

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR
BENCH, JABALPUR

Original Application No.141 OF 2005

This the 23rd day of August 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

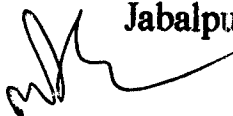
Raj Kumar Rajak
S/o Shri Kandhilal Rajak
Aged about 33 years
R/o 45, New Bajpai Colony,
Panty Naka, Cantt, Sadar,
Jabalpur.

Applicant

(By Advocate – Shri V.Tripathi)

V E R S U S

1. Union of India
Ministry of Defence,
Through its Secretary
Raksha Bhawan, New Delhi.
2. Engineering-in-chief
Military Engineering services
Army Headquarter, DHQ, PO
New Delhi.
3. Chief Engineer,
Military Engineering Services,
Central Command Head Quarter,
Lucknow.
4. Chief Engineer
Military Engineering Services,
Jabalpur Zone, Bhagat Marg,
Jabalpur.
5. Commander Works Engineers,
Military Engineering Services,
Supply Road, P.O. 54
Jabalpur.



6. Shri Sant Ram Vishwakarama
Through the Commander Works Engineers,
Military Engineering Services,
Supply Road, P.O. 54
Jabalpur

Respondents

(By Advocate – Shri M. Chourasia)

ORDER

By M.P.Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the following main relief :-

“(ii) direct the respondents to appoint the applicant as Chowkidar.

In alternatively

- (iii) Upon holding that the selection conducted by the respondents for the post of Chowkidar in pursuance to the call letter dated 17th October 2002 Annexure A/3 (sic A/7) is bad in law. Accordingly set aside the selection of Chowkidar conducted against the quota of the OBC category.
- (iv) Direct the respondents to conduct selection for 19 post of Chowkidar only on the basis of only interview”.

2. The brief facts of the case are that the District Employment Exchange had sent the name of 180 candidates for 19 posts of Chowkidar, wherein the name of the applicant was also included. The applicant had participated in the interview, and after the interview, a select list was prepared on 3.3.1997, in which the name of the applicant appeared at serial no.1 in the merit list of OBC candidate. Subsequently, the official-respondents have cancelled that selection and held second selection. In the second selection, the applicant has not been



declared successful. He, along with two others, had filed an O.A.No.381 of 1997 by claiming the following relief:

“8.1..to direct to call the record of the First and Second Selections taken place by the Respondents for the recruitment and selection for the posts of Choukidar etc.

8.2 Further, be pleased to direct to quash the whole second selection (Annexure-A-11) held for the said appointment by the respondents including any orders issued thereunder ;

8.3 To direct the Respondents to implement the First selection (Annexure-A-7), merit list prepared on due selection by First Interview Board, and necessary orders for appointment in pursuance thereof may also be directed to be issued”.

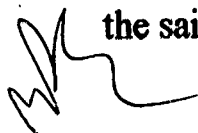
The aforesaid OA was disposed of by the Tribunal vide order dated 16.8.2000 (Annexure-A-3) with the following directions:

“20 In view of aforesaid discussions, this OA is disposed of with following directions to respondents :-

20.1 Candidates who were selected in both the list may be appointed as per their merit position of the second list in accordance with the rules.

20.2 Since the question of appointing Ex-serviceman as Chowkidar is not under dispute as they were not appointed by the Employment Exchange, they may be appointed as per rules.

20.3 With regard to three candidates (02 OBC and 01 General) already appointed as Chowkidar and who belong to the second list of 15 candidates, their continuance in service will be decided by respondent No.1 in accordance with the law after having the matter investigated by appropriate forum, keeping in view the involvement of these candidates, if any, in having their names included in the said list.



20.4 Balance vacancies may be filled after conducting fresh test from amongst the remaining candidates of the first list of 180 candidates as was sponsored by the Employment Exchange. The respondents shall also consider selection and appointment of additional three persons, two belonging to OBC category and one belonging to General category, if in the meantime these additional vacancies have arisen. Due notice shall be given to all the aforesaid candidates for the test intimating the vacancies to be filled in each category.

20.5 Respondents may consider revision of instructions of sponsoring 20 candidates for one vacancy so as to be in harmony with the norms of Employment Exchange which provide sponsoring of 12 candidates for one vacancy.


20.6 Respondents may take such appropriate action as considered necessary so as to avoid such recurrence in future.

20.7 Action on para 20.1 and 20.1 shall be completed within one month from the date of receipt of this order whereas action at para 20.4 shall be completed within three months from the date of receipt of this order. Action on other paras may be taken expeditiously”.

