

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 300/2000
with

OA 720/2000

New Delhi this the 9th day of February, 2001

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

T.C. Jain,
S/o late Sh. Chiranjilal Jain,
Ex. MES-430886/Superintendent B/R Gd.I,
0/0 G.E. South, Meerut Cantt
Residential address:
72-C, Jain Nagar, Tirthankar Marg,
Railway Road, Meerut City.

..Applicant

(By Advocate Sh. G. D. Bhandari)

VERSUS

Union of India, through

1. The Secretary,
Ministry of Defence/South Block,
New Delhi.
2. The Chief Engineer, Central Command,
Engineer Branch, Lucknow.
3. Engineer-in-Chief (E-in-C)
Army HQ/Kashmir House DHQ,
New Delhi.
4. The Command Works Engineer (CWE)
The Mall, Meerut.
5. The Garrison Engineer (South),
The Mall, Meerut Cantt.

..Respondents

(By Advocate Shri N. S. Mehta, learned
Senior Counsel)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The aforesaid two applications have been filed by the same applicant being aggrieved by various orders passed by the respondents, namely, (i) Annexure 1(a) order dated 12.1.2000 in OA 300/2000 of compulsorily retiring him from the post of Supdt. B/R Gde.I; and (ii) the order dated 14.11.1998 by which his

JS

13

application against the earlier order of transfer was rejected and he was informed to move to the new Unit i.e. STE CC, Lucknow as already ordered.

2. Both the learned counsel have in the first instance referred to the documents and issues placed in OA 300/2000. In this application, the applicant has challenged the penalty orders passed by the respondents, which has been done under Rule 14 of the CCS(CCA) Rules, 1965 (hereinafter referred to as 'the Rules'). The applicant had been issued Memo. of charges on 7.1.1999 in which two articles of charges were framed against him. One charge was that while the applicant was serving at Garrison Engineer (South) (GE(S), Meerut, he was struck off from the strength w.e.f. 19.11.1997 on permanent posting to STE CC, Lucknow where he failed to report for duty and was absenting himself without any proper leave. The second charge was that during the aforesaid period he had disobeyed the orders of the superior authorities of his posting to STE CC, Lucknow. Shri G.D. Bhandari, learned counsel has submitted that at the time when the Memo. of charges were issued, there was no posting order as the earlier order posting the applicant to Lucknow had already been cancelled by the respondents themselves by order dated 1.4.1998. Therefore, he has submitted that further proceedings held by the respondents cannot be sustained as the order referred to in the charges itself did not exist at the relevant time. He has further submitted that the disciplinary authority's order is not a speaking order and shows non-application of mind and also does not

YB

(3)

14

give the reasons on the basis of which the competent authority had come to the conclusion that the punishment should be awarded to the applicant on his 'culpability'. He has further pointed out that the proceedings have been held under Rule 14 of the Rules and a major punishment has been imposed on the applicant, when the very order which was the basis did not exist at that time, which shows that the respondents have not acted in accordance with the rules and instructions.

3. We have perused the reply and heard Sh.N.S.Mehta, learned senior counsel for the respondents. They have submitted that the enquiry has been held in terms of Rule 14 of the Rules and the disciplinary authority has imposed the penalty of compulsory retirement correctly. They have also submitted that the Tribunal is not an appellate authority to substitute its own judgement on the judgement of the administrative authority and, therefore, the respondents have pleaded that the Tribunal should not interfere in the matter unless the transfer order is malafide or in violation of the statutory provisions. The applicant has submitted that after the present OA 300/2000 was filed, he had filed an appeal against the disciplinary authority's order to which he has not received any reply.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

[Signature]

15

(4)

5. It is seen from the order dated 3.11.1997(Annexure A-8 in OA 300/2000 and OA 720/2000,respectively) that the respondents have transferred the applicant from GE(S), Meerut to STE CC,Lucknow. It is further noticed that respondents have passed another order dated 1.4.1998 (Annexure A-15) that the order dated 3.11.1997 was cancelled by them which is also stated to have been done with the approval of the appropriate authority in the Headquarters. It was further directed that the GE(S),Meerut to claim his pay and allowances immediately. From the show cause notice dated 27.3.1998, the applicant had been called to make his submissions as to why the disciplinary action should not be initiated against him for not carrying out the transfer by their earlier order directing him to join at STE CC,Lucknow. This show cause notice was also cancelled by the respondents in about a week by their letter dated 6.4.1998 which itself is within five days after the cancellation of the transfer order dated 3.11.1997. This latest order issued by the respondents speaks for itself that the Department was issuing the cancellation orders one after the other, for whatever reasons which have, however, not come on record before us.

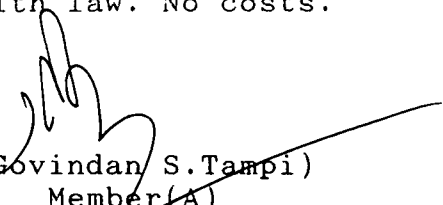
6. On a perusal of the disciplinary authority's order dated 12.1.2000 we ,therefore, see force in the submissions made by Shri.G.D.Bhandari,learned counsel that after the cancellation of the transfer order earlier passed against the applicant, as mentioned above, major

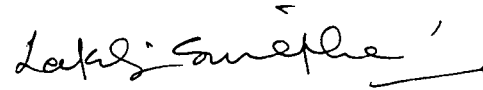
13

16

punishment of compulsory retirement could not have been imposed on the applicant in the facts and circumstances of the case. We further agree with the contention of the learned counsel for the applicant that this is not a speaking order and does not comply with the provisions of law and the principle of natural justice.

7. For the reasons given above, the OA 300/2000 succeeds and is allowed. The penalty order dated 12.1.2000 is accordingly quashed and set aside. The applicant shall be entitled to re-instatement in service with all consequential benefits in accordance with law. No costs.


(Govindan S. Tampi)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

/sk/