

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

C.P. No. 553/2018 In
O.A No.1771/2014

Reserved on : 17.09.2018
Pronounced on : 25.09.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

Tarun Kumar (SSC)
Aged about 54 years
S/o Late Shri Sant Lal
Working in Armed Forces Medical Stores Depot,
Delhi Cantt-110 010. .. Petitioner

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. Shri Sanjay Mitra,
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Shri Bipin Puri,
Director General,
Armed Forces Medical Stores,
M-Block, New Delhi-110 001. .. Respondents

ORDER

By Mr. V. Ajay Kumar, Member (J)

O.A. No. 1774/2014 filed by the applicant was disposed of by this Tribunal on 04.04.2018 as under:

"This OA has been filed seeking a direction for consideration of the case of the applicant for promotion to the posts of SSK w.e.f. 1993, SS w.e.f. 2001 and SSS w.e.f. 2004 in view of the judgment of the Mumbai Bench of the Tribunal dated 22.12.2009 passed in OA No.388/2006 titled ***Babulal Lalsab Nadaf v. UOI and Ors.*** (Annexure A-12). The entire claim of the

applicant is that he is entitled to the benefits as physically handicapped category candidate which has been denied to him while considering him for promotion from one post to another, referred to hereinabove. The similar benefit has been granted to the applicant therein who is admittedly junior to the applicant. The applicant referred to the Annexure A-3 seniority list dated 24.01.2003 wherein the name of the applicant figures at Sl. No.26 and that of Shri Babulal Lalsab Nadaf at Sl. No.38. The further contention of Shri M.K. Bhardwaj, learned counsel appearing for the applicant is that since the applicant was not a party to OA No.388/2006 (supra), similar benefit has not been granted to him.

2. In view of the above circumstances, this OA is disposed of with the direction that the claim of the applicant, at various stages, referred to in the relief part, be considered as a physically handicapped category candidate on the lines of the judgment dated 22.12.2009 passed in OA No.388/2006. Let the consideration be accorded within a period of three months from the date of receipt of a copy of this order.”

2. In compliance of the aforesaid orders of this Tribunal, the respondents passed a Speaking Order dated 18.07.2018 and the operative portion of the said order reads as under:

“6. And whereas Shri Tarun Kumar filed an OA no. 1771/2014 in CAT Principal Bench Delhi seeking relief for promotion(s) as PH in terms of DoPT OM after this office rejected his representation.

7. And whereas The Hon'ble CAT Principal Bench, New Delhi has given its judgement in the OA No.1771/2014 titled “Tarun Kumar vs UOI & Ors.” on 04 Apr 2018 and vide Para 2 of the said judgment has directed that “In view of the above circumstances, this OA is disposed of with the direction that the claim of the applicant, at various stages, referred to in the relief part, be considered as a physically handicapped category candidate on the lines of the judgment dated 22 Dec 2009 passed in OA No.388/2006. Let the consideration be accorded within a period of 3 months from the date of receipt of a copy of this order.”

8. And whereas the benefit of being a Physically Handicapped (PH) candidate can be given to only one person, as the same has already been given to Sh BL Nadaf and cannot be extended to Sh Tarun Kumar without taking back the benefit from the former, as only one person can avail the benefit of reservation of PH (OH) category in promotion and can be placed at point number one of the reservation roster for PH candidates, as per GOI DoP&T OM No 36025/3/97-Estt.(Res.) dated 04 July 1997. Otherwise it

adversely affect the seniority of other 32 Govt Servant in a roster placed from point no.2 to 33 belonging to SC, ST category & others including (another PH) if any.

9. And whereas judgement of Supreme Court in case of Sh Shiba Shankar Mohapatra & Ors vs State of Orissa & Ors. dated 12 Nov 2009 prohibits the changing of existing seniority after a reasonable period (say 3 to 4 years).

10. Now, therefore, the claim of Sh. Tarun Kumar has been considered on the lines of the judgment of Hon'ble CAT Principal Bench Delhi dated 04 Apr 2018 in OA No. 1771/2014 and the same is not found tenable by competent authority under the existing rules on the reservation for physically handicapped."

3. The applicant filed the instant CP alleging violation of the orders of this Tribunal dated 04.04.2018 passed in O.A. No.1771/2014.

4. Heard the learned counsel for the petitioner and perused the pleadings on record.

5. A careful examination of the order dated 04.04.2018 in O.A. No.1771/2014 reveals that this Tribunal has not given any finding that the applicant is entitled for any specific relief, though there was a direction that the applicant be considered as a Physically Handicapped category candidate, but the same was on the lines of the judgment dated 22.12.2009 passed in O.A. No.388/2006, titled

Babulal Lalsab Nadaf vs. UOI and Ors. The respondents while complying with the said order of this Tribunal, examined the case of the applicant with reference to the said **Nadaf** (supra) only and after considering the DoP&T O.M. in respect of the reservation roster for

Physically Handicapped category candidates and the other facts, found the claim of the applicant as untenable.

6. The contention of the learned counsel for the petitioner that the Speaking Order dated 18.07.2018 of the respondents itself is contumacious and in violation of the orders of this Tribunal in O.A. No.1771/2014, is unacceptable.

7. The reliance placed by the petitioner's counsel on an interim order dated 09.04.2018 in CP No.620/2016 in O.A. No.2644/2016 is also liable to be rejected, as the facts are different.

8. In the circumstances and for the aforesaid reasons, we do not find any valid ground to entertain the CP and, accordingly, the same is dismissed. However, this order shall not preclude the petitioner from questioning the Speaking Order dated 18.07.2018 of the respondents, if he is so advised, in accordance with law. No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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