

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 1.6.2001

OA No.229/2001

R.S.Kataria s/o Shri Sube Singh Kataria, Hostel Superintendent,
Military School, Dholpur r/o Kesharbag Area, Military School, Dholpur.

..Applicant

Versus

1. Union of India through the Deputy Chief of Army Staff,
Dte. Gen. of Military Training, GS Branch, Army
Headquarters, DHQ PO, New Delhi.
2. Principal, Military School, Ajmer (Rajasthan)

.. Respondents

Mr. Nand Kishore, counsel for the applicant

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CORAM:

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- i) "that the respondents letter dated 2.8.2000 (Ann.A/3) may be quashed and set aside and the respondents may be directed to consider the case of the applicant on transfer to Military School, Ajmer in accordance with the recruitment rules;
- ii) Any other appropriate order which may be found just and proper in the facts and circumstances of the case be passed in favour of the applicant."



2. The applicant is working as Hostel Superintendent in Military School, Dholpur since 10.10.1980. Two vacancies of Hostel Superintendent had occurred under the Principal, Military School, Ajmer. In response to the communication issued by respondent No.2 dated 7.5.2000 requesting the CAO and JS, Ministry of Defence requesting them to initiate action to fill up one vacancy of Hostel Superintendent by transfer of persons serving in the similar/equivalent or higher grades in lower information of Defence Services, the applicant applied on 15.7.2000 for the same and his case was duly recommended by the Principal, Military School, Dholpur. His application was rejected on the ground that it was received late and that the vacancy had been advertised in the meantime (Ann.A3). The applicant is aggrieved with this decision and has filed this OA.

3. The applicant's case is that as per the Recruitment Rules the posts of Hostel Superintendent are required to be filled up by promotion of U.D.Cs from within the Unit where the vacancies have arisen. In case it is not possible to fill up the vacancies from within the Unit, the same may be filled by the transfer from other Units failing which by recruitment from open market. It is stated that out of 2 vacancies, only one could be filled up internally as only one U.D.C was willing and the other U.D.C. was not willing, as has been stated in the letter dated 7.5.2000 (Ann.A1) by respondent No.2. The applicant submits that during the period the letter seeking willingness for transfer was issued, there were vacations in the School and he could apply only after the School re-opened. Because of that reason, he contends that the delay was not on account of any failure on his part. He made further representation dated 10.12.2000 (Ann.A/4) but no reply has been filed.

4. The notice for demand of justice dated 23.4.2001 was sent to the respondents which has been replied to by the respondents




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vide letter dated 1.5.2001. It has been stated in the reply that the Military School, Ajmer was not closed in the month of July, 2000 as it had opened on 30th June, 2000. It has also been stated that the office of the school remains open despite vacations. In respect of the claim of the non-teaching staff for transfer, it has been explained that such non-teaching staff like Hostel Superintendent can only ask for mutual transfer on compassionate ground on his choice station and hence the request of the applicant was invalid as per the said policy letter. It has further been explained that one Clerk who was not willing earlier when CAO and JS were asked to seek willingness from other schools, had later expressed his willingness and the vacancy which was available had been filled up by promoting Shri S.L.Rajani. In view of the fact that no vacancy exists, the respondents submit that no outsider can be considered for the post of Hostel Superintendent in Ajmer School.

5. Heard the learned counsel for the applicant on admission. The learned counsel submits that once having failed in the process of filling up the post by promotion of UDC, the respondents had floated the necessary inquiry seeking willingness from Hostel Superintendent of other schools for transfer to Ajmer. The delay in submitting the application needed to be considered on the ground that the School was closed for vacation and the applicant could not have applied earlier. After the applicant submitted his willingness for this post, the respondents could not have denied his claim and could not have filled up the vacancy by promoting a Clerk from within the School. The learned counsel contends that Shri S.L.Rajani is not even eligible for the post as he was not a UDC, when he was promoted as Hostel Superintendent.

6. I have given anxious consideration to the averments in



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the OA and the arguments advanced by the learned counsel for the applicant. It is admitted that the first step in the process for filling up the vacancy is by promotion of UDC already available in that school. Notwithstanding, the question of delay in submitting the application, the respondents have explained in reply to the notice for demand of justice that the said vacancy stands filled up by promoting one Shri S.L.Rajani. If the vacancy is filled up, no employee of any other school can claim a legal right in his favour. The question of eligibility of Shri S.L.Rajani for being promoted as Hostel Superintendent, is not the issue under adjudication. In my view, the applicant cannot claim to be transferred as a matter of right once the vacancy has been filled up by promotion of a Clerk from within the School at Ajmer. I do not find any merit in this OA and the same is liable to be dismissed.

7. I, therefore, dismiss this OA in limine.

[Signature] (6/2001)

(A.P.NAGRATH)

Adm. Member