

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.722/2015

Dated this Tuesday the 11th day of April, 2017

CORAM: HON'BLE SHRI JUSTICE DINESH GUPTA, MEMBER (J)
HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

1. Shri Rajeev Singh
Working as Works Manager,
Ordnance Factory Chanda.
R/at Q.No.04/A, Type 4,
Sector 6, Ordnance Factory
Chanda Estate, Bhadrawati,
Chandrapur Dt., - 442 501.
2. Shri Naveen James
Working as Works Manager,
Ordnance Factory Chanda.
R/at Q.No.32/A, Type 4, Sector 5,
Ordnance Factory Chanda Estate,
Bhadrawati, Chandrapur Dt.,- 442 501.

... *Applicants*

(By Advocate Shri Vicky Nagrani)

Versus

1. The Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi 110 001.
2. The DGOF & Chairman
Ordnance Factory Board,
10-A, Shahid Khudiram Bose
Road, Kolkata 700 001.
3. The Sr. General Manager
Ordnance Factory Chanda,
Bhadrawati, Chandrapur Dt.,
Maharashtra 442 501.
4. The Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110 069.
5. The Secretary

Department of Industrial Policy &
Promotion,
Ministry of Industry & Commerce,
Udyog Bhawan, New Delhi 110 01.
**(By Advocates Shri R.R. Shetty with
Shri N.K. Rajpurohit)**

... **Respondents**

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

MA No.1054/2015 for Joint Petition is
allowed.

2. The Applicants who work as Works Manager at Ordnance Factory Chanda have filed this OA aggrieved by the impugned order dated 30.12.2015 informing them that their application for forwarding the copy of Character and Antecedent Verification and Medical Examination Report to the Ministry of Commerce & Industry has not been agreed to by the competent authority. They have prayed for the following reliefs:

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents, and after examining the same, quash and set aside the impugned orders dated 30.12.2014 and 30.11.2015 to the extent of release of two posts qua the applicants.

b) This Hon'ble Tribunal may further be pleased to direct the respondent no.2 and 3 forthwith to issue the Character and Antecedent Verification and Medical Examination Reports to Respondent No.5 by holding that the refusal of the same is arbitrary and improper.

c) This Hon'ble Tribunal may further be pleased to direct the respondent no.5 on receipt of the same forthwith issue offer of appointment orders to

the applicants with all consequential benefits.

d) This Hon'ble Tribunal may further be pleased to direct the respondent nos.2 and 3 that on receipt of the said offer of appointment by the applicants, the technical resignation should be accepted immediately, and that the applicants may be released without any further delay.

e) Cost of the application be provided for.

f) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed”.

3. The Applicant had also prayed for an interim relief as follows:

“9.a) Pending the hearing and final disposal of the Original Application, the Respondent No.4 be restrained from releasing 2 qualified candidates in pursuance of letter dated 30.11.2015 and further the operation and implementation of the said letter dated 30.11.2015 by Respondent No.5 be stayed.

b) Pending the hearing and final disposal of the Original Application, the Respondents be directed to restrain the Respondent No.5 to appoint any other qualified candidate for the post of Dy. Controller of Explosives from the reserved panel against candidates.

c) Pending the hearing final disposal of the Original Application, the Respondent No.5 be directed to keep two post of Deputy Controller of Explosives vacant for the Applicants.

d) Ad-interim orders in terms of prayer clause (a) to (c) above may be granted.”

Record shows that this Tribunal had considered the prayer for interim relief and passed the following order on 23.12.2015;

“The Respondents are directed not to fill up two vacant posts of Deputy Controller of Explosives from the reserved panel till the next date of hearing.”

In obedience to this interim order, the Respondent No.5 have kept two posts of Dy. Controller of Explosives in Petroleum and Explosives Safety Organization (PESO) vacant till the disposal of the present OA.

