



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

MA 3402/2019
MA 3161/2019
OA 2872/2019

Reserved on: 18.12.2019
Pronounced on: 08.01.2020

Hon'ble Mr.S.N.Terdal, Member (J)
Hon'ble Mr. A.K.Bishnoi, Member (A)

Nitin Tanwar (Aged about 36 years)
Group 'C'
S/o Sh. Madan Lal,
Posted as Leading Hand Fireman
54, ASP Air Force Station,
Gurgaon
R/o Type 1/1, NSG Manesar.

... Applicant

(By Advocate: Mr. M.K.Bhardwaj)

VERSUS

Union of India through

1. Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi.
2. The Chief of the Air Staff,
Indian Air Force, Vayu Bhawan,
New Delhi.
3. The Commanding Officer,
54, ASP, Air Force Station,
Gurgaon.
4. Chander Bhan S/o Late Sh. Shish Ram,
Working as Fireman,
Air Force Station, Gurugram
R/o H.No.G-21, Gali No. G-1,
Ashok Vihar, Gurugram (Haryana)

(By Advocate: Shri R.K.Sharma counsel for official respondents.
Shri Yogesh Sharma counsel for private
Respondent (Applicant in MA 3402/2019).



ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

Heard Mr. M.K.Bhardwaj, counsel for applicant, Mr. R.K.Sharma, counsel for official respondents and Mr. Yogesh Sharma, counsel for private respondent (applicant in MA 3402/2019), perused the pleadings and all documents produced by the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "(a) grant ex-parte stay of order dated 18.9.2019 issued by Air HQ, New Delhi.
- (b) Restrain the respondent from reverting the applicant from the post of Leading Hand Fireman to the lower post of Fireman.
- (c) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case. "

3. This OA is filed challenging the internal communication dated 18.09.2019, which is extracted below:

"AFNET 21.11.6174

MOST URGENT
COURT CASE BY FAX

Air Head Quarter
Vayu Bhawan,
New Delhi-110106



18 Sep 19

POSTING ON COMPASSIONATE GROUNDS SH.NITIN TANWAR,
FIRE MAN, PA No. 44916N

- [illegible]

(Emphasis supplied)

From the perusal of the above extracted internal communication dated 18.09.2019, it is crystal clear that the said internal communication has been issued in view of the notice served on the respondents in OA 337/2019 filed by Chander Bhan and Others and the applicant in this case is a private respondent in that OA. It is further clear from the perusal of the said internal communication that in view of the facts available in OA No.337/2019 and in view of the facts concerning earlier posting, present posting, transfer and rank of the applicant, a corrective action is contemplated by the department by the above said internal communication. But, however, no order adversely affecting the applicant is not yet passed. Nevertheless the applicant filed the present OA and on the date of admission itself, the said internal communication was stayed. The said order dated 25.09.2019 is extracted below:-



"Heard Mr. Satish Kumar, learned counsel for applicant.

2. In the present O.A, the applicant has challenged order dated 18.09.2019 (Annexure A/1) passed by the respondent no. 2 vide, which the respondent no.3 has been requested to take corrective action and to ensure that the applicant is taken on the strength as "Fireman".
3. The learned counsel for applicant submits that the applicant was promoted to the post of Leading Hand Fireman (LHF) and on compassionate ground he was posted to Air Force Station, Gurgaon, 54 ASP, AF. In this regard, he refers to the order dated 26.12.2017 (Annexure A/9) issued by the respondents.
4. Learned counsel for applicant submits that vide impugned order, the respondents are trying to revert the applicant from promotional post without following due process of law.
5. Issue notice to the respondents.
6. Mr.R.K.Sharma, learned counsel appears on advance service and accepts notice on behalf of the respondents.
7. Mr. Satish Kumar, learned counsel for applicant presses for grant of interim order in terms of para 9 of the O.A.
8. Heard learned counsel for the parties on the point of interim relief. In the facts and circumstances, the respondents are directed not to give effect to the impugned order dated 18.09.2019, if the same has already not been given effect to till the next date of hearing.
9. Mr. R.K.Sharma, learned counsel prays for three weeks time to file reply. Let reply be filed within three weeks. Rejoinder if any, may be filed within one week thereafter."
10. List on 22.10.2019.

Order by Dasti."



