

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 06.03.2014

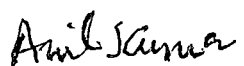
OA No. 598/2013

Mr. Neeraj Batra, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Arguments heard.

Order is reserved.



(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

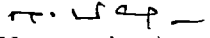
12-03-2014

Order pronounced today in the open
Court by the aforesaid Bench.



12/3/14
For CO

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft/ pre-delivery order in O.A. No. 598/2013 (Jaswinder Singh
Vs UOI) is respectfully submitted for approval.


(M. Nagarajan)
Judicial Member

Hon'ble Shri Anil Kumar,
Administrative Member

I agree


**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 598/2013

Order reserved on : 06/03/2014

Order pronounced on : 12/03/2014

Coram :

**Hon'ble Shri Anil Kumar, Administrative Member
Hon'ble Shri M. Nagarajan, Judicial Member**

Jaswinder Singh, 56 years, S/o SHri Karam Singh, R/o 51, Pratap Nagar, Khatipura Road, Jaipur Rajasthan, presently working as Post Master General (B&M), Rajasthan Circle Jaipur.

.....Applicant

(By Advocate : Shri Neeraj Batra)

V E R S U S

1. Union of India, through its Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi- 110 116.
2. Assistant Director General (SGP), Government of India, Department of Posts, SPG Section, Dak Bhawan, New Delhi - 110 116.
3. Assistant Post Master General (Staff), O/o Chief Post Master General, Maharashtra Circle, Mumbai - 400 001.

.....Respondents.

(By advocate : Shri Mukesh Agarwal)

O R D E R

Per : Shri M. Nagarajan, Judicial Member

The grievance of the applicant in the O.A is as to rejection of his request for issuing no objection certificate (NOC) for acquiring personal Indian Passport. His request for issuing NOC to acquire a personal Indian passport was

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rejected by the respondents under the order dated 07/08/2013 (Annexure A/1) which is impugned in this Original Application.

2. The facts stated by the applicant relating to his grievance in brief are that at present he is working as Post Master General (B&M), Rajasthan Circle, Jaipur, he submitted an application to the respondent No. 3 for issue of "No Objection Certificate" for going abroad which came to be forwarded to the respondent No. 2 by the respondent No. 3. On receipt of the letter forwarded by the respondent No. 3 the respondent No. 2 informed respondent No. 3 that in view of the intimation given by the vigilance branch the applicant is already in possession of Indian Passport. He was asked to clarify the circumstances under which he has applied for another passport and returned the application submitted by him requiring him to resubmit his application with the factual position as to the doubt raised by the respondent No. 2. In turn, the applicant has furnished clarification sought by the respondent No. 2 stating that in the rules governing issue of an Indian Passport, there was no concept of renewal of Passport and an ordinary Indian Passport is issued for a fixed period and on the expiry of such period, the validity of the passport ceases. Explaining the position, he informed that the passport which is already issued to him is on the verge of expiry and as such since he is interested to have a passport, he requested for issue of

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NOC to obtain a new passport at the earliest, but, his request was not responded by the respondents in spite of several requests and repeated reminders. Ultimately, by a letter dated 26/07/2012 (Annexure A/2) the respondent No. 1 rejected his request. Being aggrieved by the said letter dated 26/07/2012 (Annexure A/2), the applicant approached this Tribunal in O.A. No. 468/2013 and the Tribunal by the order dated 03/07/2013 (Annexure A/10) in the said O.A. directed the respondents to consider the representation of the applicant dated 01/01/2013 (Annexure A/9) and to pass reasoned and speaking order in accordance with the provisions of law. The applicant submits that in spite of the said directions of the Tribunal to consider his request for issue of NOC to obtain a passport, the respondents rejected his request on the ground that the applicant is not clear from vigilance angle in view of the pendency of major penalty proceedings against him. Being aggrieved by the order dated 07/08/2013 of the respondent No. 1 (Annexure-A/1), under which his request for issue of NOC came to be rejected, the applicant presented this O.A. with a prayer to declare that the action of the respondents in rejecting his request for grant of NOC is illegal and for a direction to respondents to issue NOC for applying personal Indian Passport.

3. The respondents have filed their reply. In the reply, the respondents have stated that as directed by Tribunal in

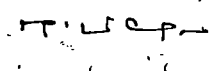
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O.A. No. 468/2013 by the order dated 03/07/2013, the competent authority sought the comments of vigilance division on this issue, vide communication dated 26/07/2013 and in response to the same, the vigilance division has intimated that as on date a charge memo under rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant on 10/09/2012 and thus observing the comments of the vigilance branch the applicant was not given NOC for obtaining a passport.