4. The facts of the case, as they appear from the OA, are as follows;

i) The Applicants were initially appointed as Assistant Works Manager at the Ordnance Factory, Chanda in the year 2009 and 2008 respectively. Applicant No.2 was promoted as Works Manager in 2011 and the Applicant No.1 in 2013. They had decided to apply for the post of Dy. Controller of Explosives in Petroleum and Explosives Safety Organization (PESO) in response to an Advertisement issued by UPSC in the Employment News 14-20 July 2012. For applying to the said post, an Experience Certificate was required from the Parent Department. However, the Respondent Nos.2 and 3 refused to issue an Experience Certificate to them. The Applicants approached this Tribunal through OA No.487/2012 and this Tribunal had passed an interim order directing the respondents to issue a provisional Experience Certificate to the applicants and by the final

order on 24.04.2015 had made the order absolute.

ii) Both the applicants were selected by the UPSC for the post of Dy. Controller of Explosives (PESO). The Applicant No.2 was placed at sr.no.3 and the Applicant No.1 was placed at sr.no.29 in the notice of result which was issued by the UPSC on 08.03.2014 (Annexure A-4).

iii) Before the selection of the applicants were to be made final, the Respondent No.5 sought the Character and Antecedent Verification and Medical Examination report from the Respondent No.2 in respect of the two applicants on three different occasions in their letters dated 30.05.2014, 20.10.2014 and 09.12.2014. The Applicants had also submitted their application for the same and the Respondents No.3 vide the impugned order dated 30.12.2014 informed the applicants about the rejection of request for forwarding the copy of Character and Antecedent Verification and Medical Examination report in respect of the two applicants by the competent authority. Aggrieved by this order, the applicants have filed the present OA praying for the relief enumerated at para 1 above.

5. The Applicants have based their prayer on

the following grounds extracted from para 5 of the OA;

“a) The impugned order dated 30.12.2014 of the Respondent No.2 and 3 issued to both the Applicants are absolutely illegal and arbitrary.

b) The impugned order passed by the Respondent is absolutely illegal and arbitrary as the same is cryptic and without mentioning a single reason.

c)The Applicants apprehend that merely because the Applicants approached this Hon'ble Tribunal highlighting their grievance, the Respondent No. 2 and 3 has deliberately rejected the said request of the Applicants without assigning a single reason and by passing a cryptic order. There is no justification for Respondent No. 2 and 3 to give discriminatory treatment to the Applicants just because they happened to file Original Application No. 487 of 2012 seeking experience certificate.

d) The Applicants further submit that the Respondent NO. 2 vide order dated 08.10.2015 had accepted the technical resignation of one Shri. Sohan Kumar Jha who was working in SAG level in the same office of Respondent No.2 in the higher pay scale and who had applied for advertisement issued by UPSC for filling the post of Sr. Director in the National Handicrafts and Handlooms Museum, Ministry of Textile in the lower pay scale to which he was actually drawing. Copy of the order dated 08.10.2015 is annexed hereto and marked as Annexure A-9. Even assuming for the sake of the argument and also assuming that the reason of not issuing the said verification and examination report being appointment to the lower pay scale. The same can also be not accepted at any stretch of imagination as the Respondents themselves have accepted the resignation of the said Shri. Sohan Kumar Jha who was working on higher pay scale, and was appointed on the lower pay scale and the same is evident from their own order dated 08.10.2015. Thus the Original Application deserves to be allowed on this ground also.

e) The Applicants further submit that assuming that there is acute shortage of Group A Officers from

Chemical stream in Indian Ordnance Factories Service (IOFS) cadre, and that is the reason for not agreeing to relieve the Applicants. To this the Applicants submits that as per the position of strength trade wise as on 11.12.2015, the sanctioned strength of Officers from Chemical stream is 125 whereas the existing strength is 139 i.e. surplus of 14 Officers. and actually, name wise list of Officers from Chemical stream shows that there are 152 Officers which is around 27 in surplus than the sanctioned strength. Thus by no stretch of imagination the acute shortage could be the reason. Infact on the contrary, there is shortage of Group A Officers in the Organization where the Applicants have got selected, and the same is evident from the chart. Copies of all the charts are annexed hereto, and marked as Annexure A-10. Thus on this ground also the Original Application deserves to be allowed.

f) The impugned action of Respondent No. 2 is to defeat the lawful claims of the Applicants for their appointment to the post of Deputy Controller of Explosives and to which they are legally entitled to.