4. Aggrieved by the interim order dated 25.09.2019, the private respondent in this case, who is the applicant in OA no.337/2019 filed the present MA 3402/2019 praying for vacation of the stay. The applicant filed reply to MA 3402/2019 and the official respondents have also filed reply to this MA and in the reply also they have reproduced the facts leading to the transfer on compassionate ground of the applicant in this OA and the pendency of OA 337/2019 and reiterated the contents of the impugned internal communication. The relevant paras of the reply are reproduced below:

"7&8. That the content of Para 7&8 of the MA No.3402/2019 in OA No.2872/2019 under reply are not denied to the extent that the contents are based on facts and on record. That the applicant, Shri Nitin Tanwar was initially appointed as Fireman at 11 BRD, AF Ojhar, Nasik wef 27 Dec 2004. He submitted a general application for co-location posting with spouse on 08 Aug 16 at 11 BRD, AF Ojhar, Nasik wef 27 Dec 2004. He submitted a general application for co-location posting with spouse on 08 Aug 16 at 11 BRD, AF. The posting application of above named individual was forwarded to HQ MC, IAF after confirmation of vacancy of in the trade of Fireman/LHF at 54 ASP, AF (Gurgaon). The posting application on compassionate ground has been examined. The ACAS (PA&C) has given in-Principal approval for posting of the applicant Shri Nitin Tanwar, Leading Fireman of 11 BRD AF to 54 ASP, AF. The applicant was promoted to the post of Leading Hand Fireman and on compassionate ground he was posted to Air Force Station, Gurgaon, 54 ASP, AF.

9. That the content of Para 9 of the MA No. 3402/2019 in OA No. 2872/2019 under reply are denied to the extent that a total of six post of Leading Hand Fireman were vacant in Year 2017. However, Department promotion committee was not held due to Court case OA /2584/2016 wherein the Hon'ble Court had directed that any promotion will be subject to final outcome of the



above mentioned OA (A copy of order dated 03 Aug 2016 of the Hon'ble CAT (PB), New Delhi in OA /2584/2016. It is further brought out that DPC has been convened and finalized after the clarification from Air HQ that the Department promotion committee can be held as there is no interim stay on conduct of DPC. Applicant who was already a Leading Hand Fireman at 11BRD, AF has been posted as LHF to 54 ASP on compassionate ground. It is clarified that there is no department on posting of persons holding promotional posting to any other unit of IAF. However applicant has not been granted any new promotion due to posting at 54 ASP. On the event of transfer on compassionate grounds, persons are treated as junior most in transferred post at new unit. A copy of order dated 03 Aug 2016 of the Hon'ble CAT (PB), New Delhi in OA /2584/2016 is annexed as Annexure R-1.

10. That the content of Para 10 of the MA No.3402/2019 in OA No. 2872/2019 under reply are not denied to the extent that the contents are based on facts and on record. That the applicant was posted to 54 ASP, AF to Fire Man Trade vide HQ MC, IAF letter No. MC/5500/3/47/PC dated 28.07.2017. It was mentioned in para 2 of ibid posting order that the individual will reckon his seniority from the date of reporting for duty in his new unit. However, it has been come to notice of Air HQ (VB) vide OA No. 337/2019 filed by Shri Chander Bhan and others before Hon'ble CAT (PB), New Delhi, that the individual has been taken on the strength in his New Unit i.e at 54 ASP as 'Leading Fire Man' which is a promotional post for Unit Controlled the Fire Fighting Cadre. Hence, it was requested to 54 ASP, AF to take necessary corrective action vide letter dated 18.09.2019 and ensure that the applicant be taken on the strength as 'Fire Man' trade at 54 ASP. An interim relief has been granted by this Hon'ble Court in this OA directing not to give effect to the Air HQ (VB) order dated 18.09.2019 and the same has been complied by the respondents at this stage."

From the above facts it is crystal clear that no order is passed by the respondents affecting adversely the applicant as envisaged under Section 19 of the Administrative Tribunals Act, 1985. Moreover, even, if any, order is passed the applicant had to exhaust



the alternative remedy available to him before filing OA as required under Section 20 of the Administrative Tribunals Act, 1985. The Section 19 and Section 20 of the Administrative Tribunals Act, 1985 are extracted below:-

“19. Applications to Tribunals.—

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees)⁴⁶ [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]



(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

Section 20 in The Administrative Tribunals Act, 1985

20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.



5. In view of the fact of this case that no order as envisaged under Sections 19 and 20 are passed by the respondents, as such we are of the view that the OA itself is filed without any cause of action and also in view of the fact that the impugned internal communication is written as a consequence of the fact brought to the notice of the respondents by way of pending OA 337/2019 and the applicant in this OA being respondent No.5 in the above referred OA no. 337/2019, the impugned order dated 25.09.2019 will come in the way of disposal the said OA 337/2019. In view of these facts, we are of the view that staying the impugned internal communication dated 18.09.2019 of the respondents requires to be vacated.

6. Accordingly, MA is allowed. The stay order dated 25.09.2019 passed in this OA is vacated. And as narrated above cause of action to file the present OA has not yet arisen as such the OA is dismissed being pre-mature. The other pending MA is disposed off. No order as to costs.

(A.K.Bishnoi)
Member (A)

(S.N.Terdal)
Member (J)

'sk'

..