

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1510/2000

New Delhi, this the 23<sup>rd</sup> day of October, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)  
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Harihar Prasad  
S/o Late Shri Chander Banshi Prasad,  
R/o Q-5/2, CAD Colony  
Jorbagh Road  
New Delhi - 110 003.

... Applicant

(By Advocate Shri G.D.Gupta)

V E R S U S

UNION OF INDIA : Through

1. Secretary to the Govt. of India  
Ministry of Civil Aviation  
Rajiv Gandhi Bhawan  
Safdarjung Airport  
New Delhi - 110 003.
2. The Director General of Civil Aviation  
Ministry of Civil Aviation  
Technical Centre  
Opposite Safdarjung Airport  
New Delhi - 110 003.

3. Shri H.S.Khola  
Director General of Civil Aviation  
Ministry of Civil Aviation  
Technical Centre, Opp. Safdarjung Airport,  
New Delhi - 110 003.

4. Shri N.Ramesh  
Deputy Director General of Civil Aviation  
Office of the Directorate General of Civil  
Aviation, Technical Centre, Opp. Safdarjung  
Airport, New Delhi - 110 003.

... Respondents

(By Advocate Shri Madhav Panikar)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

Shri Harihar Prasad, applicant has sought  
following reliefs in this OA.

"(A) allow this Original Application of the  
applicant with costs ;

(B) issue appropriate direction or  
directions, order or orders

... 2/-

(i) declaring that since the applicant apprehends that his reports for the period 1997-1998; 1998-1999; and 1999-2000, even though do not contain any adverse remark as such, but would certainly have been lukewarm and will not be conducive for his promotion to the post of Dy. D.G.C.A. atleast in comparison to other candidates likely to be considered alongwith the applicant as during the said period the applicant was not allotted much work, functions, duties and responsibilities and was not allowed to discharge the duties of the post against which he was posted, the applicant is entitled that the confidential reports for the period preceding to 1998 alone should be allowed to be considered and if the reports for the last preceding three years are considered and found lesser in grading in comparison to earlier reports, then from that point of view also those reports should not be seen;

(ii) further declaring that the applicant is entitled to bee given full charge of the post of DAW (Headquarter), being senior-most DAW against which post he has been posted w.e.f. 14th December, 1998 in the office of D.G.C.A., Headquarters against one post of DAW (Headquarters) and kept idle for last over one and half years;

(iii) directing the respondents that in the DPC likely to be held shortly for making promotion to the post of Dy. DGCA to consider the confidential reports of the applicant for the period preceding to 1998 along and if the reports for the last preceding three years are considered and found lesser in grading in comparison to earlier years, then from that point of view not to consider those reports and if the applicant found fit for promotion on that basis, to promote him with all consequential benefits.

(iv) further directing the respondents to give full charge of the post of DAW (Headquarter), being senior-most DAW against which he has been posted w.e.f. 14th December, 1998 in the office of DGCA, Headquarters against one post of DAW (Headquarters) and kept idle for last over one and a half years;

2. Heard Shri G.D.Gupta and Shri Madhav Panikar, learned counsel for the applicant and the respondents respectively.

3. The applicant who joined as Assistant Aircraft Inspector in the office of the Director General of Civil Aviation (DGCA) in January 1974 on

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direct recruit through UPSC, became Aircraft Inspector and Sr. Aircraft Inspector both by promotion and through UPSC. On the re-designation of the post, he became Sr. Airworthiness Officer in 1984 and in December 1987, he was made Controller of Airworthiness/Deputy Director of Air Worthiness on selection by the OPC. He became direct Airworthiness Officer on regular basis since January, 1992, on which promotion he was posted to Calcutta region. In June 1995, he was transferred as Director, Air Worthiness at Delhi Region, where he had worked in efficient and praiseworthy manner. In October 1998, however, he was transferred as DAW (Training) from the post of DAW, Delhi Region. The same order also had posted one Shri L.A.Mahalingam who came on promotion from the post of Deputy Director/Controller of Airworthiness, Mumbai and was directly posted in the office of DGCA. This was a bit strange as the post of DAW in the office of DGCA had through-out normally been made from amongst senior most Directors of Airworthiness as by convention this was considered the senior most post in the cadre and if any one was to be posted, it should have been the applicant, as he was the senior most DAW after Shri Chattpadhyaya, who was stationed at Mumbai, where he wanted to continue. Inspite of the above convention of posting senior most Director, Airworthiness as DAW in the Headquarters, DGCA, posted Shri Mahalingam, the junior most person, fresh on promotion, which was clearly an act of manipulation and of nepotism. As the very promotion of Shri Mahalingam was against the vacant post of Director, DAW (Training), he should naturally have been posted to the vacant post and instead of to the senior most