g) The Applicants further submit that as per the DOPT OM 24.08.1965 which specifically deals with release of Government servant applying for posts in response of UPSC advertisement. it is categorically decided that if the application of an officer has been forwarded to the UPSC he should be released in the event of his selection by the commission and only if subsequent to forwarding of application but before selection by the commission any very exceptional circumstances arise in which it may not be possible to release the officer in the event of his selection by the commission, the fact should be communicated immediately to the commission as well as officer concerned it is also clarified that the decision of not releasing should be very rare and the decision not to release the officer should be taken only where the circumstances referred to above are really exceptional. A copy of OM dated 24.08.1965 is annexed hereto and marked as Annexure A-11. In the present case of the Applicants first of all after forwarding such applications no such exceptional circumstances has arisen due to which there could be any decision of not releasing the Applicants and even assuming the for the sake of the argument that there could be any very exceptional

circumstances due to which the Respondents are not releasing the Applicants in that case also the same should have been communicated immediately to the commission and that too before selection. The Respondent have undisputedly not communicated any such information either to the Applicants or to the commission i.e. Respondent No.4 and thus it is not understood as to why the Respondent are illegally and arbitrary not releasing the Applicants and that too without specifying a single reason for their action. Thus on this sole ground the Original Application deserves to be allowed.

h) The Applicants further submit that on perusal of the Job Profile and Allocation of duties also of both the Applicants it will be crystal clear that it is also not the case that they are holding some sensitive post or that are in middle of some project assigned to them due to which they could not be released. Copies of job profile and allocation of duties of both the Applicants is annexed hereto and marked as Annexure A-12 colly. Thus it is not understood as to why the Applicants could not be released and as to why the request of issuance of character and antecedent certificate and medical examination report is turned down and that too without assigning any reasons. Thus on this ground also the Original Application deserves to be allowed.

i) The Applicants further submit that since 2008 till date the Respondents have accepted technical resignation of more than 80 officers out of which one officer belongs to chemical stream i.e. the stream in which the present Applicants are working. It is also vital to note that since the filing of the Original Application No. 487 of 2012, 22 officials are released by accepting their technical resignation. A copy of the said list is annexed hereto and marked as Annexure A-13. Thus once the technical resignation is accepted in respect of other officers than it is not understood as to why the same can be turned down in the case of the Applicants. The Applicants strongly apprehend that that merely because the Applicants approached this Hon'ble Tribunal highlighting their grievance, the Respondent No. 2 and 3 has deliberately rejected the said request of the Applicants without assigning a single reason and by passing a cryptic order. There is no justification for the Respondent No. 2 and 3 to give

discriminatory treatment to the Applicants just because they happened to tile Original Application No. 487 of 2012 seeking experience certificate”.

6. The Respondent Nos.1 to 3 in their reply filed on 28.06.2016 opposed the prayer of the applicants in the OA. It is their contention that the provisional Experience Certificates were issued for the two applicants as compliance of the interim order passed by this Tribunal. However, there is acute shortage of officers at the Ordnance Factory Chanda and therefore the competent authority i.e., the Ordnance Factory Board, Kolkata have taken a decision not to issue the provisional Experience Certificate and Medical Examination report. Since the Ordnance Factory Chanda was experiencing acute shortage of IOFS Officers and prior replacement will be required to be posted at Ordnance Factory Chanda in case the officers were selected`. It was not possible on their part to forward the provisional Experience Certificate to the PESO. The matter has also been reconsidered by the Respondent No.2. i.e., Ordnance Factory Board, Kolkata and it has been decided that the Department could not spare the applicants, being Group 'A' officers in the Chemical Engineering stream on compelling reasons, functional

requirements and in public interest. Nine Group 'A' officers of Chemical Engineering stream had applied for the post of Dy. Controller of Explosives and out of nine, four officers had been selected for the said post. However, due to shortage of officers in the IOFS in general and officers belonging to the Chemical discipline in particular, it would have been discriminatory, if the case of one or two officers were to be considered in isolation. Hence it was decided not to process the case of the four officers while issuing the Character and Antecedent Verification reports including the applicants. The Respondents claim that the two applicants play a pivotal role in the production shop floor to plan, chalk out production possibility and various important managerial decisions to achieve the production targets fixed by the Ordnance Factory Chanda from time to time. There is a huge shortage of Group 'A' officers in the discipline to which the applicants belong and the decision not to forward the documents was taken in public interest. The applicants in the present OA are holding the post of Works Manager bearing the Pay Scale of Rs.15,600/-10,600/-39,000/- with

