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IN THE CENTRAL ADMINISTRATIVE PRISONAL JAIPUR BENCH:JAIPUR.

O.A. No. 79/1996

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M.A. No. 300/96

Date of order: 19.12.1996

Akhtar Hussain S/o late Shri
Gulab Khan, aged around 26 years,
resident of Outside Delhigate,
Meenagadi, Alwar. Presently
working as Mazdoor in the office
of Garrison Engineer, MES, Alwar.

: Applicant

Versus

1. Union of India through Secretary,
Ministry of Defence, Government
of India, New Delhi.
2. Commander Works Engineers,
M.E.S., Banipark, Jaipur-6.
3. Garrison Engineer, M.E.S.
Itarana Palace, Alwar (Raj.)

: Respondents

Mr. P.N. Mathur, counsel for the applicant
Mr. V.S. Gurjar, counsel for respondents

CORAM:

HON'BLE SHRI GOVINDA KRISHNA, VICE CHAIRMAN
HON'BLE SHRI S.C. VAISH, MEMBER (ADMINISTRATIVE)

ORDER

(PER HON'BLE SHRI S.C. VAISH, MEMBER (ADMINISTRATIVE))

The applicant Akhtar Hussain was given a
compassionate appointment by the respondent Garrison
Engineer, M.E.S. Alwar (Rajasthan) on 4.2.1994. His
appointment was to a Group 'D' post but he had not
attained the qualification of VIIIth Class pass. Hence,
an undertaking was obtained from him on 20.1.1994 (R-2)
which is reproduced below:-

"UNDERTAKING CERTIFICATE"

I, Sh. AKHTAR HUSSAIN S/o Late Shri Gulab Khan
submit an undertaking that in case I am applied
for the post of Mazdoor in MES I will pass 8th

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Class within a period of two years. In case I could not pass 8th Class within a period of two years, I am liable for termination of service for which I will not have any objection.

Sd/-
(Akhtar Hussain)
(Signature of the Individual)

Place: Alwar.
Dated: 20 Jan.94."

The applicant did not attain the qualification of VIIIth Class pass within two years i.e. upto 4.2.1996 and the respondents by their order dated 19.1.1996 (A-1) terminated his services under the terms of appointment.

2. The case of the applicant is that he was appointed in February, 1994 on compassionate grounds and he could obtain admission in a School only in July, 1994 when the academic session started. In his first attempt in 1995 he failed and it was only in a second time in 1996 that he passed VIIIth class. In support of his contention he has submitted a certificate from Government School, Alwar that he had passed this examination in 1996. No mark-sheet has been submitted by the applicant. The case of the applicant is that he passed the examination four months after the prescribed period of two years.

3. We have heard Shri R.U.Nathur for the applicant and Shri V.S.Gurjar for the respondents and examined the records in detail.

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4. The facts of the case are largely not in dispute. The learned counsel for the applicant urged that this was a compassionate appointment and enforcing a default of four months in educational qualification would be against the entire spirit of the compassionate appointment and also that the delay occurred because of the academic session. He urged that two years should be counted from July, 1994 when the first academic session was available to the applicant. The learned counsel for the respondents has contested this and urged that the applicant gave a specific Undertaking, which has been reproduced above and he has to abide by that undertaking. He further argued that Rules of compassionate appointment as framed by the respondents by their circular dated 22.2.1988 (R-3) provide for temporary relaxation of educational qualifications but this period under the Rules is limited to two years. The relevant paragraph 3(c) of the Rules is reproduced below:-

"3(c) Departments are, however, competent to relax temporarily educational qualifications in the case of appointment at the lowest level i.e. Group 'D' or LDC post, in exceptional circumstances where the condition of the family is very hard. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the persons concerned if still unqualified, are liable to be terminated."

The learned counsel for the respondents urged that though this is a hard case but the Rules reproduced above do not permit the respondents to continue the relaxation beyond two years. We are in agreement with

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the learned counsel for the respondents that though this is a hard case which involves a delay of only four months and that also because of the periodicity of the academic session but the Rules as they stand do not permit relaxation beyond two years. In these circumstances, the impugned order of termination dated 19.1.1996 (A-1) cannot be faulted. The application is without merit and is dismissed. No order as to costs.

5. M.A. No. 300/96 also stands dismissed accordingly.

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M.M.L 19-12-96
(S.C. VAISH)
MEMBER (A)

G.K. 19-12-96
(GOPAL KRISHNA)
VICE CHAIRMAN