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and strategic post in the Headquarters. This has been done only by the DGCA and Shri N.Ramesh, DDGCA, who were interested in Shri Mahalingam. The applicant on 21-10-1998, made a representation among others to the Ministry of Civil Aviation against the transfer and posting, whereafter on 14-12-1998, an order was passed partially modifying the order dated 16-10-1998 posting the applicant also as Director of Air Worthiness, Headquarters with directions that he should lookafter the functions of all Aircraft Maintenance Engineering Training Institutes in India. This modification order was meant only to mollify the applicant and other officers who were agitating against the violation of the precedents and convention of posting the senior persons in the Headquarters. But he was not permitted to function in any way effectively as DAW, Headquarters, as no work of any sort was allotted to him. He had repeatedly represented against the same including to the Chairman of the UPSC, in this matter requesting that DGCA may be directed to appoint him as DAW, Headquarters and post Shri Mahalingam as DAW (Training). But nothing has happened thereon. Evidently, thus the applicant had been meted out greatest injustice inspite of being senior most officer in the grade, based in Delhi Region. Therefore, in October, 1999, he sought a posting to Bombay, which was denied to him. Thereafter, he represented that he should be posted as DAW (CEO) Headquarters with permission to discharge full-fledged duties, but the same was also not given to him. He has been ignored and denied his duties and all his attempts for getting the injustice removed had proved unsuccessful. The applicant further alleges that

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while juniors are being given recognition, he was being discriminated against. He also says that he apprehends that his Confidential Reports for the period of 1997-98, 1998-99 and 1999-2000, would have been lukewarm as he has not been permitted to perform what he feels to be his correct duties which he fears would come in the way of his promotion as Deputy Director General, Civil Aviation. According to him, the post of Shri Mahalingam as DAW, Headquarters was improper and illegal and was meant to humiliate and harass him. Tribunal's intervention was called for render him justice, pleads the applicant. Shri G.D.Gupta, appearing for the applicant forcefully argued the case and called for immediate redressal of the applicant's genuine grievance.

4. In the counter, filed on behalf of the respondents, it is pointed out that the Organisation has seven posts in the grade of Director of Air Worthiness out of which four are in the Regional Offices and three in the Headquarters' office. All the posts are equally important and prestigious and the administration can post any of the Directors into any of the said posts, according to their appreciation of the requirement of the posts and the suitability of the individual. The same is also supported by FR 11. The applicant has not quoted any specific order against which he has come in this OA, but has made allegations of malafides, arbitrariness and discrimination without any basis. The distribution of the work amongst the officers of the Department is the prerogative of the Department and the applicant cannot claim that he should be posted to a specific post. It

is also pointed out that no irregularity whatsoever has been committed in the posting of Shri Mahalingam as he was as good a DAW as the applicant. It is also evident that all the grievance of the applicant have been duly examined and replied, as pointed out in annexures to the counter. Nothing remained to be done further.

5. Shri G.D.Gupta, learned counsel for the applicant vehemently stated that the applicant being the senior most person at Delhi should have been as per convention considered for being posted as DAW, Headquarters, which was almost DAW-1 instead of giving the same to Shri Mahalingam, the junior most DAW. Infact, Shri Mahalingam was promoted against the vacancy of DAW (Training). It was only proper that he was adjusted in that post to be filled by one, immediately on promotion. Respondents' action was totally incorrect and improper. To a specific query from the Court as to whether the applicant had any vested right to the post of DAW in the Headquarters, the learned counsel replied that it should have gone to him by convention and precedent and all averments made by the respondents to the contrary are incorrect and have to be rejected. The respondents have only attempted the face saving devise by their order dated 14-12-1998 permitting the applicant to share the job as DAW, Headquarters along with Shri Mahalingam, but at the same time, virtually prevented him from performing the duties. Learned counsel specifically referred to the Notification dated 4-10-1994, detailing the distribution of work among the various officers in the Headquarter's office, whereunder DAW,

Hdqrs. is entrusted with very important items of work. He has been unjustly denied the right to perform them. Therefore, his performance during that period amounted to next to nothing and the same would have resulted in his performance being rated in a lukewarm manner in his annual performance appraisal. As the applicant had been having better reports and better performance earlier, it should be deemed that his rating/assessment had fallen and keeping in view the decisions of the Hon'ble Supreme Court in U.P. Jal Nigam's case, such reports should have been communicated to him, which has not been done. Learned counsel apprehends that this might adversely affect his future prospects.

