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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 05.09.2023

+ **W.P.(C) 10079/2023 & CM APPL. 38880/2023**

MR. AMIT YADAV

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant:

Mr. Shreenath A. Khemka with Mr. Ganesh A. Khemka, Advocates.

For the Respondents:

Mr. Hemant Kumar Yadav, SPC, Mr. Rahul Kumar Sharma, GP along with Col. R.K.Nair, Lt. Col. Maheshwar Sharma and Sub. Ram Niwas for R-1 to 3.
Mr. Prem Prakash, Mr. Sumit Kumar and Ms. Neetu Gupta, Advocates for R-4.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Learned counsel for the respondent submits that on account of a typographical error the presence of Mr. Hemant Kumar Yadav, Senior Panel Counsel with Mr. Rahul Kumar Sharma (GP) has not been noticed in order dated 07.08.2023 whereas the submissions of the counsel have been noted.

2. Accordingly, order dated 07.08.2023 is corrected. Presence of Mr. Hemant Kumar Yadav, Senior Panel Counsel with Mr. Rahul Kumar Sharma (GP) shall be read in order dated 07.08.2023 as having appeared for respondent Nos.1 to 3.



3. Petitioner impugns letter dated 28.07.2023 whereby the application of the petitioner seeking study leave has been rejected.

4. The original file has been produced by the department for consideration of the application. It is noticed that the note approved by the Director General while rejecting the application primarily dealt with the issue of shortage of enough serving engineers in the service to an extent that it noted that there are 51% shortage of staff. In that view the application has been rejected. The original file has been produced in the Court.

5. It is noticed that when the petitioner filed an application for grant of study leave the Administrative Officer put up a note highlighting that the present deficiency in cadre of Assistant Executive Engineer (Civil) as on 01.06.2023 is 51.77%. Thereafter the noting sheet proceeds on the sparability certificate being issued by the competent authority. The DG, Border Roads on 22.06.2023 has also noted that considering the existing deficiency of 51.77% in AEE (Civil) justification for recommending the case has not been brought out on the file.

6. Subsequently, when the matter was once again placed before the DG the Director General has noted as under: -

(a) The officer has applied for study while posted in a foregoing assignment without awaiting for cooling off period. The officer is required to serve in own organization after BCA tenure and any outside employment immediately after BCA is not in order due to heavy deficiency in cadre.

(b) Further conditional sparability certificate issued by CE(P) Pushpak is not acceptable. Project is asking



for reliever with forthwith move.

7. However, when it is communicated to the petitioner on 28.07.2023 by the Senior Administrative Officer the words “due to huge deficiency in cadre” have been omitted.

8. We notice that the communication dated 28.07.2023 is pursuant to the directions of the DG as noted in the office noting dated 25.07.2023.

9. The application of the petitioner has been rejected on the ground that there is deficiency in the cadre of AEE (C) of 51.77% and it would not be in the interest of the organization to relieve petitioner for two years study leave.

10. We may further note that an officer cannot claim study leave as a matter of right. Study leave is granted keeping in view the interests of the organization. In the instant case petitioner has not been able to show that petitioner has been discriminated against in terms of grant of study leave. Respondents have declined to grant study leave to the petitioner in the interest of the organisation keeping in view the huge deficiency in the rank in which the petitioner serves i.e. AEE(C).

11. In view of the above, we find no merit in the petition. The petition is accordingly dismissed.

12. At this juncture, it is pointed by learned counsel for the petitioner that during pendency of the present petition by order dated 01.08.2023 petitioner was permitted to participate in the verification process for admission into the subject course in the School of Planning and Architecture i.e. respondent No.4.



13. Learned counsel for the petitioner submits that since the petitioner would not be able to now join the course, he be permitted to apply to the said school for refund of the fee that he had deposited and accordingly he submits that petitioner shall be filing a representation with respondent No.4 for refund of the school fee in accordance with rules.

14. In view of the above, on an application being filed by the petitioner seeking refund, respondent No.4 shall consider the same in accordance with law and pass appropriate orders. However, due credence may be given to the fact that petitioner was permitted to participate in the admission process pursuant to the orders passed by this Court.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 05, 2023/rk