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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.355/2001 in
OA No.964/2001

New Delhi this the 12th day of October, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

R.K. Bhardwaj,
S/o Shri Jai Ram,
aged 58 years,
H.No.1079, Sector-3,
R.K. Puram,
New Delhi.

...Applicant

(By Advocate Shri A.K. Behera)

-Versus-

1. Shri Kamal Pande,
Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Shri N.S. Sandhu,
Director General,
Special Security Bureau (SSB),
East Block-V, R.K. Puram,
New Delhi.

...Respondents

(By Advocate Shri B.S. Jain)

O R D E R

By Mr. Shanker Raju, Member (J):

Heard the learned counsel for the parties. The applicant has assailed an order of transfer issued by respondents whereby on request transfer he has come to Delhi and onceagain by an order dated 23.10.2000 he has been transferred to Barmer. The request made by the applicant was also turned down by an order dated 11.4.2001. By an order dated 9.5.2001 having regard to the pleadings of the applicant and finding force in the arguments of the learned counsel of the applicant the transfer order dated 11.4.2001 was found to be malafide and the operation of the same was stayed by the Tribunal.

2. The learned counsel for the applicant alleges wilful and contumacious disobedience of the directions of

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this court by alleging that the copy of the order was served upon the respondents on 10/11.5.2001 by Dasti. The applicant was not allowed either to join or to sign the attendance register for which he made a representation and was verbally directed by the respondents to return the identity card and has been denied his pay and allowances since April, 2001. The learned counsel of the applicant by resorting to the doctrine of eclipse, stated that no status quo was granted by the Court but having regard to the malafides and the transfer orders being contrary to the guidelines the operation of the order has been stayed with the result that the applicant has to be put back in the position which he was holding at the time the transfer orders have been issued, which, *inter alia*, implies that the applicant is to be put back at Delhi and to be accorded his pay and allowances.

3. On the other hand, the learned counsel for the respondents states that a reply has already been filed in the OA and in his reply to the contempt it is stated that the copy of the order of this Court was served upon the respondents on 11.5.2001. Before that the post of DFO (M) Barmer stood transferred back on 31.3.2001 and the applicant had already stood relieved on 30.3.2001, much before the receipt of the interim order dated 11.4.2001 and having no vacant post at SSB, Delhi, it is not possible to retain the applicant at Delhi. It is also stated that the respondents have not committed any wilful or contumacious disobedience of this court and the applicant has to make a request to the office to which he has been transferred on

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31.3.2001. The respondents have also tendered their unqualified and unconditional apology for the lapse or delay on their part.

4. We have considered the rival contentions of the parties and perused the material on record. The transfer order dated 11.4.2001 and the order passed on representation have already been given effect to by the respondents by transferring the post of DFO (M) Barmer on 31.3.2001 and the applicant having relieved on 30.3.2001 and in absence of any order passed by this Court according status quo ante the applicant cannot be restored back to the position he was holding before the transfer orders were issued. The operation of the transfer order has been stayed but on 9.5.2001 before that the transfer order has been given effect to on 30.3.2001 and as such we do not find any wilful or contumacious disobedience of the order of the court by the respondents. The doctrine of eclipse would have no application in the facts and circumstances of the present case. The stay of the operation of the transfer order would be relevant to the circumstances as existing on 9.5.2001 and once the transfer order has been given effect to, the action of the respondents by not taking back the applicant on duty at Delhi cannot be found fault with. However, we do not express any opinion on the merits of the case.

5. Having regard to the reasons recorded the present CP is dismissed. Notices are discharged.

6. Let the OA be listed for final hearing before the appropriate Bench on 16.10.2001.

S. Raju
(Shanker Raju)
Member (J)

'San.'

(Govindan S. Tampi)
Member (A)