4. Heard the learned counsel for the applicant Shri Neeraj Batra and Shri Mukesh Agarwal, learned Senior Central Govt. Standing counsel. Perused the pleadings of both the parties and the documents annexed therein. Upon hearing the learned counsel for both the parties, the question that arises for our consideration is "whether is it necessary for the applicant to obtain NOC from the respondents and to enclose the same for the purpose of obtaining an Indian Passport?"

5. For giving an answer to the above question we have perused the impugned order. Para 5 of the said order dated 07/08/2013 (Annexure A/1) reads as under:

"As per MEA's OM dated 9th July 2002, guidelines in this regard are very clear. NOC is not a must for passport, an intimation to the employer is enough. An intimation by an employee to the employer that he is applying for a passport and a declaration, duly acknowledged by his Head of Office, to the effect that he has



informed his employer of his intention to apply for a passport, should be adequate for acceptance and processing of his case in normal course. But, here the officer is asking for a NOC for passport. And for giving NOC, it has to be seen if disciplinary/vigilance case is pending."

6. The Hon'ble High Court of Andhra Pradesh while dealing with an identical issue in Writ Petition No. 13791/2010 by its order dated 27/07/2010 observed as follows:

"When we examine the provisions of the Passport Act, there is no specific provision, which requires the applicant to produce any such NOC from his Controlling Officer, Schedule 3 of the Passport Rules 1980 (for (for short, the Rules') prescribed the application form for grant of passport, which is in inconformity with Rule 5 and 11 of the Rules. It is therefore, manifestly clear that if a government servant or a member of the Armed Force of the Union solicits the grant of passport, he does not in fact require to submit any such NOC along with the said application."

In view of the above categorical finding of the Hon'ble High Court of Andhra Pradesh, we hold that it is not necessary for the applicant to obtain NOC from the respondents for securing a passport.

7. As per the Govt. of India, Ministry of External Affairs OM No. VI/401/40/83 dated 09/12/2012, there is no legal requirement for an applicant of a passport, even if he were to be a Government servant to secure or append to the application for grant of passport, the NOC from the Controlling Officer of such servants. It is enough, if such

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Government servant merely intimate his Controlling Officer of his intention to apply for grant of passport. Therefore, for the purposes of securing the passport by the applicant securing or appending the NOC from his controlling officer is a redundant exercise. Hence, the question of issuing any direction to the respondents to issue NOC for obtaining personal passport does not arise.

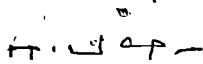
8. The Hon'ble High Court of Andhra Pradesh in its order dated 27/07/2010 in the said Writ Petition No. **13791/2010 (P.Shibu Kumar, S/o. Prabhakaran V/s The Inspector General of Police)** by referring to certain important recommendations made by an Inter-Ministerial Committee established in the Cabinet Secretariat relating to liberalizing the issue of passport and examined the same. On such examination, the Hon'ble High Court of Andhra Pradesh at para 2 of the said judgement observed as:


"2. This committee had also examined the requirement of NOC for Government employees and had noted that by making NOC obligatory, the passport system was placing the Government employees at the disadvantage vis-à-vis an ordinary citizen. It was also noted that obtaining an NOC for a field level employee may itself be a source of considerable delay and harassment. Considering that the right to hold a passport flows from the Fundamental Rights of a citizen, the insistence on an NOC in case of Government servants may not be strictly legal. The Committee, therefore, recommended that an intimation by an employee to the employer that he is applying for a passport and a declaration, duly acknowledged by his Head of Office, to the effect that he has informed his employer of his

T. U. S. P.

intention to apply for a passport, should be adequate for acceptance and processing of his case in normal course. However, in such cases, the passport should be issued on prior verification of citizenship and character only. Also, the employer will always have an opportunity to issue directions to the employee not to proceed abroad and refuse leave should the circumstances warrant such an action, i.e., pendency of a disciplinary enquiry on grave charges, etc., apart from advising the RPO concerned not to issue passport on grounds to be specified."

9. In view of the aforesaid observations of the Hon'ble High Court of Andhra Pradesh relating to the recommendations made by Inter-Ministrial Committee established in the Cabinet Secretariate, we are of the opinion that the refusal of the respondents to issue NOC for the applicant on the ground that he was not clear from vigilance branch can not be faulted upon. However, we make it clear that it is not necessary for the applicant to secure or append NOC from the respondents for the purpose of obtaining an Indian Passport. With these observations the O.A. is disposed of. No order as to costs.


(M. Nagarajan)
Judicial Member


(Anil Kumar)
Administrative Member

