, it is stated that Sri Nagpal be

advised to fill up the requisite form to enable them to implement the Judgment of the Hon'ble CAT, Hyderabad. The same authority addressed a further letter dated 6-3-1996 to the applicant stating that the DGCA(ADM-6A), intimated that the applicant's case was discussed with the DTD&P(Air) and they asserted that as per the policy issued by the Ministry of Defence/DOP&T, the forms were required to be filled in by all posted to DTD&P(Air) and that this was a requirement for all concerned before they were taken into the DTD&P(Air). It is further pointed out in the said letter that the previous service, if any, rendered was not a criteria and filling up forms was a must for DTD&P(Air). By a further letter dated 5-6-1996, while urging the applicant to expedite submitting the required Attestation Forms, the applicant was warned that his case had been delayed considerably due to his non-cooperation and the applicant was directed to fill up the required forms and that non-compliance of the said requirement would invite disciplinary action since orders of the CAT had to be implemented. This is followed by a series of letters on the subject addressed to the Controller, Controllerate of Quality Assurance (Systems). By a further letter dated 8-4-1999, issued from the office of the Director General Quality Assurance addressed to the Controllerate of Quality Assurance (Systems), Secunderabad, it is pointed out in paragraph 3 that the matter had been again considered in consultation with the DGAQA that the OM dated 4-9-1986, inter-alia stipulated making of a special verification through the IB in respect of persons to be appointed in posts in the sensitive Departments/Ministries enumerated in the OM itself. It is clarified in the said letter that it was not feasible to provide a copy of OM dated 4-9-1986, the same being a classified document and the Controller was called upon to bring it to the notice of Sri B.K. Nagpal that he could not be appointed in DGAQA without requisite verification through the IB. In paragraph 4 of the said letter, it is made clear that the applicant be instructed to complete the

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SSQ and Attestation Forms immediately for processing the case further. The letter contained also a direction that it should be made clear to the Officer that in case he did not submit the requisite forms within one month of the date of the letter in question, the Head Quarters would be constrained to presume that he was no longer interested in his transfer to DGAQA and consequently in his promotion to the grade of SSO-II. His case, in that event, was liable to be treated as one for refusal of promotion.

14. In the rejoinder affidavit filed by the applicant in this proceeding, the applicant states in paragraph 4 that he was dealing with secret and confidential equipments and documents of the Defence for the last 25 years and therefore there was no requirement of clearance by Intelligence Bureau or any other Agency. He further states in his rejoinder that the correspondence already filed establishes that the clearance was intended only for the new recruits to the Organization. He further submits that one Sri J.R.Jain, working as Chief Draughtsman (Engineering) was transferred from CQAS (same Organization) to DTD&P (Air) about 5 or 6 years back without any clearance from IB and that there were many such instances.

15. We have, however, seen from the exchange of communications as set out in the preceding paragraphs that it could not be construed that the requirement was to be complied with only in case of new recruits. The reason for not producing the OM dated 4-9-1986 has also been satisfactorily explained by the Respondents which does not call for further elucidating the statements made by the applicant in his rejoinder affidavit that one Sri J.R.Jain, working as Chief Draughtsman (Engineering) was transferred without any clearance from IB. However, the learned Standing Counsel Mr.B.Narasimha Sharma pointed out that Sri J.R.Jain was merely a Draughtsman and it was not found in such cases to insist upon IB clearance.



The applicant has not produced any material on record to show that he was singled out and discriminated by insisting upon him to submit the Attestation Forms so that 1B clearance could be obtained.

16. For all the above reasons, therefore, we do not find any merit in the applicant's case and hence the OA is dismissed. However with no order as to costs.

D.H.NASIR
(D.H.NASIR)
VICE CHAIRMAN

DATED: this the... 27 day of October, 1999

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO :-

1. BBHC
2. HRRN M (A)
3. BBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H.NASIR
VICE - CHAIRMAN
THE HON'BLE MR.R.RANGASWAMY :
MEMBER (ADMN.)
THE HON'BLE MR.S.S.JAI PARAMESWAR :
MEMBER (JUDL.)

DATE OF ORDER: 27/10/99

8/1/99

MA/RA/CP.No.

in
OA. NO. 870/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

