

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1264/2016**

**Reserved on : 20.05.2016.**

**Pronounced on : 25.05.2016.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)  
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Sh. Vijender Kumar, UDC/SI(M),  
Aged about 43 years,  
S/o Sh. Maha Singh,  
R/o H.No. 199, Village Bajit Pur,  
Delhi-110039.

.....      **Applicant**

(through Sh. M.K. Bhardwaj, Advocate)

**Versus**

1. Union of India through  
Its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. National Investigation Agency  
Through its Director General,  
Ministry of Home Affairs,  
6<sup>th</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi-110001.
3. Inspector General (Admn.),  
National Investigation Agency,  
Ministry of Home Affairs,  
6<sup>th</sup> Floor, NDCC-II Building,  
Jai Singh Road, New Delhi-110001.

....      **Respondents**

(through Sh. Hanu Bhaskar, Advocate)

**O R D E R**

**Mr. Shekhar Agarwal, Member (A)**

The applicant initially joined as Assistant Sub-Inspector (M) in BSF on 29.09.1997. He got promoted as Sub-Inspector (M) in April, 2011. He responded to a circular issued by respondents No.2 & 3 inviting applications for filling up the

post of UDC in NIA on deputation basis. He was selected and joined there on 26.05.2011. On 12.09.2014, the respondents issued another circular inviting applications for 07 vacancies of Assistants amongst others on deputation basis/absorption basis. The applicant applied for the same. His parent department also granted NOC for him to be considered. The applicant's grievance is that while other similarly placed persons have been absorbed, he has been left out. He, therefore, submitted two representations on 23.12.2015 and 12.01.2016. However, they have been rejected by the impugned orders dated 01.02.2016 and 16.02.2016. Hence, he has filed this O.A. seeking the following relief:-

- “(a) To declare the action of respondents in not absorbing the applicant as Assistant in NIA, Ministry of Home Affairs, as illegal and arbitrary and issue directions for considering the case of applicant for absorption as Assistant in NIA from the date of absorption of similarly placed persons.
- (b) To quash and set aside the impugned order dated 01.02.2016 & 16.02.2016 and direct the respondents to consider the applicant for absorption as Assistant.
- (c) To quash and set aside the order dated 22.12.2016 to the extent the applicant has not been absorbed as Assistant in NIA.
- (d) To award cost of the proceedings in favour of the Applicant and against the Respondents.
- (e) To pass such other order or direction as deemed fit and proper by this hon'ble Tribunal in the facts and circumstances of the present case, and in the interest of justice.”

2. The applicant has contended that he has been discriminated against inasmuch as similarly placed persons have been absorbed and he has been left out. He has also claimed that his record was in the category of 'outstanding' and 'very good' during the relevant years and, therefore, there was no reason for him to be left out. The respondents have acted in a mala fide manner in violation of Constitutional provisions. Their action was highly illegal, arbitrary and

unjustified. The respondents have failed to appreciate that his case was required to be considered in a fair and just manner without ill will or malice in fact or in law. Similarly placed persons, such as, Sh. Anil Kumar and Sh. Akhilesh Singh have been absorbed despite the fact that the applicant himself has outstanding service record.

3. In their reply, the respondents have submitted that applications for 07 posts of Assistant were considered by a Board on 04.12.2015. The applicant's name was also considered. The Board recommended 05 candidates for absorption and 02 candidates for deputation. The Board also took into consideration the eligibility of the candidates in the light of provisions contained in the respective Recruitment Rules and other available record like NOC, integrity certificate, vigilance clearance certificate and major/minor penalty details during last 10 years, APAR gradings for last 05 years. The Board also scrutinized the records of the candidates and obtained feedback from the concerned supervisory officers in respect of all the candidates. The Board decided to set a benchmark of minimum 03 'outstanding' APARs and atleast one commendation from DG/IG or Head of Office for absorption. Further, the respondents have submitted that all the 05 candidates absorbed as Assistants were senior to the applicant and their past performance was also found to be better than that of the applicant. As of now, all 07 posts of Assistants have been filled by taking 05 candidates on absorption basis and 02 candidates on deputation basis.

4. The respondents have gone on to state that the applicant was issued a notice for premature repatriation on 18.02.2013 as he was repeatedly leaving office prior to scheduled time without permission from the competent authority. He also absented himself from office on 27.03.2012 and previous week also. On

11.01.2013, he left leave application for 05 days EL and proceeded on leave without sanction of the same or without intimating his superior. Due to this conduct of the applicant, he was issued notice for premature repatriation on 18.05.2013. However, later on that was cancelled. The respondents have also shown the APAR gradings of Sh. Anil Kumar and Sh. Akhilesh Singh, whom the applicant claims were similarly placed as him. According to the respondents both of them had all 05 'outstanding' APARs in the relevant 05 years whereas the applicant had 02 'very good' and 03 'outstanding' APARs.