6. Respondents' pleas reiterated by Shri Madhav Panikar, learned counsel for the respondents during the oral submissions. According to him mere perusal of the claims made by the applicant in the present OA showed that the same is based on certain apprehensions entertained by the applicant with regard to entries in his ACRs for the relevant orders from 1997-98 and onwards. He has also prayed that a direction may be given to the respondents that he may be given full charge of the post of DAW, Headquarter, being the senior most DAW. These are not, according to the learned counsel for the respondents within the powers of judicial review, it is within the exclusive domain of the Head of the Department to utilise the services of any of the officers in the Organisation as required by administrative exigencies. The same cannot be questioned except on grounds of proven malafide or on charges of action against accepted

guidelines. The learned counsel also drew our attention to the detailed reply given by the respondents to the various representations submitted by the applicant on his grievances, which have been annexed to the counter affidavit filed by them. It is also averred, with instances that there was no precedent in the Department that only the senior most Director is always posted as DAW, Headquarters. This is only a claim made by the applicant based on his seniority and nothing turned on it. Shri Madhav Panikar, learned counsel has also relied on the provisions of FR 11 to bolster his assertion that it is for the Govt. to make use of the services of its employees in the best manner as found suitable by the Head of the Organisation. Shri Panikar also relied upon the decision of the Hon'ble Supreme Court in the case of N.K. Singh Vs. Union of India and others (1994 (28) ATC 246 SC) to show that the employer reserved the right for utilisation of the services of the employees. Further, he mentioned the decision of the Hon'ble Delhi High Court in Rajender Kumar Vs. UAI & Ors. [1999/2001 DLT 170 (DB)], which interpreted U.P. Jal Nigam's case and held that the "Average" entry did not require any communication as it was not considered as an adverse entry under the guidelines. The applicant, cannot, therefore, have a case, is what the learned counsel urges.

7. We have carefully considered the matter. The point for determination in this OA is the appointment of the applicant to the post of Director of Air Worthiness in the Headquarters office of the DGCA to the exclusion of anyone else. The applicant

is seeking that he should be appointed to that post of DAW (Headquarters) and the incumbent DAW Shri Mahalingam should be posted as DAW (Training). The applicant has apparently forgotten that the engagement of any individual in service against a particular post is well within the exclusive domain of the Head of the Organisation, subject to guidelines or rules on the subject and the requirement of the organisation. FR 11 directs that "unless in any case it is otherwise distinctly provided the whole time of a Govt. servant is at the disposal of the Govt, which pays him, and he may be employed in any manner required by the proper authority" This represents the correct position in law and no Govt. Servant has any vested right as to which post he should be appointed. In the instant case, he has been assigned a very important job and has also been permitted to work as DAW in the Headquarters. The applicant obviously is not satisfied with the same and has thrown allegations all around stating that the post which should have come to him as of right has been denied to him. The learned counsel for the applicant was at considerable pains to point out that the post of DAW, Headquarters was held only by the senior most DAW, both on convention and by precedent, while the fact as brought out in the counter are quite opposite. The applicant's claim falls on that count as well. Still as he had not been given the exclusive charge as DAW (Hdqrs.), he desires his main charge of DAW (Trg.), for supervising all Aircraft Maintenance Engineering Training Institutes in the country, which is a strategic post in the organisation. We cannot endorse such a stand. In arriving at this decision, we are fortified by the observations of the Hon'ble

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Supreme Court in the case of N.K.Singh (supra).

Relevant para of the said decision are as below :-

"Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer.

The applicant has not successfully fulfilled this criterion as laid down by the Apex Court and he has, therefore, no case.

9. It is also pertinent to point out that though in the application a demand originally has been made for the transfer of Shri Mahalingam from the post of DAW, Headquarters with the direction for posting himself as DAW (Training). However, the concerned individual has not been made party to the OA. We have noted this omission or lacunae.

10. Nothing has been brought on record to show that the person appointed as DAW, Headquarters was in any way inferior in capabilities to the applicant and, therefore, the order of the respondents cannot be assailed.

11. With regard to the averments made by the applicant and reiterated by the learned counsel for the applicant, as to the down grading of the ACRs is

only an apprehension and, therefore, it cannot be sustained. As pointed out earlier, the learned counsel for the applicant had strenuously argued that the file in which the applicant's transfer order of October, 1998 was modified on 14-12-1998 should be called for examination and that ACRs of the applicant for the period 1997-98 and 1999-2000 should be also called for examination. We do not find any reason to grant the request as it has been made purely based on apprehensions and not on facts and the perusal of the said records, would not alter the situation in any manner.

12. In the above view of the matter, we are convinced that the applicant has not at all made out any case for our interference. It, therefore, fails and is accordingly dismissed. No costs.

(Govindan S.Tampi)  
Member (A)  
/vikas/

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)  
Vice-Chairman (J)