Against the aforesaid order passed by the Tribunal, the applicant and one Vinod Kumar had approached the Hon'ble High Court of Madhya Pradesh, Jabalpur by filing Writ Petition No.1450/2002 claiming the following relief:

- “(a) Set aside the order passed by the learned Tribunal in O.A.No.381/1997 Annexure P/10;
- (b) Set aside the second selection conducted by the department;
- © Direct the respondents to implement the first selection and issue the appointment orders as per the merit list;”

Since, the applicant has not yet been appointed, he has filed this Original Application claiming the aforementioned relief.

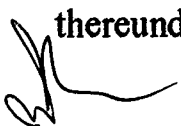


3. Heard the learned counsel for the applicant and official respondents.

4. During the course of arguments, learned counsel for the official- respondents has submitted that the present O.A. is not maintainable and is barred by the principle of res judicata. He has submitted that the applicant had claimed the similar relief in the earlier OA before this Tribunal and, also in the writ petition filed before the Hon'ble High Court. The applicant's prayer for his appointment on the basis of the first selection has already been considered by the Tribunal in the earlier OA, and the applicant cannot now again come up with the same prayer.

5. On the other hand, the learned counsel for the applicant has submitted that in the earlier OA certain directions were given by the Tribunal. The said order of the Tribunal has been challenged before the Hon'ble High Court, in which the applicant has taken several other grounds. Therefore, this OA is not barred by res judicata. He has submitted that there may be some relief, which he had not claimed earlier and the same was also not considered by the Tribunal. He has submitted that there were different circumstances and grounds under which he had filed the earlier OA and also has gone to the Hon'ble High Court. Because of the different situation and the circumstances, he has again filed this OA. He submitted that the relief might have been worded slightly in the manner which appears to be the same as was claimed by the applicant in the earlier OA, and this can still be amended. Further, the grounds taken by the applicant in the present OA are totally different.

6. We have given careful consideration to the arguments advanced on behalf of both the sides. We find that the applicant in the earlier OA 381/1997 had also challenged the selection for the posts of Choukidar held in the year 1997, with a relief to quash the whole second selection including the orders issued thereunder. The applicant had also sought a direction to the

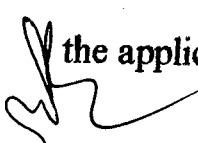


respondents in the said OA, to implement the merit list prepared by the Interview Board in the first selection, and necessary orders for appointment in pursuance thereof. The said OA was considered and decided by the Tribunal on merits, against which the applicant has moved the Hon'ble High Court. Now, in the present OA 141/2005 the applicant has again prayed for a direction to the respondents to appoint him as Chowkidar on the basis of the aforesaid selection which was held in 1997, or alternatively, "on holding that the selection conducted by the respondents for the post of Chowkidar in pursuance to the call letter dated 17th October 2002 Annexure A/3 (sic A/7) is bad in law" and "accordingly set aside the selection of Chowkidar conducted against the quota of the OBC category". He has also prayed for a direction to the respondents "to conduct selection for 19 post of Chowkidar only on the basis of only interview".

7. The Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. T.P.Kumaran, 1996 (6) SCALE 403 has held as under:-

"The claim is barred by constructive res judicata under Section 11. Explanation IV CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit shall be deemed to have been a matter directly or substantially in issue in a subsequent suit. Hence, when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not set and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2 Rule 2 CPC prohibits the petitioner to seek the remedy separately".

8. It is not in dispute that the applicant was selected in the first selection. He had also participated in the second selection but had failed in the selection. The Tribunal in para 19 of its judgment dated 16.8.2000 in OA 381/97 (filed by the applicant and others) had clearly held that "all the candidates including the applicant willingly participated in the second test ordered by



the Chief Engineer. Having participated and failed, they cannot now question the wisdom of Chief Engineer for ordering second test which was done based on complaints received by him". From the facts mentioned above, it is, therefore, clear that the applicant in his earlier OA 381/1997, had also sought for a direction to the respondents to appoint him as Chowkidar on the basis of the first selection, and in the present OA also he has sought the same direction although worded differently. Thus, the present OA is clearly hit by the principle of res judicata and is, therefore, liable to be dismissed on this ground alone.

9. In the result, for the reasons stated above, the Original Application is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पृष्ठंकन सं. ओ/न्या. जयलपुर, दि.
पतिलिपि अर्पित दि.

- (1) सचिव, उच्च न्यायालय का एग्रेसिवेशन, जयलपुर
(2) आदेशक श्री/श्रीमती/सु. के सम्मुख
(3) प्रत्यक्ष श्री/श्रीमती/सु. के सम्मुख
(4) कार्यपाल, तहसील, जयलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

V. Tripathi
Dr. J. K.
Dr. J. K.
Dr. J. K.
Dr. J. K.

Accepted
24.8.97