

Central Administrative Tribunal
Principal Bench

O.A.No.2526/97

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 19th day of December, 1997

Akbar Ali Khan, IPS
s/o Shri Akbar Hussain Khan
DIG CISF(NZ)
r/o D-7, M.S.Flats
Tilak Lane
Tilak Marg
New Delhi - 110 001.

... Applicant

(By Shri D.R.Garg, Advocate with Shri Amarander Sharan, Sr.
Advocate)

Vs.

1. Union of India
through its Secretary
Ministry of Home Affairs
North Block
New Delhi-1.

2. Shri R.K.Sharma, IPS
DG/CISF
13, CGC Complex
Lodhi Road
New Delhi - 110 003.

... Respondents

(By Shri V.S.R.Krishna, Advocate for R-1
and Smt. Meera Chhibber, Advocate for R-2)

O R D E R

The applicant, Shri Akbar Ali Khan is a member of the Indian Police Service (IPS) on deputation as Deputy Inspector General (DIG) to the Central Industrial Security Force (here-in-after referred to shortly as CISF). He has come before this Tribunal aggrieved by the order of his transfer dated 12.6.1997 made by the Director General, CISF from the post of DIG, Northern Zone CISF to DIG, IISCO, Burnpur. This order had however been held in abeyance by another order dated 1.7.1997 and it was stated that the applicant will be on compulsory waiting. In his OA the applicant by way of Interim relief sought a direction to stay the operation of the

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order dated 1.7.1997 with regard to putting him on compulsory waiting and to allow him to resume his duties as DIG, Northern Zone.

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2. Notices were issued to the respondents, i.e, Secretary, Ministry of Home Affairs and Shri R.K.Sharma, DG, CISF both on the main relief as well as on the Interim Relief sought for by the applicant. Both the respondents have filed a short reply on the question of Interim Relief and rejoinders thereto have also been filed by the applicant. Both the Union of India in their affidavit filed through DIG(Personnel), CISF, Headquarters and Shri R.K.Sharma, Director General, CISF have raised a preliminary objection on the ground that the OA is not maintainable before this Tribunal as the applicant is challenging the order of transfer passed by the DG of CISF which is an Armed Force of Union of India. This contention has been refuted by the applicant in his rejoinders. Before examining the prayer of the applicant for interim relief, it therefore becomes necessary to decide the issue of the maintainability of this OA.

3. Section 2(a) of the Administrative Tribunals Act, 1985 reads as follows:

Section 2(a): The provisions of this Act shall not apply to any member of naval, military or air force or of any other armed forces of the Union.

4. It is an admitted position that CISF is an Armed Force of the Union and hence ordinarily the persons serving in the CISF would not come within the jurisdiction of this Tribunal. However, Section 14(b)(i) of the Administrative Tribunals Act, 1985 reads as follows:

14. "Jurisdiction, powers and authority of the Central Administrative Tribunal:- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall

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exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court ****) (b) in relation to all service matters concerning a person of any All-India Service; or....."

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5. The postings and transfers of All India Service officers are service matters which would thus be in the jurisdiction of this Tribunal. The applicant herein is a member of an All India Service and his service matters including posting and transfer would ordinarily be within the jurisdiction of the Tribunal. On the other hand, being a member of the CISF which is an Armed Force of Union of India, albeit on deputation, it could be argued that so long as he is in service of the CISF, he would be outside the purview of this Tribunal under Section 2(a).

