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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, Mumbai.

ORIGINAL APPLICATION NO. 54/2020

DATE OF DECISION:- 28.01.2020

CORAM:- **R. Vijaykumar, Member (A)**
RAVINDER KAUR, MEMBER (J)

Arun Kumar Pandey,
Aged: 56 years; Occu: Chief
Vigilance Inspector)
(Security), Vigilance, Central Railway,
Railway Head Quarters, CSTM, Mumbai,
R/at:F-7, Central Railway Colony,
Matunga, Mumbai - 400 019

....Applicant

(By Advocate Shri R. G. Panchal)

Versus

1. Union of India, Through Secretary,
Ministry of Railway, Rail Bhavan, South
Block, New Delhi-110 010
2. General Manager, (CR)
Central Railway Head Quarters, Old Bldg,
CSTM, Mumbai - 400 001
3. Sr. Deputy General Manager, (Vigilance)
(CR) Central Railway Head Quarters,
Old Bldg,
CSTM, Mumbai - 400 001
4. Principal Chief Personnel Officer
Central Railway Head Quarters, Old Bldg,
CSTM, Mumbai - 400 001
5. Deputy Chief Vigilance Officer
Central Railway Head Quarters, Old Bldg,
CSTM, Mumbai - 400 001

....Respondents

(By Advocate Shri V.S. Masurkar)

ORDER
PER: RAVINDER KAUR, MEMBER(J)

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“(a) This Hon'ble Tribunal be pleased to quash and set aside the impugned order 20.12.2019 [Annexure-A1], repatriating the applicant without allowing him to complete the period of deputation.
(b) Cost of this Application may kindly be provided;
(c) any such other and further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case”

2. We have heard Shri R. G. Panchal, learned counsel for the applicant and Shri V. S. Masurkar, counsel for the respondents on the point of admission after obtaining short reply on the preliminary issue of jurisdiction of this Tribunal.

3. The facts in brief are that the applicant had joined Railway Protection Force(hereinafter referred as 'RPF') as Constable in Central Railway on 20.09.1984. After getting series of promotions he was promoted as Inspector in 2012. He was selected as Chief Vigilance Officer(Security) on deputation after following the due process consisting of written and oral exam. Vide

order dated 27.04.2018 (Annex A-3) issued by Respondent no. 4, the applicant was appointed on deputation as Chief Vigilance Officer (Security). Thereafter vide order dated 15.06.2018, he was posted as Chief Vigilance Officer (Security) with his branch GM's officer Directorate, HQ, CSMT, Mumbai for a period of four years. The applicant was issued identity card (Annex A-4) valid till 14.06.2022 as Chief Vigilance Inspector (Security). He continued to discharge his duties with utmost care, uprightness and integrity.

4. It is stated that on 05.04.2019, Vigilance team consisting of the applicant and other Chief Vigilant Inspector (Security) namely Sankalp Shrivastava alongwith RPF conducted joint check at Lokmanya Tilak Terminus. On person namely Shailendra Kamla Prasad Pandey, a suspect was apprehended, who was found in possession of four tickets costing Rs. 4015, three filled and 22 blank reservations forms. Information regarding this was sent to the higher authorities by

Shri Sankalp Shrivastava through SMS. A joint note dated 05.04.2019 was prepared.

The suspect was handed over to the RPF who booked him and produced him before the Railway Court. Later on the suspect was chargesheeted under Section 143 of the Railways Act. The applicant was called upon by respondent no. 5 vide official note dated 16.09.2019 (Annex A-10) to explain certain inconsistencies with regard to the joint check referred above, to which he submitted his response but he did not receive any memo.

As per his knowledge, a preliminary Inquiry was conducted against him and he was given to understand that the Inquiry Officer who conducted the preliminary Inquiry did not find any material against him. However, it is alleged that respondent no. 5 was hell bent upon punishing the applicant for reasons best known to him but when he failed to take any such action against him, he illegally terminated his service on deputation and repatriated him to his parent department. Vide impugned order dated 20.12.2019.

5. The applicant has challenged the impugned order dated 20.12.2019(Annex A-1) on the grounds that it is violative of settled principles of law and is stigmatic. It also violates the fundamental right of the applicant under Article 14 read with 21 of the Constitution.

