**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the H.P. Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth :

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned inaction of the respondent department whereby they have created no promotional avenues for the applicant and the applicant will have to retire in the cadre of Security Guard in which he was initially appointed.

The said impugned inaction is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power.

4. Jurisdiction:

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

6.1 That the relevant facts and the facts leading to filing of present O.A. are given in brief hereunder in chronological order for the convenience of my Lords :-

|  |  |
| --- | --- |
| Date | Event |
|  | The applicant joined Army |
|  | The applicant participated in the War during the period. |
|  | The applicant was released from the Army. |
|  | The applicant joined civil service in the respondent department as a Security Guard, on regular basis against reserved post for Ex-Serviceman. (Annexure A-1) |

6.2 Details of Medals, Decorations and Mentions in dispatches Awarded :

1. Raksha Medal 1965

2. Samar Seva Medal 1965

3. 9 Years S. S. Medal

4. 25th Independence Medal

5. S. S. Medals with clasps

6. Sangram Medal

7. Assam & Bengal Medal

8. Poorvi Star

Details of War/Field Service :-

1. FSCA Op Cactus Lily

2. Binaguri/Jalpaiguri

3. FSCA (Nefa)

4. Binaguri/Jalpaiguri

5. FSCA Op ORCHID

Naga Hills

6. FSCA (J&K)

7. CA 19 Inf Div

8. FSCA CUPTB

9. FSCA & HAUCA Nefa

6.3 That the applicant joined Army with great fervour and zeal to serve the nation on \_\_\_\_\_\_. The applicant was initially enrolled for \_\_\_\_\_\_ years of colour service and 8 years of reserve liability. However, the service of the applicant was extended by the Army authorities in the wake of external aggressions and as such the applicant served in the Army for full terms when he was released on completion of service. The applicant served through whole length and width of the country, during Wars, Operations, and Exercises conducted by the Army authorities. Interestingly, the applicant served in the Army during all the Wars. It would be pertinent to mention here that when the applicant was released from the Army his character was assessed as Exemplary, which is the highest degree of character.

6.4 That the applicant on release from the service joined the respondent department on the initial post of Security Guard and is serving as such eversince. The applicant was appointed against reserved vacancy on sponsorship by the Ex-serviceman Cell and therefore, was entitled for the benefits under these Rules.

6.5 That the respondent department has no published and notified R&P Rules of its own and as such is adopting the R&P Rules of Agro Industries Corporation Ltd.

6.6 That the applicant is an Ex-serviceman. After retirement from the armed forces, the applicant was faced with rehabilitation and resettlement like any other Ex-serviceman and as such has applied for and joined the service with the respondent department.

6.7 That the applicant further submits that there were approximately 20 Ex-servicemen called for interview for the posts of Security Guards by the respondent department, out of which three Ex-servicemen including the applicant were selected. The Applicant was legitimately expecting that there must be good promotional chances and avenues available in the cadre of Security Guards and as such the applicant joined the service.

6.8 That it is submitted that the respondent department has no notified R&P Rules of its own and as such is following the R&P Rules of HP Agro Industries Corpn Ltd. It is also pertinent to mention here that the employees of the respondent department in class III or II are getting all the promotional benefits and the respondent department is paying no heed towards the employees in the lowest categories with regard to their promotional benefits.

GROUNDS

6.9. That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned inaction of the respondent whereby they have provided no promotional avenues to the applicant is arbitrary, malafide, illegal, ultra vires, against the Articles 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the Hon'ble Apex court has held that reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and foster the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to be degenerate and stagnation kills the desire to serve properly. The Hon'ble Apex court has given directions in appropriate cases to provide at least two promotional opportunities to the employees by appropriate amendments of rules.

(c) That when the applicant joined the service with the respondent department, the applicant was legitimately expecting that there must be enough promotional avenues in the cadre of Security Guard. However, after joining the respondent department the applicant learnt to his shock and dismay that there are no promotional avenues in the cadre of Security Guards. Thereafter, the applicant and other two Security Guards kept on demanding of the management to create promotional avenues in their category. The management kept on assuring that the promotional avenues will be created, but despite so much of time having elapsed no fruitful action have been taken in this regard.

(d) That it is settled law that the public or private organizations must provide opportunities of advancement to its employees as an employee is appointed not just for one job but for whole career.

(e) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(f) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Quash the impugned inaction of the respondent department whereby they have not created promotional avenues for the applicant arbitrarily, malafidely and illegally;

(b) Direct the respondents to create at least two promotional avenues for the applicant in the cadre of Security Guard;

(c) Direct the respondent department to consider the applicant for further promotion after creating two promotional avenues at least after 5 years and 10 years of service and grant all the consequential benefits to the applicant with arrears and interest @ 18% pa;

(d) Direct the respondents to produce all the relevant documents for perusal by this Hon'ble Tribunal;

(e) Allow the cost of this O.A.;

(f) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

At this stage no interim directions are prayed for.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter Not Pending with any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the H.P. Administrative Tribunals Act 1985.

I, \_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under :-

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No: \_\_\_\_\_\_ of 2004

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Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**Annexure A-1**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ref No: \_\_\_\_\_\_ Regd\_\_\_\_\_\_ Dated: \_\_\_\_\_\_

OFFICE MEMORANDUM

Subject: Appointment to the post of SECURITY GUARD

Reference your application/interview dated \_\_\_\_\_\_ for the post noted above, you are hereby offered the post of Security Guard in the pay scale of Rs. \_\_\_\_\_\_-\_\_\_\_\_\_ per month plus other usual allowances as admissible to the employees of this Corporation from time to time on the following terms & conditions:-

(1) That you will be on probation for a period of two years which shall be deemed to have been extended till such time orders otherwise are issued. During the period of probation, your services are liable to be dispensed with at any time without assigning any reasons thereof.

(2) That in the event of your leaving the services of this Corporation, you shall be required to give in writing one month's notice or in lieu their of you shall be required to deposit one month's salary.

(3) That you shall produce the following certificates at the time of your joining the post.

(i) Certificate in support of your being bonafide resident of Himachal Pradesh from the Magistrate 1st Class.

(ii) Certificate in support of your academic and technical qualifications/experience etc.

(iii) Certificate in support of your date of birth.

(iv) Certificate of good character and conduct from the Magistrate 1st Class or your last employer/Gazetted Officer.

(v) Medical fitness certificate from an authorised Medical Attendant.

(vi) Bigamy certificate in respect of your marriage.

(vii) Certificate from the last employer to the effect that you have no liability towards him.

(viii) If you belong to SC/ST/BC certificate from the Magistrate to the effect.

(ix) Oath of allegiance to the Constitution of India.

(4) You shall be liable to be posted any where in the country/state where the Corporation has its operational units.

(5) No. TA will be paid for joining the post in the Corporation.

(6) Other terms & conditions of service shall be subject to the rules, regulations/orders of the Corporation that are or may be in force from time to time.

In case the above terms & conditions are acceptable to you, you are directed to report for duty to \_\_\_\_\_\_\_\_\_\_ on or before \_\_\_\_\_ positively, whereafter this offer of appointment shall automatically be treated as canceled.

BY ORDER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

No. \_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_

Copy to:

1. \_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_

3. Personal file to the official.

4. Guard File.

MANAGER (PERSONNEL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TRUE COPY