

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P.NO.577 OF 2015 (IN OA 808/14)

New Delhi, this the 1st day of March, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**
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1. Ex-Sub Major Rajiv Naharia,
Village & PO Karota,
Distt. Mohindergarh (Haryana)
2. Ex-Sub Maj.Amar Singh,
Village: Kotkasim Near Gurudwara,
Dist. Alwar, Rajasthan
3. Ex-Sub Maj. Pankaj Jain,
H.No.16, Maruti Estate,
Phase I, Bodla Road, Agra

í í Petitioners

(By Advocate : Mr.M.K.Bhardwaj)

Vs.

1. Sh.G.Mohan Kumar,
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Lt. Gen. Sanjiv Talwar, AVSM,
Engineer-in-Chief,
Rajaji Marg, Kashmir House,
New Delhi.

3. Brig. S.K.Kataria,
 Commandant,
 Bengal Engineer Group & Records,
 PIN: 908779,
 C/o 56 APO

í í í Respondents

(By Advocate: Shri B.K.Barera)

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ORDER

Per Raj Vir Sharma, Member(J):

The three petitioners in CP No.577 of 2015 were applicants in OA No.808 of 2014. Holding that the applicant-petitioners were entitled to the same benefits as had been extended to other similarly situated applicants in OA No.2214 of 2010, the Tribunal, by its order dated 29.4.2015, allowed O.A.No.808 of 2014 and directed the respondents to extend the said benefits to the applicant-petitioners within three months from 29.4.2015. It is stated by the petitioners that though in compliance with the order passed by the Tribunal in OA No.2214 of 2010, *ibid*, the respondents have already given appointment to the applicants therein, yet the respondents have failed to give appointment to the applicant-petitioners in the present proceeding by way of implementation of the order dated 29.4.2015, *ibid*. Thus, the applicant-petitioners have filed the CP on 4.7.2015 for initiation of contempt proceedings against the respondents for willful disobedience of the Tribunal's order dated 29.4.2015, *ibid*, and for other consequential directions to the respondents.

2. On 3.12.2015, the respondents filed a reply stating, *inter alia*, that after OA No.808 of 2014 filed by the applicant-petitioners was disposed

of on 29.4.2015, the Tribunal disposed of another OA No.2266 of 2014 filed by Ex Sub Dalbir Singh and others, vide order dated 29.5.2015, and directed the respondents to calculate the 20% vacancies of PBOR w.e.f. 27.4.2011 and 10% vacancies of PBORs before that date and maintain a proper register regarding the filling up of such year-wise PBOR vacancies separately, which cannot accrue to any of the two other categories of the modes of the recruitment, to the detriment of the persons who are retiring or have retired in the interregnum period from 27.4.2011 to 16.4.2012. Therefore, the respondents took a decision to approach all eligible candidates to indicate their willingness or otherwise and to apply for being considered for appointment on deputation-cum-reemployment (DCRE). The applications of the applicants and other eligible candidates would be considered against the year-wise vacancies. In order to avoid any litigation, the respondents are also taking care that all eligible candidates are considered for such DCRE. Thus, it has been submitted by the respondents that no disobedience has been shown to the Tribunal's order, and the delay in the implementation of the Tribunal's order is not intentional or deliberate.

2.1 On 29.2.2016 the respondents also filed a compliance affidavit along with a list of persons who were considered for appointment as JE (Civ.) and JE (E/M) under DCRE in compliance with different orders passed by the Tribunal in a large number of O.As.. It has been stated by the respondents that applicant-petitioner nos. 1 and 2 would be considered for

appointment as JE in MES under DCRE by March 2016, and applicant-petitioner no.3, being lower in merit, was kept as reserve.

3. We have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant-petitioners and Shri B.K.Barera, the learned counsel appearing for the respondents.

