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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1989/ 1988.
T.A. No.

DATE OF DECISION 23.12.1988.

Shri Kehar Singh ~~Petitioner~~ Applicant.

Shri S.M. Asri with Shri O.P. Sood Applicant.
Advocate for the ~~Petitioner(s)~~

Versus

Union of India & Others Respondent_s

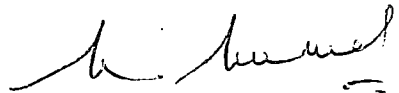
Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. KAUSHAL KUMAR, MEMBER (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *No*



(KAUSHAL KUMAR)
MEMBER.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1989/1988.

DATE OF DECISION: 23.12.1988.

M.P. 2223/1988.

M.P. 2308/1988.

M.P. 2560/1988.

M.P. 2561/1988.

Shri Kehar Singh Applicant.

V/s.

Union of India & Others Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant Shri S.M. Asri with
Shri O.P. Sood, Counsel.

For the Respondents Mrs. Raj Kumari Chopra,
Counsel.

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who is a Civilian Assistant Security Officer in 505 Army Base Workshop, Delhi Cantt., has called in question the order dated 18th July, 1988 transferring him from 505 ABW to DEAL Dehradun, which has been filed as Annexure A-4 to the application.

2. The main ground on which the transfer has been challenged is that the authority who passed the transfer order was not competent to do so. This position has not been accepted by the respondents who have contended that all the posts of Civilian Assistant Security Officers were being controlled by the Adjutant General's Branch and, therefore, the said Branch was competent to issue the transfer order.

3. The short point for determination in this case is the competence of the authority who issued the transfer order. There are a number of posts of Civilian Assistant Security Officers under the Ministry of Defence and these

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officers are deployed in various Branches / Directorates such as Ordnance Services Directorate, Electrical & Mechanical Engineering Directorate, Engineer-in-Chief's Branch, Research & Development Organisation, Directorate General of Inspection Organisation. These officers are recruited under the Ministry of Defence (Class II Gazetted Civilian Assistant Security Officer) Recruitment Rules, 1969, notified vide S.R.O. 357 dated the 3rd December, 1969, but their appointment letters, promotion orders etc. specifically indicate the respective Directorates / Branches in which they are deployed. In the case of the applicant, the order of appointment filed as Annexure A-10 to the application, was issued on 12th February, 1982 and it was stated in the first para of the appointment letter that he was being offered a temporary post of Civilian Assistant Security Officer in the Corps of EME. The applicant was also confirmed by the order dated 24th March, 1988 filed as Annexure A-2 to the application. It is indicated in the said order that the applicant had been confirmed with effect from 5th April, 1984 and the unit shown against his name is 505 Army Base Workshop Delhi Cantt-10. The applicant made a representation on 28th July, 1988 against his transfer. In para 3 of his representation dated 28th July, 1988, the applicant stated as follows: -

"3. It is further submitted that I was recruited through Union Public Service Commission for EME Directorate. As per the posting order ibid, the command and control rests with AG's Branch. From the above, it will be clear that I shall approach to AG's Branch in future for service matters, whereas I have received all orders such as Selection Grade/ confirmation etc. from EME Directorate and NOT from AG's Br."

The said representation was forwarded by the Unit of the applicant viz., 505 Army Base Workshop, Delhi Cantt. to Headquarters Technical Group EME (Adm), Delhi Cantt.-10, vide forwarding letter dated 20th August, 1988, filed as Annexure A-7 to the application. Paras 4, 5 and 6 of the

h. name

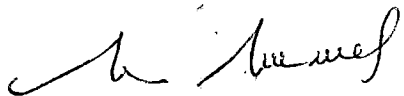
forwarding letter dated 20th August, 1988, which was issued with the approval of the Commandant of 505 Army Base Workshop, are extracted below: -

"4. In this connection it is informed that a proposal was made by Min of Def for combatization the cadre of CASOs, but the same has not yet materialised and the cadre comes under the command and control of respective Directorate of Army Headquarters. Hence AG's Branch, Army Headquarters is not empowered to issue posting order of CASO Shri Kehar Singh, without concurrence of the DGEME, Army Headquarters, the appointing authority. It is evident from his appointment order issued by Min of Def vide order No. F-15/27/81-D/Appts dated 12 Feb 82. A copy of the same is enclosed for ready reference please.

