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CAT/7/11

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1253/97 with 199
T.A. No. OA 1346/97, 1493/97

DATE OF DECISION 19-8-97

Shri B.L.Gautam & Others **Petitioner**

Shri R.P.Kapur with Sh. G.S.
Lobana **Advocate for the Petitioner(s)**

Versus

UDI & Ors.

Respondent

Mrs P.K.Gupta

Advocate for the Respondent(s)

CORAM

The Hon'ble Sh.S.R. Adige, Member (A)

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)

Member (J)

13

Central Administrative Tribunal
Principal Bench

O.As 1253/97, 1346/97 and 1493/97

New Delhi this the 19th day of August, 1997

Hon'ble Shri S.R. Adige, Member(A).

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

O.A. 1253/97

1. Shri B.L. Gautam,
S/o Shri Radhey Shyam Gautam,
Warrant Officer, 1-CBPO,
R/o 12/4, Old APS Colony,
Delhi Cantt.
2. Shri V. Laxman Reddy,
S/o Shri V. Kista Reddy,
(Warrant Officer, 1-CBPO),
R/o 18/5, Old A.P.S. Colony,
Delhi Cantt.
3. Shri Venugopalan,
S/o Shri A. Kuppuswamy,
(Warrant Officer - 1-CBPO),
R/o P.17/6, Old A.P.S. Colony,
Delhi Cantt.
4. Shri M. Balakrishnan,
S/o Shri M.K. Muniyandi,
(Warrant Officer, 1-CBPO),
R/o 18/14, Old A.P.S. Colony,
Delhi Cantt.
5. Shri S.D. Prasad,
S/o Shri Basgit Sah,
(Warrant Officer, Addl. Dte.
Gen APS (PLI Cell),
R/o P.15/2, Old APS Colony,
Delhi Cantt.
6. Shri R.P. Singh,
S/o Shri Ram Laxhan Singh,
(Warrant Officer, 1-CBPO),
R/o P.15/2, Old APS Colony,
Delhi Cantt.
7. Shri K. Mani Vannan,
S/o Shri R. Kaliresan,
(Warrant Officer, 1-CBPO),
R/o 17/3, Old APS Colony,
Delhi Cantt.
8. Shri U.K. Sarkar,
S/o Shri J.C. Dey Sarkar,
(Warrant Officer, 1-CBPO),
C/o 56 APO.

...Applicants.

By Advocates Shri R.P. Kapur with Shri G.S. Lobana.

13

Versus

1. The Union of India,
Department of Posts, through
its Director General,
Dak Bhawan,
New Delhi.
2. The Additional Director General,
Army Postal Service, West Block-III,
Rama Krishna Puram,
New Delhi.
3. The Officer-Incharge Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records,
Kamptee, APO.
4. Shri Om Prakash,
Assistant Superintendent,
Vigilance Deptt;
Office of Director General of
Posts, Dak Bhawan,
New Delhi.
5. Shri Kanwarjeet Singh,
Section Supervisor,
DE Section (under suspension),
Dak Bhawan,
New Delhi.
6. Shri U. Lakra,
Upper Division Clerk,
(under suspension),
DE Section, Dak Bhawan,
New Delhi.
7. The Ministry of Defence,
through its Secretary,
Raksha Bhawan,
New Delhi.

... Respondents.

By Advocate Mrs. P.K. Gupta.

O.A. 1346/97

Shri T.K. Chary,
S/o Shri T.G. Chary,
Warrant Officer, 1 CBPO,
C/o 56 APO

... Applicant.

By Advocates Shri R.P. Kapur with Shri G.S. Lobana.

Versus

1. The Union of India,
Department of Posts, through
its Director General,
Dak Bhawan,
New Delhi.

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2. The Additional Director General,
Army Postal Service, West Block-III,
Rama Krishna Puram,
New Delhi.
3. The Officer-Incharge Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records,
Kamptee, APO.
4. Shri Om Prakash,
Assistant Superintendent,
Vigilance Deptt;
Office of Director General of
Posts, Dak Bhawan,
New Delhi.
5. Shri Kanwarjeet Singh,
Section Supervisor,
DE Section (under suspension),
Dak Bhawan,
New Delhi.
6. Shri U. Lakra,
Upper Division Clerk,
(under suspension),
DE Section, Dak Bhawan,
New Delhi.
7. The Ministry of Defence,
through its Secretary,
Raksha Bhawan,
New Delhi.

... Respondents.

By Advocate Mrs. P.K. Gupta.

O.A. 1493/97

Shri Hari Kumar,
S/o Shri P. Narayanan Nair,
Warrant Officer,
1-CBPO,
C/o 56 APO.