5. We have heard both sides and have perused the material on record. The applicant has relied on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 7894/2014 (Sampat Singh Rathore Vs. UOI & Ors.) dated 14.07.2015. In this case relief was granted to the petitioner and the respondents were directed to consider his case for absorption after the Hon'ble High Court came to the conclusion that even though similarly situated persons had been absorbed, the petitioner had been denied absorption for unjustifiable reasons. Learned counsel for the applicant also submitted that the judgment of this Tribunal in OA-3259/2015 (Santosh Kumar Vs. UOI & Ors.) cannot be relied upon as the same has been stayed by Hon'ble High Court of Delhi vide their order dated 06.05.2016 in Writ Petition (C) No. 3929/2016.

6. After giving our anxious consideration to the submissions made by both sides, we are of the opinion that there is no merit in the contention of the applicant. From the facts narrated above, it is clear that the applicant was also duly considered by the respondents along with others. The respondents have submitted that the other candidates, who were absorbed in preference to the applicant, were all senior to him. The applicant has alleged discrimination vis-a-vis Sh. Anil Kumar and Sh. Akhilesh Singh. The respondents have shown that

record of both of them was superior to that of the applicant because both of them had all 05 'outstanding' APARs while applicant had only 03 'outstanding' APARs during the relevant 05 years.

6.1 Learned counsel for the applicant argued that the respondents need not have done comparative evaluation of the records of the 05 candidates. Rather, they should have seen suitability of each candidate for the purpose of absorption.

7. We are not inclined to agree with this reasoning. The respondents had invited applications for absorption as well as deputation basis from different departments of the Central Government, State Government and Union Territories. They had every right to select the best available candidates out of those, who had applied. For this purpose, they had every reason to compare the records of different candidates to select the best out of them.

7.1 The applicant has relied on the judgment dated 14.07.2015 of Hon'ble High Court of Delhi in the case of Sampat Singh Rathore (supra). However, in that case relief was granted when it was found that the petitioner's case had not been considered in a fair manner. This does not appear to be the situation in the instant case where the respondents have not only shown that record of selected candidates was better than the applicant but also that the past conduct of the applicant had been far from satisfactory.

7.2 Learned counsel for the applicant has argued that judgment of this Tribunal in the case of Somesh Kumar (supra) cannot be relied upon since it has been stayed by Hon'ble High Court of Delhi. However, in para-32 of the same judgment, the judgment of Hon'ble High Court of Delhi in the case of NHAI Vs.

Ashok Kumar Gupta [WP(C) No. 8412/2014] dated 03.12.2014 has been cited.

Therein, it is mentioned as follows:-

“11. The choice of the public employer – whether, or not, to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists. As mentioned earlier, barring procedural failure in regard to the fair consideration of the request for absorption - which necessarily has to manifest from the records - the subject would be hardly one for judicial review. If Courts or Tribunals were to intervene routinely in such matters - as the CAT unfortunately did not once but twice over in the present case, the efficiency and functioning of public organisation would seriously be undermined. On the other hand, the parent employer has repeatedly insisted that the applicant should return to his duties. Not only has that organisation continued 21 OA No.3259/2015 his lien, but would have undoubtedly made arrangements in his absence on a stop gap basis, and make do without a permanent officer. A direction of the kind that the CAT has given in the impugned order amounts to needlessly interfering with the discretion which otherwise needs to be exercised judiciously after taken into consideration all relevant factors. The manner in which the CAT went about intervening repeatedly in this manner is rather unfortunate; we cannot help but express this, and regret that such a situation has come to pass.

12. For the forgoing reasons, the impugned order of the CAT is hereby set aside. The writ petition is allowed, but, without any order as to costs. A copy of this order shall be communicated to the relevant Bench of the CAT through its Principal Registrar.”

7.3 In the instant case, the applicant has been duly considered for absorption and has not been found fit for the same. The applicant had joined NHAI on deputation basis. In our opinion, he had no right to demand absorption in the said organization. At best, he could have asked for consideration of absorption, which has already been done. It is also noteworthy that he had joined NIA and had been working there as UDC. He is seeing absorption on higher post of Assistant for which he has not been found to be suitable by the respondents.

8. We, therefore, find no merit in this O.A. and dismiss the same. No costs.

**(Raj Vir Sharma)**  
**Member (J)**

/Vinita/

**(Shekhar Agarwal)**  
**Member (A)**