"5. Further, the provisions of CPRO 73/73 clearly indicates that when an incumbent posted out from parent unit/corps/deptt, he has to forgo the seniority for the purpose of promotion/confirmation/selection grade appointment etc. CASO Shri Kehar Singh is not declared surplus from this unit as he is the only one authorised CASO. In addition to this, CASO Shri Kehar Singh is in the zone of selection grade of CASO in the Corps of EME. If he is ordered to move out of the Corps of EME, he will lose his selection grade appointment which will adversely affect the further career of the officer.

"6. In view of the position explained above, it is requested that DGEME, Army Headquarters may please be approached to cancel the posting order issued vide AG's Branch letter mentioned in para 1 above."

The Headquarters Technical Group EME, Delhi Cantt. sent a reply on 16th September, 1988 to 505 Army Base Workshop stating that although the appointment of the applicant was made in the year 1982 by the Ministry of Defence initially for the Corps of EME, the cadre controlling authority for Civilian Assistant Security Officer post is with AG's Branch, Army Headquarters since 1984 under the authority of the Ministry of Defence ID No. 20(3)/84/D (Appts) dated 12th June, 1984.



The Research & Development Organisation under whom the applicant had been transferred also wrote a letter to the Commandant, 505 Army Base Workshop, Delhi Cantt. on 30th September, 1988. Para 2 of the said letter runs as follows: -

"2. The matter regarding competent authority for posting of CASOs is under dispute. Till a final decision is taken in this matter, you are requested not to relieve Shri Kehar Singh who stands posted to DEAL, Dehradun vide letter under reference. The AG Branch is being requested to cancel the orders of Shri Kehar Singh and Shri K K Katoch."

4. The point for examination in this case is whether there is one centralised cadre of Civilian Assistant Security Officers or they are still functioning under different Branches, Directorates for purposes of their seniority, promotion etc. The respondents rely on the decision communicated by the Ministry of Defence on 12.6.1984. This decision was incorporated in a Note dated 12.6.1984 and internally circulated to all the concerned Branches. This Note is reproduced below: -

" MINISTRY OF DEFENCE
D(APPIS)

Subject: - Centralisation of the Cadre of Civilian Assistant Security Officers and its merger with the Defence Security Corps.

The question of centralisation of the cadre of Civilian Assistant Security Officers and its merger with the Defence Security Corps has been reviewed by this Ministry and it has been decided that -

- (a) The various posts of CASO as indicated below whose control and administration rests with the respective employing Branches / Directorates, may be centralised under one common cadre with immediate effect. The centralised cadre will be controlled by AG's Branch, in Army Headquarters till all the existing personnel retire/are absorbed in DSC:

h. k. katoch

<u>S.No.</u>	<u>Employment Branches/ Directorates</u>	<u>No. of posts</u>
1.	OS Directorate	23
2.	EME Directorate	8
3.	E-in-C's Branch	12
4.	R&D Organisation	16
5.	DGI Organisation	8
	Total	<u>67</u>

(b) The existing cadre of CASO be declared a dying out category;

(c) Hence-forth, fresh recruitment and deployment of CASOs would be made by the DSC, against requisition from the employing Branches/ Directorates and

(d) DSC will explore the possibility of the absorption of all the existing CASOs in their organisation.

Sd/- M.C. Juneja
Under Secretary.

JS(O) (Dr. S. Sundaram)

DOS (Lt. Gen. A.D. Mohani, PVSM, VSM)

DDEME (Maj Gen. L.M. Rajgopal, AVSM)

Dir DSC (Brig I.D. Vasishtha AVSM)

E-in-C's Branch/DOP (Brig V.K. Shawhney)

DGI Organisation (Col. R.K. Jain)

R&D Organisation (Gp. Capt. M. Salahuddin, DOP)

AG's Branch (Shri R.P. Gupta, JDCP)

M of D I.D. No. 20(3)/84/D (Appts), dated 12th June 1984

Copy to: - DS (O&M, D(Civ-I), D(W-II),
D (Insp), D(R&D), D(GS-IV).

It is seen from the above note that a decision had been taken to the effect that the various posts of Civilian Assistant Security Officers, as indicated in the said Note, whose control and administration rested with the respective employing Branches / Directorates, might be centralised under one common cadre with immediate effect. It would appear, however, that although a decision was taken in June, 1984, the same has not so far been implemented. At the time of hearing, the respondents produced a draft seniority roll of permanent/ temporary Civilian Assistant Security Officers as on 1st November 1984. This was issued on 14th December, 1984. This was merely a draft seniority roll and it was conceded by the respondents at the time of hearing that no final seniority roll of Civilian Assistant Security Officers had been issued so far.