... Advocate.

By Advocates Shri R.P. Kapur with Shri G.S. Lobana.

Versus

1. The Union of India,
Department of Posts, through
its Director General,
Dak Bhawan,
New Delhi.
2. The Additional Director General,
Army Postal Service, West Block-III,
Rama Krishna Puram,
New Delhi.
3. The Officer-Incharge Records,
Sena Dak Seva Abhilekh Karyalaya,
Army Postal Service Records,
Kamptee, APO.

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4. Shri Om Prakash,
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Vigilance Deptt;
Office of Director General of
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5. Shri Kanwarjeet Singh,
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DE Section (under suspension),
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DE Section, Dak Bhawan,
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7. The Ministry of Defence,
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Raksha Bhawan,
New Delhi.

... Respondents.

By Advocate Mrs. P.K. Gupta.

O R D E R

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

These three applications are being disposed of by a common order as the issues raised are the same. The applicants, namely, S/Shri B.L. Gautam, V. Laxman Reddy, Venugopalan, M. Balakrishnan, S.D. Prasad, R.P. Singh, K. Mannivannan and U.K. Sarkar, who are at serial Nos 1,2,3,5,6,7,9 and 10 in the impugned order dated 9.4.1997, have filed O.A.1253/97 on 26.5.1997. The applicant Shri T. Krishnamachari, who is at Serial No.4 in the impugned order has filed O.A. 1346/97 on 2.6.1997 and the applicant, Shri Hari Kumar, who is at Serial No. 8 in the impugned order has filed O.A.1493/97 on 24.6.1997.

2. The applicants are aggrieved by the order dated 9.4.1997 (copy placed in O.A. 1346/97) issued by Respondent 3 which is a Discharge Approval Order No. 14/97 by which they were sought to be discharged from the Army Postal Service (for short 'APS'), Circle, Department

of Posts. They are aggrieved that by this discharge order they have been deprived of several legal rights which they claim they have acquired in a patently unlawful manner.

3. The applicants have stated that the Director General of Posts, Respondent-1 is the overall incharge of Department of Posts and the Army Postal Service is under the control of Respondent 1. They are aggrieved by the decision and approval conveyed in the order dated 9.4.1997 by Officer Incharge Records to recall them to the Department of Posts. They have submitted that the APS is always short of officers and they have been picked up for recall to the Department of Posts unjustly. The applicants have submitted that they have rendered varying periods of service from 6 to 25 years with APS. The learned counsel, therefore, contends that the Department of Posts cannot recall them and they are also not willing to go back to the Department of Posts. They have, therefore, prayed for quashing the impugned discharge approval order dated 9.4.1997 and further proceedings being taken against them.

4. The main ground taken by the applicants is that they have been arbitrarily recalled from the APS which is not in public interest. Shri R.P. Kapur, learned counsel for the applicants, has submitted that the Department of Posts/Respondent-1 have recalled the applicants in colourable exercise of their power which is seen from the shifting stand they have taken in the short reply and thereafter in the detailed reply filed by them.

18

5. It is an admitted fact that the applicants who were working with the APS appeared in the examination for Inspector of Post Offices/Inspector of Railway Mail Service in August, 1996 conducted by the Department of Posts. The respondents in their short reply have submitted that when the result was to be declared by the parent department, the applicants manipulated the results by changing the evaluated answer books to fresh answer books with the help of some personnel of the Department of Posts, i.e. Respondents 5 and 6 who have now been put under suspension. After investigating the matter, they have submitted that the Department of Posts requested the Additional Directorate General of APS to repatriate the applicants and the impugned order was then issued. The applicants state that in the detailed reply filed by them, they have, however, stated that the recall of the applicants was in public interest and not punitive in nature. The applicants have submitted that when they joined the APS, it was held out to them that if they get qualifying marks in the IPO/IRM examination, they can become JCO in APS and after three years service as JCO, they will ^{be} given lien in civil in IPO/IRM. They have also submitted that by their recall they cannot enjoy the status of an ex-serviceman and avail opportunities and facilities even after retirement. Their contention is that having served in APS for a number of years, it is not open to the Respondents to call them back arbitrarily, especially when it is not in administrative and public interest.

13

6. It was noted in the Tribunal's order dated 27.6.1996 that the learned counsel for the applicants in O.A. 1493/97 had submitted that in similar cases (O.A. 1253/97 and O.A.1346/97) interim order dated 3.6.1996 has been passed stating that in the event the applicants in those cases have not already been relieved on that date, the respondents should not relieve them. In the circumstances of the case, a similar interim order was passed on 27.6.1996 in O.A. 1493/97 that in case the applicant has not been relieved till date, the respondents shall maintain status quo in respect of the applicant, Shri Hari Kumar.