4. On a perusal of the records, we find that O.A.No.2214 of 2010 (Subedar Major Mohinder Singh & two others Vs. Union of India and others) and O.A.No.1015 of 2010 (Ex.Sub.Maj.Hari Raj Singh & nine others Vs. Union of India and others) were disposed of by the Tribunal vide common order dated 19.7.2011, which reads thus:

“Both these cases are identical. Applicants have retired from Indian Army as Person Below Officer Rank (PBOR, for short). They are aggrieved by the alleged arbitrary, discriminatory and illegal action of the respondents in not appointing them as Junior Engineer (E/M) against the 10% vacancies in terms of Military Engineer Services Junior Engineers (Civil) and Junior Engineer (E&M) RRs2008. They have, therefore, sought a direction to the respondents to consider them for appointment to the post of JE by way of deputation-cum-re-employment against more than 100 vacancies available in the cadre of JE (E/M) with all consequential benefits including arrears of pay. They have also sought a declaration that the action of the respondents in not calculating the vacancies meant for re-employment-cum-deputation quota correctly and diverting the same to DR quota as illegal. They have further sought a direction to the respondents to prepare the merit list/select list of MES Militarized cadre for deputation-cum-re-employment for the year 2008 and 2009 and fill up the vacancies meant for the DCRE quota, year wise.

2. After the pleadings in these cases have got completed, the learned counsel for the applicants has filed MA No. 1642/2011 in OA No.2214/2010 annexing therewith a copy of the amended Recruitment Rules in respect of Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Group

Ø posts in Military Engineers Service under Ministry of Defence Recruitment Rules 2011. In the said Recruitment Rules, against column 11 which deals with the eventuality 'In case of recruitment by promotion or deputation or absorption grades for which promotion or deputation or absorption to be made', the following provisions have been incorporated:-

Ø Deputation/Re-employment (for Armed Forces Personnel)

The Armed Forces personnel/Combatants personnel from Corps of Engineers holding the rank of Naiks/Hawaldars, Naik Subedars/Subedars Majors and Honorary Lieutenant/Honorary Captains retired or due to retire and are to be transferred to reserve within the period of one year and have the requisite qualifications and experience as prescribed. If selected, such officers will be given deputation terms upto the date on which they are due for release from the Armed Forces, thereafter they may be continued on re-employment terms. In case such eligible officers have retired or have been transferred to reserve before the actual selection to the post is made their appointment will be on re-employment basis, re-employment upto the age of superannuation in respect of civil posts).

3. In view of the aforesaid position, the learned counsel for the applicants has submitted that the grievances of the applicants raised in these OA will get redressed.

4. The learned counsel for the respondents has, however, submitted that the case of the applicants will be considered only in accordance with rules and it has to be examined whether the cases of the applicants are covered by the aforesaid newly incorporated provisions in the Recruitment Rules.

5. In view of above facts and circumstances of this case, we need not go into the merits of these cases. As submitted by the learned counsel for the applicants, the applicants are satisfied with the aforesaid provisions in the amended Recruitment Rules as cited above. We, therefore, dispose of these OAs with the directions to the respondents to consider the applicants' grievance in terms of the aforesaid amended Recruitment Rules and pass appropriate orders within a period of two months from the date of receipt of a copy of this order under intimation to them.

6. There shall be no order as to costs.

It is, thus, to be seen as to whether or not the cases of the applicant-petitioners in the present proceedings have been considered by the respondents in accordance with the amended Recruitment Rules.

5. Admittedly, a large number of O.As. were filed by different persons who were similarly placed as the applicant-petitioners in the present proceeding, and the Tribunal disposed of those O.As. by passing various orders on different dates. Determination of year-wise vacancies not only under the pre-amended Recruitment Rules but also under the amended Recruitment Rules, and consideration of the applicants who approached the Tribunal in different O.As. and other eligible persons who opted for consideration of their cases for appointment under DCRE in compliance with the orders passed by the Tribunal from time to time are time consuming processes. If at all there is any delay on the part of the respondents in considering the cases of the applicant-petitioners for appointment under DCRE, such delay cannot be said to be intentional or deliberate. Therefore, the respondents cannot be said to have willfully and deliberately flouted the Tribunal's order dated 29.4.2015 passed in OA No.808 of 2014.

6. It is trite law that contempt jurisdiction is to be exercised sparingly and in very deserving cases only and not casually. Such a power is not intended to be exercised as a matter of course.

7. In the light of our above discussions, we do not find a *prima facie* case of contempt of this Tribunal to have been made out by the applicant-petitioners against the respondents. Accordingly, the Contempt

Petition is dismissed, and the notices issued against the respondents are discharged. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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