Grade Pay of Rs.6,600/- whereas the Pay Scale of the post applied for is Rs.15,600/-39,000/- with a lesser Grade Pay of Rs.5400/-. The post of Dy. Controller of Explosives at PESO cannot be considered as an improvement in their career prospects since it carries less Grade Pay. The Respondents have cited the Government of India, MHA OM No.170/51-Ests., dated 21.10.1952 which stipulates as follows:

“vi Notwithstanding anything contained in the preceding paragraph in a case in which a particular employee cannot be spared without serious detriment to important work in hand public interest would justify withholding of his application even if otherwise the application would have been forwarded.”

7. The Respondent No.5 in his reply filed on 20.07.2016 has submitted that the Respondent No.5 had repeatedly asked Respondent No.2 for forwarding the Character and Antecedent Verification and Medical report of the applicants to enable them to join as Dy. Controller of Explosives in PESO. However, Ministry of Defence, Department of Defence Production had informed that it was not possible to forward the same in respect of the applicants in view of the DOPT OM dated 23.12.2013. Thereafter, the Respondent No.5 informed UPSC to release the names of the candidates from the

reserved list of officers for the post of Dy. Controller of Explosives. However, UPSC had informed the Respondent No.5 that the normal validity period of 18 months for releasing names of candidates from the reserved panel has already expired and only in exceptional circumstances names can be released from reserved panel.

8. During the course of arguments, learned counsel for the applicants vehemently argued for issue of Character and Antecedent Verification and Medical Examination report to the applicants to enable the applicants to join in the post of Dy. Controller of Explosives at PESO. It is his contention that withholding of the Certificates is arbitrary. It is also discriminatory since two other employees working in other Ordnance Factories have already been released and joined the PESO as Dy. Controller Explosives. In respect of one Shri Tejveer Singh, who was working as Assistant Works Manager at the Vehicle Factory, Jabalpur, Ordnance Factory Board had rejected his technical resignation. However, the Jabalpur Bench of CAT had considered his case in OA No.968/2015 and had directed the respondents to reconsider his application for grant of technical

resignation on lien basis. The Applicants have also referred to the case of one Shri Nitesh Chaurasia who was similarly placed as the applicants. They claim that he has been released to join as Dy. Controller of Explosives in PESO. Learned counsel for the applicants argued that once this Tribunal had held in oA No.487/2012 that non-issue of the Experience Certificate was arbitrary, the applicants should be treated at par with Tejveer Singh's case and they should also be given the Antecedents and Verification Certificate along with the Medical report.

9. Learned counsel for the Respondents however, argued that the MHA OM No.170/51-Ests. dated 21.10.1952 is quite clear that if the public interest is at stake refusal can be given and is justifiable. The case of Tejveer Singh is different because he was a Group 'B' officer and was applying for a Group 'A' post and therefore it was an advancement of career promotion, whereas in the case of the applicants they are proposing to join a post which carries less Grade Pay than what is being drawn by them at present. In the case of Shri Tejveer Singh his Experience Certificate had already been released by the respondents whereas in the case of the two applicants the Experience Certificate was refused

initially and was forwarded only after this Tribunal had passed an order directing the respondents to do so. Learned counsel for the respondents reiterated that there is an acute shortage of officers in the Chemical stream and the two applicants are working at Managerial level in-charge of shop floor operations and doing supervisory works in production. Since Ordnance Factory deals with production of defence equipment for the Country, their continuation at the Ordnance Factory, Chanda is absolutely essential and therefore, in public interest they cannot be relieved.