7. The preliminary question of jurisdiction which was taken by the respondents, was, however, not pressed during the hearing. The learned counsel for the applicants has also drawn our attention to the Tribunal's order dated 17.6.1997 in this regard.

8. The respondents' counsel has submitted that the applicants were sent on deputation to APS and they were holding lien in their parent office i.e. with the Department of Posts - Respondent 1. This fact was also confirmed by the learned counsel for the applicants at the time of hearing. It is clear that while the applicants were on deputation to APS as Warrant Officers, they appeared in the examination conducted by Respondent 1 for Inspector of Post Offices/Inspector of Railway Mail Service in August, 1996. The main argument advanced by the learned counsel for the applicants is that the applicants were entitled to be promoted as JCO in APS on passing the examination, where they enjoyed much better

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23

facilities as applicable to Army personnel. His contention was that they would be deprived of these rights they have acquired if they are recalled and retransferred to the parent office. Shri Kapur, learned counsel, has also strenuously argued that since the CCS(CCA) Rules apply to the civilian employees in Army, as held in **M.S. Dasan Vs. Union of India** (ATC 1993(24) 43), the disciplinary proceedings, if any, could be conducted while the applicants continue on deputation with the APS.

9. The applicants have nowhere stated or contended that they have been absorbed as Warrant Officers in APS. The respondents ~~have~~ in their short reply have stated that when the result of the examination was to be declared and on receipt of a complaint, they came to know that the applicants might have manipulated to change the answer books, with the help of some personnel of the Department of Posts i.e. Respondents 5 and 6 who have now been put under suspension. After investigating the matter, they have submitted that the Department of Posts requested the Addl. Director General, APS - Respondent 2 to repatriate the applicants and the impugned order was then issued. Merely because the respondents have stated that the applicants have been recalled because they suspect that they have manipulated the result by changing the evaluated answer books and other records in connivance with some employees of examination Branch of the Department of Posts which later they have described is in public interest does not by itself make the order of recall punitive in nature or as contended by the applicants in colourable exercise

18

of power. The recall/retransfer order dated 9.4.1997 is neither arbitrary, irrational or capricious on this account.

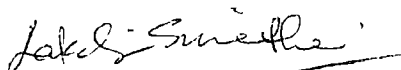
10. From the materials placed on record, it is clear that the applicants were merely on deputation from the Department of Posts to the APS even though they might have been in that position for a considerable length of time but have not been absorbed in APS. As a deputationist, therefore, the applicants have no vested right to continue in the borrowing department or to be absorbed there and so long as their lien continues with the respondents they could be recalled. (See judgements of the Supreme Court in *State of Madhya Pradesh Vs Ashok Deshmukh and Ors.* (1988 SCC (3) 503), *Rati Lal B. Soni Vs. State of Gujarat* (AIR 1990 SC 1132), and the decision of the Delhi High Court in *Union of India Vs. Mathura Dutt* (CWS 1721, 1889 and 1895/97), decided on 30.5.1997.) In *State of Madhya Pradesh Vs. Ashok Deshmukh(supra)*, the Supreme Court has held that the impugned order to repatriate the respondent who was sent on deputation to officiate in the post in another department was not illegal. It was also observed that there was no stigma attached by the said order as the allegations of bias and mala fide made against the officer had remained unsubstantiated. In *Rati Lal B. Soni's case (supra)*, the Supreme Court has reiterated that the appellants being on deputation, they could be reverted to their parent cadre at any time and they could not get any right to be absorbed. We do not, therefore, find that the impugned order No. 14/97 dated 9.4.1997 giving approval for the discharge of the applicants and retransferring them to the parent

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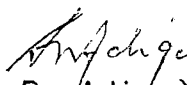
department is illegal. The applicants have no right to continue in APS or be absorbed there. The fact that the chargesheet for the alleged irregularities in the examination held in August, 1996 has not been issued in respect of certain other persons does not also vitiate the order of recall. As the applicants have no right to continue on deputation as Warrant Officers in the APS, we are unable to agree with their contentions that the impugned order should be quashed and set aside as it is neither illegal or arbitrary.

11. In the facts and circumstances of the case, we find no merit in these applications. Accordingly, O.As 1253/97, 1346/97 and 1493/97 are dismissed. Interim orders are vacated. No order as to costs.

Let a copy of this order be placed in O.A 1346/97 and O.A. 1483/97.



(Smt. Lakshmi Swaminathan)
Member(J)



(S.R. Adige)
Member(A)

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