6. Shri V.S.R.Krishna, the learned counsel for Respondent No.1 submitted a copy of the order passed by the Principal Bench of this Tribunal in OA No.648/91 Rajinder Kumar Sachar Vs. Union of India. The applicant therein was also an officer of the IPS, Orissa cadre who had joined the Border Security Force (BSF) on deputation. The Director of BSF issued an order of his repatriation w.e.f. 1.8.1990 and asked him to report to the Government of Orissa. Aggrieved by this order he came before this Tribunal praying for the quashing of the orders of his repatriation. It was concluded by the Tribunal in its order dated 22.3.1991 that the BSF Act, 1968 defines the BSF as an armed force of the Union and all the provisions in that Act and the Rules thereunder apply to all the officers e.g. Inspectors General, Deputy Inspectors General, Commandant and other officers as may be appointed by the Central Government and the Director General, BSF is in the over all command of the force. It was also held that while there was no doubt that the

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applicant was governed by the All India Service Rules yet the reliefs claimed by him were against the decision of the BSF and hence the Tribunal had no jurisdiction in the matter.

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7. It was urged by the learned Counsel Shri V.S.R. Krishna as well as Smt. Meera Chhibber that since the CISF was also like BSF, admittedly an Armed Force of an Union, and since the order in respect of the present applicant has also been passed by the DG, CISF the ratio of the decision of the Division Bench of this Tribunal in Rajender Kumar Sachar (Supra) would apply in the present case also.

8. The learned counsel for the applicant, on the other hand, has cited the case of Kishore Kunal Vs. Union of India, OA No.316/96, decided by the Patna Bench of this Tribunal on 9.9.1996. In that case also the applicant, Shri Kishore Kunal belonged to the IPS Gujrat cadre. While posted as IG, CISF at Patna he was transferred as IG, CISF at Mumbai. The transfer order was assailed on various grounds including malafide on the part of the certain prominent persons in authority. In that case also the respondents had raised the question of maintainability on the ground that CISF was an Armed Force of Union. However, in its order the Patna Bench consisting of a Single Member disagreed with the view held by the Principal Bench in the case of Rajendra Kumar Sachar and holding that the same was per in curiam, concluded that the applicant therein, being an officer of an All India Service was within his rights to approach the Tribunal under Section 14(b) of the Administrative Tribunals Act, 1985.

9. It has been urged before me on behalf of the respondents that the decision in Rajendra Kumar Sachar having been rendered by a Division Bench would hold the ground as

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against the decision in Kishore Kunal case which was rendered by a Single Member Bench. On the other hand, the learned counsel for the applicant submitted that the respondents had filed a SLP before the Hon'ble Supreme Court in Kishore Kunal's case which was dismissed and therefore the decision in that case as well as the ratio of that order achieved finality and the Tribunal was now bound by the same.

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10. I have carefully considered the matter. Section 4(1) of the CISF Act, 1968 reads as follows:

Section 4(1): Appointment and powers of Supervisory officers:- The Central Government may appoint a person to be the Director General of the Force and may appoint other persons to be Inspector General, Deputy Inspector General, Commandants, Deputy Commandants or Assistant Commandants of the Force."

11. Section 2(f) of the CISF Act, 1968 defines 'members of the Force' as follows:

"Members of the Force" means a person appointed to the Force under this Act.

12. It is thus clear that in terms of Section 4(1) read with Section 2(f) of the CISF Act the applicant is a member of CISF so long as he is working as DIG in that Force. At the same time the applicant is also subject to the AIS and IPS service Rules. In my view the two aspects can be harmonised in so far as the jurisdiction of this Tribunal is concerned if a view is taken that in so far as his service interest as an IPS officer are concerned the same come within the jurisdiction of this Tribunal but so far as his interests as a member of CISF are concerned those are out side the purview of the Tribunal. In another words, where the questions such as terms of deputation, promotions, disciplinary matters and the like wherein the deciding authority is his cadre controlling authority, are concerned he would be subject to the jurisdiction

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of this Tribunal while the terms and conditions of service in the CISF such as allowances, duties, accommodation, place of posting and the like being the internal matters of CISF where the deciding authority is the DG, CISF would be outside the purview of this Tribunal. Looked at from another point of view the jurisdiction in respect of the IPS officer on deputation to an Armed Force of Union would depend on the nature of the reliefs claimed by him. If the relief sought for is against the decision taken by the competent authority of the Armed Force, then as a rule it would not come within the purview of the Administrative Tribunals Act, 1985. This is also, broadly what has been concluded by the Division Bench in OA No.648/91, Rajender Kumar Sachar Vs. Union of India(Supra).