10. The Respondents have also clarified that Shri Nitesh Chaurasia, Works Manager at Ordnance Factory Itarsi is still working at OFI. He was initially not given the Experience Certificate. A reference was made to the Ordnance Factory Board which in its letter dated 07.10.2013 intimated the Ordnance Factory Itarsi that the intimation to the UPSC about the non-release of the officers was not given timely and therefore there was no option but to issue Experience Certificate. Following this instruction from the Ordnance Factory Board, the Ordnance Factory Itarsi gave Experience Certificate to Shri

Nitesh Chaurasia. However, although Shri Chaurasia has been selected by the UPSC, the Department of Industrial Policy & Promotion has been informed by the Ordnance Factory Board letter dated 19.03.2015 that in view of shortage of officers in the Chemical stream, Ordnance Factory Board was unable to spare the services of the officer. The Character and Antecedent Verification and Medical Examination report was not forwarded by the Ordnance Factory Board to the DIPP.

11. Learned counsel for the Applicants however, has argued that there is no shortage of officers as claimed by the respondents. He has given a chart to show the total sanctioned strength in the Chemical stream as 125 whereas presently 139 officers are working and therefore there is an excess. In over-all staff capacity also as against 1152 sanctioned strength 1173 employees are working. The Respondents have however argued that at the officers level in Chemical stream, there is a shortage. They have pointed out that the work handled by the applicants is quite critical for ensuring production at the Ordnance Factory. That is why in public interest the applicants cannot be

relieved from their post in the Ordnance Factory Chanda. The Government had issued instructions on release of Government servants applying for post outside their organization. It is true that once a Government official joins a particular post, he acquires experience and expertise in the same organization. However, in the interest of his own career advancement he also applies to other organization for higher post, in such cases organization has to weigh the relative advantages of retaining the Government official vis-a-vis the official's need for advancement in career. In the present case, the respondents have taken the plea that the services of the applicants cannot be spared in public interest since they are involved in the production of advance defence equipments. Comparing the work involved in the OF and the PESO, we are inclined to accept this proposition. The Applicants are undoubtedly involved in more critical work at the Ordnance Factory in national interest for the defence of the country compared to the regulatory job at PESO. It cannot also be strictly stated that it is for their career advancement, particularly because the Grade Pay for the post to which they

have applied at PESO is less than the Grade Pay they are already drawing at the Ordnance Factory Chanda.

12. The Respondents have forwarded the application of Shri Tejveer Singh since at the time of applying he was in a lower post and in the interest of career advancement he had applied for a higher post. Even then he was finally relieved to join in the new post after he obtained the order of the Jabalpur Bench of this Tribunal in OA No.968/2015. The second candidate mentioned by the applicants, namely, Shri Nitesh Chaurasia has not been relieved by the Ordnance Factory Itarsi and the Ordnance Factory Board has already informed the DIPP of its inability to relieve the officer. In the present case also the Ordnance Factory Board had initially refused to support the application of the applicants by withholding the Experience Certificate which was subsequently released only after the intervention of this Tribunal in OA No.487/2012. It is our considered view that the respondents are within their rights to exercise the power of refusal to the applicants to leave the organization in national interest. As already mentioned by us when it comes to weighing the

public interest/national interest vis-a-vis the individual interest one should be inclined to tilt towards the former rather than the latter.

13. The Respondents have rightly cited the Government of India MHA OM No.170/51-Ests. dt. 21.10.1952, the operating para of the said OM is quoted at para 6 above and is reproduced below:

“vi Notwithstanding anything contained in the preceding paragraph in a case in which a particular employee cannot be spared without serious detriment to important work in hand public interest would justify withholding of his application even if otherwise the application would have been forwarded.”

14. After considering the facts of the case and points of law involved in the OA, it is our considered view that the applicants cannot claim their relief from the parent organization as a matter of right. In the present case, the respondents have rightly withheld the issuance of the Character and Antecedent Verification and Medical Examination report on the ground of public interest. We find nothing arbitrary or illegal in their action.

15. The Original Application is therefore, dismissed as devoid of merits. No order as to costs.

(Dr.Mrutyunjay Sarangi)
Member (A)

(Justice Dinesh Gupta)
Member (J)

dm.