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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

OA-1347/95

New Delhi this the 9th day of July, 1996.

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri SSS Goverdhan Singh,
S/o Shri Anant Singh,
R/o House No.C-105,
Amar Colony,
Kamrudin Nagar,
Delhi-110041.

Applicant

(through Sh. Surinder Singh, advocate)

versus

1. Union of India through
the Defence Secretary,
South Block, DHQ Post Office,
New Delhi-110 011.

2. The Director General of Ordnance Service,
MGO's Branch OS - 8C,
Army Headquarters,
DHQ Post Office,
New Delhi-110 011.

3. O I/c A.O.C.(R)
Secunderabad.

4. The Commandant,
Ordnance Transit Group,
C/o 56 A.P.O.

Respondents

(through Sh. V.S.R. Krishna, advocate)

ORDER(ORAL)

delivered by Hon'ble Mrs. Lakshmi Swaminathan, M(J)

Heard the learned counsel of both the sides.

The applicant has impugned the order passed by Respondent No.3 dt. 20.10.1993 on the basis of which a further order was passed transferring the applicant as Senior Store Keeper (SSS) from O.T.G. Pathankot to O.D. Shakurbasti, Delhi. According to the learned counsel for the applicant this order and the subsequent transfer order which was carried out by the applicant on 3.3.94 are not in accordance with the Army Headquarters Instructions issued vide their letter No.ROI C/03/93

8/

dated 28.04.93 as well as Rule 4.4(a) of the General Rules regarding declaration of Surplus Staff (Swamy's Complete Manual on Establishment and Administration, (1994 Edition)Page 569).

2. The learned counsel for the applicant submits that in accordance with the surplus seniority of Store Keeping staff of O.T.G. published by the respondents themselves (Annexure-III to the reply), the applicant was at Serial No.2 and was not among the 4 junior most who are to be affected by the transfer order. He has also relied upon Rule 4.4.(a) of the General Rules (supra) by which he states that when declaring surplus staff, the rule of junior most should be insisted upon for placement in the Central Surplus Cell. His contention, therefore, is that since the applicant was in fact at serial No.2 in the surplus seniority list of store keeping staff, the impugned transfer order issued in 1994 is contrary to the rules. He has also submitted that in accordance with para 18 of the respondents ROIC/03/93 dated 28.4.93, the applicant could not have been transferred as again he was not the junior most. In the circumstances, he has submitted that as the respondents have acted arbitrarily, he has prayed for a declaration that the posting of the applicant is against the rules and bad in law; to direct the respondents to post him back at Pathankot and for exemplary costs.

3. I have seen the reply filed by the respondents as well as heard Sh. V.S.R. Krishna, learned counsel. The applicant has also filed rejoinder to the reply in which he has more or less reiterated the pleas ~~not~~ stated above.

4. Sh. Krishna, learned counsel for the respondents has submitted that the impugned order is not in violation of the relevant rules or the transfer policy issued by the respondents under the heading "Posting to adjust Surpluses and Deficiencies" by the Army Headquarters letters dt. 6.2.90 & 12.7.91. He further submits that Rule 4.4(a) of the General Rules relied upon by the learned counsel for the applicant is not relevant as the rule refers to surplus staff being placed in the surplus cell, whereas in this case there are specific rules/instructions dealing with the situation of posting and adjustment of surplus staff on permanent reduction(PE) of the Establishment. He has also submitted that, as is evident from the letter dt. 2.7.94, which deals with a similar posting on account of surplus of another incumbent who was also a Senior Store Keeper, namely, Sh. Bali Singh, the same transfer policy contained in paragraphs 18 & 19 of ROIC/03/93 dt. 28.4.93 has been applied. This shows that the policy has been uniformly applied and there was no question of singling out the applicant for any adverse action as alleged by the applicant. Sh. Krishna, learned counsel also submits that paragraphs 18 & 19 have to be read together and a person who is junior in a station, if he falls within the number of persons who have been declared surplus due to reduction in the establishment,

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is liable for posting out to another station where he could be deployed. He, therefore, submits that the respondents' action is well within the relevant rules and hence the application may be dismissed.

5. I have carefully considered the pleadings and arguments of both the learned counsel.

6. Rule 4.4(a) of the General Rules regarding identification of surplus staff and their subsequent placement in the Central Govt. Surplus Cell relied upon by the learned counsel for the applicant is not relevant to the facts in this case. ~~Here~~¹⁸ the respondents have passed Instructions-ROI C/03/93 dated 28.4.93 which deal with the situation of placing of surplus staff in the case of ~~permanent~~¹⁸ reduction of Establishment (PE). As rightly pointed out by the learned counsel for the respondents, the General Rules apply to cases where the surplus staff are placed in the Surplus Cell, which, therefore, are not applicable here. It is also settled law that when there are two sets of rules, one general and the other special, the latter shall prevail in case of any conflict.

7. Paras. 18 & 19 of the Army Hqrs. Instructions on transfer policy formulated by the respondents are extracted below:-

Posting to adjust Surpluses and Deficiencies

18. The junior most employees in a particular category will be declared surplus in a unit. As far as possible the surplus staff will be adjusted in the same group of stations. If it is not feasible to adjust all surplus employees within same group of

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14

-5-

stations then the station seniority of only the surplus staff will be taken into consideration. The station senior will be absorbed in the vacancy existing in the same group of station and the station junior will be absorbed by posting out to other units.

19. Cases regarding considering the seniority of junior most employees for posting out of the station, while declaring surplus due to reduction of PE, the personnel having less service taking into the account of their appointment in the station will be considered as junior most employees for posting out purposes. (emphasis added)

8. As can be seen from perusal of paragraphs 18 & 19 of Transfer Policy/Posting to adjust Surpluses and Deficiencies on the reduction of the permanent staff, the junior most employee of a particular cadre is to be posted out. In para-18, it is stated that as far as possible the surplus staff should be adjusted in the same group of stations. However, if it is not feasible to adjust all surplus employees within the same group of stations then the station seniority of only the surplus staff will be taken into consideration. This is further clarified by the letter dt. 12.7.91. Para-19 states that while declaring surplus ^{staff} due to reduction of PE, the personnel having less service, taking into account their appointment in the station will be considered as junior most employee for posting out purposes. By the letter dt. 5.11.93, in the column under Station Seniority of Store Keeping Staff of O.T.G., the undisputed position is that the applicant is at Serial No.7 and, is within the number of surplus staff declared for that station, namely, Pathankot and, therefore, could be posted out to other units/stations.

18

9. Therefore, having regard to the facts and the rule position regarding transfer and adjustment of surplus staff in a station where there has been reduction of permanent staff, it cannot be stated that the action of the respondents is in any way arbitrary, unreasonable, illegal or against the rules/ INSTRUCTIONS which justifies any interference in the matter.

10. In the result, the application fails and is dismissed.

No costs.

Lakshmi Swaminathan
(Mrs.Lakshmi Swaminathan)
Member(J)

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