6. The respondents in their short reply have taken the preliminary objection that the applicant is a member of armed force, therefore, irrespective of the fact that he is appointed on tenure basis on an ex-cadre course, he does not cease to be member of the armed force and therefore, this Tribunal has no jurisdiction to deal with the present case. The respondents have relied upon the judgment of the Hon'ble High Court of Gujarat in the case of **Shiv Kumar Tiwari v. UOI & Ors.** (1986) 2 GLR 1038. It is stated that the applicant was selected on ex-cadre tenure post of Chief Vigilance Officer(Security) in Vigilance Branch of the Railway from his parent cadre. That no deputation allowance is being paid to Any Chief Vigilance

Inspector. For day to day working and railway administration the Indian Vigilance Manual has to be followed. It is claimed that the person occupying the ex-cadre post is governed by his respective service rules since the Central Vigilance Inspector(Security) is chosen exclusively from the members of RPF, he remained a member of RPF. He continues to get all the allowances like Ration Money allowances as per his cadre policy which are not admissible for other non RPF posts in Vigilance Branch. For all service and establishment matter, he is governed by the RPF Rules 1957 as amended from time to time.

7. Learned counsel for the respondents has drawn our attention to Section 2(1)(c). As per the this Section, "Member of the force means a person appointed to the force under this Act". It is claimed that even after the applicant is posted on ex-cadre post of Central Vigilance Inspector(Security), his status as "Member of the force" remains unchanged. Learned counsel for respondents

also relies upon Section 3 of the RPF Act that RPF is an armed force of the Union as described in Section 3 of the RPF Act 1957 and therefore, even if the applicant is working in Vigilance branch, he continues to be the member of the RPF and governed by the provisions of RPF Act.

8. Learned counsel for the respondents has prayed that the OA be dismissed for want of jurisdiction.

9. We have carefully considered the submissions of both the parties and have gone through the relevant provisions of law. The applicant belongs to RPF. Section 3 of the RPF Act reads as follows:

“3. Constitution of the Force:

(1) There shall be constituted and maintained by the Central Government a Force to be called the RPF for the better protection and security of Railway Property.

(2) The force shall be constituted in such manner, shall consist of such number of superior officers and members of the Force and shall receive such pay and remuneration as may be prescribed.”

Section 3 was amended by virtue of Section 4 of the amending Act (No. 60/1985) and for the words “a Force” the words “an armed force of the Union” were substituted.

10. Section 2 of the Administrative Tribunals Act, 1985 finds mention certain persons to whom the provisions of this Act shall not apply. Section 2 of the Administrative Tribunals Act reads as under:

“2. Act not to apply to certain persons.

The provisions of this Act shall not apply to—

- (a) any member of the naval, military or air forces or of any other armed forces of the Union;
- (b) deleted
- (c) any officer or servant of the Supreme Court or of any High Court [or courts subordinate thereto];
- (d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union territory having a Legislature, of that Legislature.”

Admittedly the applicant belongs to RPF, an Armed Force of the Union and therefore, in terms of Section 2 of the Act, he is not subject to the jurisdiction of the Central Administrative Tribunal. No doubt the applicant, though was occupying an ex-cadre post i.e. CBI(Inspector) on deputation, however, he is not uprooted from his parent department during the period he remained on deputation. Therefore, he is governed by the service rules applicable to him as he is still member of RPF an Armed Force of Union. Merely for the fact that he has been

repatriated to his parent department vide the impugned order dated 20.12.2019 issued by Respondent No.4, this itself does not give any jurisdiction to this Tribunal to try the present application.

11. Learned counsel for the respondents has drawn our attention to the judgment of Hon'ble Gujarat High Court in the case of **Shiv Kumar Tiwari** (supra) wherein also the petitioner belonging to RPF had approached the Central Administrative Tribunal for setting aside his transfer order. The Hon'ble High Court observed "if the petitioner is treated to be a servant belonging to the Armed Force of the Union, Administrative Act 1985 will not be applicable in view of the provisions under Section 2 of Administrative Tribunals Act, 1985." It made specific observations in this regard in para 6 of the judgment which reads as under:

"Thus, from the foregoing discussion, it is very clear that the petitioner who belongs to the Railway Protection Force comes under the category of "an armed force of the Union" and as such, the provisions of the Administrative Tribunals Act, 1985, will not be applicable to him. If that be so, there is no question of sending back the petition filed by him to the Administrative Tribunal and the

said petition has to be dealt with on merits."

12. In view of the aforesaid judgment as well as Section 2(a) of the Administrative Tribunals Act, which clearly state that the provisions of this Act shall not apply to any member of the Naval, Military or Air Forces or of any other Armed Forces of the Union, since the applicant belongs to the armed forces of the Union in view of Section 3 of RPF Act, 1957, this Tribunal has no jurisdiction to look into the dispute raised by the applicant vide present OA. Hence at the admission stage itself, the OA is dismissed being not maintainable for want of jurisdiction of this Tribunal. However, the applicant is at liberty to approach the appropriate forum for redressal of his grievance. No order as to cost.

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(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)