

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

MP 2388/89
MP 2389/89

O.A. No. 1741/1989.

Date of decision: November 9, 1989

Capt. K.S. Malhotra ...

Applicant.

Vs.

Union of India & Ors ...

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... Shri R.P. Oberoi, counsel.

For the respondents 1 to 3 Shri M.M. Sudan, counsel.

For the respondent No.4 Shri S.M. Ashri, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

This Application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed by
Capt. K.S. Malhotra (hereinafter referred to as the
'applicant') against the order of transfer dated 31.8.1989.

The applicant in paragraph 1 of the Application has
stated that the impugned order purports to transfer the
applicant " from his present assignment of Commandant
CTI as Junior Staff Officer (Home Guard) which amounts
to reversion and transfer from CTI to JSO (Home Guards)"
and this is against the term of the appointment of the applicant
and is violative of recruitment rules. He claimed that
he was looking after the work of the Commandant CTI
continuously from 1.8.1984 and he could not be demoted
to a lower assignment.

He prayed for two principal reliefs:

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Firstly to quash the Office Order No.551 dated 31.8.1989 (Annexure-I to the O.A.), and, secondly, to direct the respondents 1 to 3 not to discontinue the arrangements which have been in force since 1984 regarding performance by the applicant of the duties of Commandant CTI till a decision regarding his regular appointment to the said post was made.

The impugned Office Order dated 31.8.1989 is in Annexure I to the O.A. which reads as under:

■ OFFICE ORDER No.551.

Consequent upon Shri R.K.Sharma reporting for duty as Comdt. Home Guard under this Dte. Genl., the following posting and transfers are ordered with immediate effect.

1. Sh. Kuldeep Singh Malhotra, Junior Staff Officer, is transferred and posted in the same capacity in the Home Guard section at Vikas Bhawan.

2. Sh.S.S.Dagar, junior Staff Officer, is transferred and posted in the same capacity in the Central Training Institute, Raja Garden. Sh. Dagar is allowed to act as Comdt. CTI, till further orders. This will not, however, confer any right or claim on him for higher post and will not carry any addition remuneration. This is purely a stop-gap arrangement till regular incumbent of the post is appointed.

Sd/- (H.C.JATAV) 31.8.1989.

Commandant General Home Guards & Director Civil Defence: Delhi."

After admission and issue of notice, the respondents filed a reply and rejoinder has also been filed. We are informed that the applicant has also filed another O.A. No.134/87 in regard to his promotion to the rank of Commandant CTI and the same is pending. Learned counsel for the applicant had prayed that these two O.As be posted

together but we decline to do so for the questions involved in two O.As are different and it will be convenient with to deal them separately.

Of the two prayers made in the present Application, the second prayer obviously cannot be considered, for the impugned order shows that one Shri R.K.Sharma has reported for duty as Commandant Home Guard. Consequently, no relief can be granted in the present O.A. directing the respondents to continue the applicant as Junior Staff Officer and also carry on the work of Commandant CTI. The question whether the applicant has attained the rank of Commandant is a matter to be gone into in the other O.A. No.134/1987. We cannot also go into the question of reversion or demotion of the applicant by the impugned order. The applicant has first to establish that he has attained the rank of Commandant before the question of demotion can be considered. Thus the only question before us is of alleged transfer. When the O.A. was listed for admission on 1.9.1989, the following order was issued:

"List the case on 11.9.1989. Meanwhile, until further orders on 11.9.1989, the operation of the order dated 31.8.1989 shall be stayed."

This does not preclude the respondents from passing a further order in respect of the posting of the applicant. Our attention has been drawn to Office Order No.585 attached as Annexure III to Misc. Petition No.2389/89 filed by the applicant. The respondent No.4, by Office Order No.585

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dated 18.9.1989 has again posted the applicant as Junior Staff Officer (CTI). He has been asked to "supervise the functioning of the Regional Centre of the C.T.I. with Headquarters provisionally at Vikash Bhawan, New Delhi, under the command and control of the Deputy Director, Civil Defence & Deputy Commandant General Home Guards, Delhi". It appears to us that by the above Office Order No.585, the applicant has been reposted as Junior Staff Officer (CTI) a position he was holding before the impugned order was passed. The Office Order makes it clear that apart from the work of Junior Staff Officer (CTI), he has been assigned some specific work. The nature of work and status of the applicant remains the same as that of Junior Staff Officer (CTI). We are, therefore, of the view that the impugned order dated 31.8.1989 has been superseded and the applicant posted back to the post which he was occupying earlier as Junior Staff Officer (CTI). In effect, it means that Office Order dated 31.8.1989 no longer survives and this O.A. has been rendered infructuous.

Shri R.P. Oberoi, learned counsel for the applicant has addressed the Bench in respect of various difficulties that are being faced by the applicant in his present assignment. He has complained of lack of accommodation, staff and work. He has also complained that there appeared to be a plan again to keep the applicant idle without doing any work and take some further action. However, Shri M.M.Sudan, learned counsel for the respondents has

urged that the applicant has not even reported for duty, a fact which is hotly disputed by Shri R.P.Oberoi. We do not think that it is necessary for us to go into these matters in the present Application. These matters cannot be taken into consideration in deciding whether the transfer order dated 31.8.1989 was bad in law or suffered from any mala fides.

One expects that senior Officers in establishment like the Home Guards, Civil Defence etc. will conduct themselves in a disciplined manner in discharge of their functions. It is expected that they will take necessary steps and action to see that the work goes on smoothly and properly. The respondents also have a duty to see that the officers of the organisation are able to function properly and are provided with necessary infrastructure.

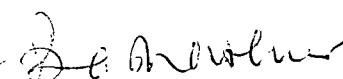
Learned counsel for the applicant prayed for issuing necessary directions to the respondents to provide accommodation, staff and work etc. to the applicant. We decline to do so, for in our opinion, when a matter is being dismissed as infructuous, such directions cannot be given.

There are two Misc. Petitions filed in this Application. M.P.No.2388/89 is a petition filed by the respondents for initiating proceedings against the applicant under Section 340 Cr.P.C. read with Section 195 Cr.P.C. Shri M.M.Sudan, learned counsel for the

respondents stated that he is not pressing this Misc. Petition. It is accordingly dismissed as not pressed.

The other Misc. Petition No.2389 has been filed by the applicant where he has prayed for bringing certain facts and documents on record and for summoning some record in possession of the respondents. We have heard learned counsel for the parties and we do not think that it is necessary to summon any document. This Misc. Petition also is accordingly disposed of.

In view of the above, we dispose of this Original Application as having become infructuous. Costs on parties.


(B.C. Mathur)
Vice-Chairman
9.11.1989.


(Amitav Banerji)
Chairman
9.11.1989.

SKS