13. The Patna Bench of this Tribunal in the case of Kishore Kunal came to the conclusion that the IPS officers have their own Tenure Rules and they are governed by these Rules, even when on deputation, in an Armed Force like the CISF. It was also pointed out that the Rule 17 of the CISF Rules, 1960 reads as follows:

17(4)(i) During the period of deputation, the officers on deputation shall be governed by the provisions of the Act and the rules and regulations made thereunder.

Provided that the provisions of the Rules 55, 56, 58 & 65 shall not apply to him.

(ii) without prejudice to the foregoing, every such officer shall be subject to the rules of discipline applicable to the corresponding rank of the Force.

(5) Save as aforesaid, the other terms and conditions of deputation shall be such as may be agreed upon between the lending authority and the Central Government (Emphasis provided).

(6) notwithstanding anything contained in these rules, the Central Government, or the Inspector General, as the case may be may without assigning any reason terminate the period of any officer at any time and such termination shall not be deemed to be punishment."

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14. In term of the above rules, it was concluded that the applicant Kishore Kunal had come on deputation on the understanding that he was to be posted at Patna and therefore in that light his transfer from Patna without his consent was contrary to the contract as per Rule 17(5).

15. In the present case there is no such contention that the applicant came to the CISF on the understanding that he would be posted only as DIG, North Zone with headquarters at Delhi thus bringing him under the operation of Rule 17(5) and Rule 68 of CISF Rules, 1969. In view of this position the ratio of the decision Kishore Kunal's case would not in any case apply.

16. It is also necessary before reaching a final decision in this case to take note of two other points. As mentioned earlier it has been contended by the learned Counsel for the applicant that the decision of the Patna Bench in Kishore Kunal's case has been upheld by the Hon'ble Supreme Court since the SLP, Civil Appeal No.21422/96 from the judgment and order dated 9.9.1996 in OA No.316/96 of the CAT Patna Bench, has been dismissed. A copy of the order of the Apex Court in the said SLP has been produced by the learned counsel for the respondents and is taken on record. It reads as follows:

"In view of the contradictory affidavit that has been filed we are not inclined to interfere. The Special Leave Petition is dismissed."

17. It is clear from the order of the Hon'ble Supreme Court that the same is not on the merits of the case and therefore it cannot be said that apex court has expressed any opinion on the merits of the Kishore Kunal's case.

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18. The second point has been made by Smt. Meera Chhibber, learned counsel regarding the 'Doctrine of Precedents' contending that it becomes incumbent upon me to follow the ratio of the decision of the Division Bench in Rajender Kumar Sachar (Supra).

19. In a recent judgment in the case of K. Ajit Babu & Others Vs. Union of India & Another, JT 1997(7) SC Page 24 it has been held as follows:

"Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 10 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches (See Jhon Lucas (supra)).


20. The Supreme Court in The State of U.P. Vs. Ram Chandra Trivedi, AIR 1976 SC 2547 has observed as follows:

"It is also to be borne in mind that even in case where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case as observed by this Court in Union of India Vs. K.S. Subramanian (Civil Appeal No. 212 of 1975 decided on July 30, 1976) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

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21. In view of the above pronouncement of the Apex Court I have also to follow the order of the Division Bench in Rajender Kumar Sachar (Supra), with which in any case I respectfully agreed, as compared to the Single Bench decision in Kishore Kunal's case (supra).

22. In view of the above discussion, I conclude that since the relief sought for by the applicant is against the orders of the Director General, CISF who is the head of an Armed Force of the Union, this OA does not come within the purview of this Tribunal and is not maintainable under Section 2(a) of the Administrative Tribunal's Act, 1985. The OA is accordingly dismissed. No costs.


(R.K. AHOOJA)
MEMBER(A)

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