

1
Central Administrative Tribunal
Jabalpur Bench

OA No.18/06

Jabalpur, this the 12th day of December 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.M.K.Gupta, Judicial Member

Deepak Pore
S/o late Shri Pandurang Pore
R/o H.No.436, Near Datt Mandir
Golbazar
Jabalpur (MP)

Applicant

(By advocate Shri Arvind Singh Gaur
on behalf of Shri Abhay Shrivastava)

Versus

1. Ministry of Defence
through the Chief Secretary
North Block
New Delhi.
2. Chief Engineer
Jabalpur Zone
Bhagat Marg, Post Box No.84
Jabalpur.
3. Garrison Engineer Project
Bhagat Marg, Ridge Road
Jabalpur.

Respondents

(By advocate Shri A.P.Khare)

ORDER (oral)

By M.K.Gupta, Judicial Member

Applicant seeks directions to respondents to appoint him on compassionate grounds.

2. Admitted facts of the case are that Shri Pandurang Pore, Senior Mechanic, Garrison Engineer Project, Jabalpur, died in harness on 5.3.99 and left behind his widow, three daughters and one son. Applicant who possesses B.Com degree with 55% marks, in addition

to computer diploma, applied for compassionate appointment on 29th September 2000. It is stated that thereafter 2 unmarried daughters got married, family holds no immovable property and is living in rented house. He received a communication dated 6th October 2000 from Chief Engineer, Jabalpur Zone requiring him to submit relevant documents for such consideration, which direction was complied with. Vide communication dated 20th February 2002, applicant was informed that his name was included in the merit list for employment on compassionate grounds for the post of Mazdoor at S.No. 146 by the Board of Officers, meeting of which was held in January 2002. The grievance of the applicant is that despite the above, no actual appointment order had been issued till date. He submitted a representation dated 3.6.05 (A-9) which elicited no positive result.

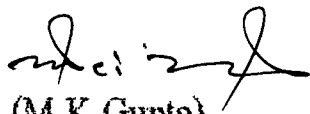
3. Respondents contested the said claim stating that applicant's request for compassionate appointment had been examined and rejected due to non-availability of vacancies within 5 % limited quota by the Board of Officers and he was intimated vide communication dated 20th September 2002 (R-1), which facts had been suppressed by applicant, contended Shri A.P.Khare, learned counsel for respondents. The learned counsel further contended that as the respondents had already passed aforesaid speaking order, there was no justification for judicial intervention by this Tribunal. Moreover, present application was filed almost three years after issue of said communication without either rebutting the said contentions or by filing a miscellaneous application seeking condonation of delay.

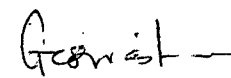
4. We heard learned counsel for the parties and perused the pleadings.

5. At the outset, we may note that neither any rejoinder was filed nor any document produced to show that the applicant did not receive the aforesaid communication dated 20th September 2002, as suggested during the course of hearing by learned counsel for applicant. In other words, on record, it is an admitted fact that a speaking order dated 20th September 2002 rejecting applicant's request was issued, stating due to "non-availability of sufficient vacancy within 5% quota", it was not

possible to appoint him on compassionate basis. Applicant has filed a copy of representation dated 3.6.05 (A-9) which makes no reference of the aforesaid order dated 20th September 2002. In other words, the communication dated 20th February 2002 vide which his name was included in the merit list for employment on compassionate ground has become redundant on passing of order dated 20th September 2002. In these circumstances, it is undoubtedly clear that the factum of passing of order dated 20th September 2002 has been suppressed by the applicant, for what reason and for what object, remains a mystery. Therefore, we have no hesitation to conclude that the applicant has not approached this Tribunal with clean hands. Even on merits, we find that applicant's case had been reconsidered by the Board of Officers along with other cases and could not be recommended due to non-availability of sufficient vacancy within 5% quota. The prescribed limit of 5% quota is sacrosanct and cannot be breached, as held by Supreme Court in Union of India vs. Joginder Sharma - 2002 SCC (L&S) 1111. The order dated 20th September 2002 remains unchallenged.

6. In view of discussion made herein above, we find no merit in the present OA and accordingly the OA is dismissed. No costs.


(M.K. Gupta)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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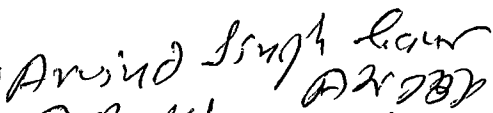
पूरांकन सं ओ/व्या.....जबलपुर, दि.....
पतिलिपि अन्वेषित:-

- (1) सचिव, राज्य उपायकाय कर एकोविशका, जबलपुर
- (2) वायव्य विभाग, जबलपुर
- (3) प्रत्यक्षी वि/डी.जी.ए.ए. जबलपुर
- (4) वायव्य विभाग, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप निदेश

27/11/06


Arvind Singh
A.P. Khanna

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on 27/12/06
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