It is also obvious that orders of appointment, promotion, confirmation of Civilian Assistant Security Officers are being issued referring specifically to their respective Directorates and Branches under the Army Headquarters even as late as 1988, even though a decision for centralisation of the cadre had been taken in June, 1984. The order of confirmation of the applicant himself issued on 24.3.1988 shows his Unit as 505 Army Base Workshop, Delhi Cantt. The notification regarding the applicant having been made permanent is numbered 210, dated 25th January, 1988 and is published in the Gazette of India dated February 27, 1988 (Part I - Section 4). It was issued by the Ministry of Defence, which shows the applicant along with others as being in the Corps of Electrical and Mechanical Engineers (Army Branch). The learned counsel for the applicant also referred to the Schedule - Part 5 - Civil Posts in Defence Services on pages 144-145 of Swamy's Compilation of CCS CCA Rules (Sixteenth Edition). The said Schedule shows that the appointing authorities for posts in Lower formations are as under: -

<u>Description of Service/Post</u>	<u>Appointing Authority</u>
(i) General Staff Branch	Deputy Chief of Army Staff.
(ii) Adjutant General's Branch.	Adjutant General.
(iii) Quarter Master General's Branch.	Quarter Master General.
(iv) Master General of Ordnance Branch.	Master General of Ordnance.

5. Learned counsel for the respondents Mrs. Raj Kumari Chopra rightly pointed out that this Schedule was with reference to the authorities competent to impose penalties in Rule 11 of the CCS (CCA) Rules and since transfer was not a penalty, this Schedule was not relevant. However, learned counsel for the applicant was at pains to show that the various Branches were independent of each other in the matter of appointment, disciplinary matters, promotion, etc.

6. An averment has also been made in the application

in para 6 (vi) to the following effect: -

"vi) That on the persistent demand of the C.A.S.Os Association to open avenues of promotion a proposal was initiated by the Defence Deptt suggesting the merger of all the CASOs of various departments of the Defence in the "Defence Security Corps" by grant of Commission and those who are not found fit for grant of commission be declared belonging to dying cadre and disposed by the AG's Branch of Army HQ under surplus pool, but this proposal was not accepted.

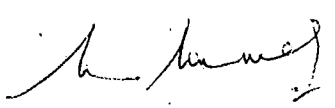
"vi) That the above fact was also considered by the IV Pay Commission whose observations are reproduced as below: -

"..For Security of Defence Depots/ installations, there is a cadre of Civilian ASO's with 67 posts. Recruitment to these posts is made through UPSC. We understand that there was a proposal to merge the cadre of CASOs with the Defence Security Corps. This however has not yet materialised. Having regards to the qualifications for recruitment and the responsibilities of the posts of CASOs of scale Rs.550 - 900 may be given the scale of Rs.2000-3500 and for the posts in the scale of Rs.775-1200 may be given the scale of Rs 2200 - 4000."

7. In the counter-affidavit in reply to the aforesaid averment, it is stated :

"Contents of sub para (1) to sub para (vi) of main para 6 being matter of record warrant no reply."

It is further stated in the counter-affidavit that the cadre controlling authority of the EME, E-in-C, R&D Org, DGI Org and Ordnance in respect of CASO's is only AG's Branch. However, this position is not supported by any document and in fact it is belied by the orders of confirmation and promotion being made in respect of CASOs posted in the respective Branches / Directorates. If there were one centralised cadre of CASOs controlled by the Adjutant Generals Branch as contended by the respondents, there should



have been one common seniority list published by the said Branch and the orders regarding appointments, promotions and confirmations would naturally have been issued from that branch only. The documents produced and filed by the applicant, however, show to the contrary that the centralisation of the cadre has not taken place under the Adjutant General's Branch. Merely because a decision was taken in June 1984 for centralising the cadre and placing the same under the Adjutant General's Branch or for that matter a draft seniority roll was issued in December 1984 does not show that the centralisation of the cadre has in effect taken place or the decision implemented. In fact, the Commandant of the Army Base Workshop in his forwarding letter dated 20th August, 1988 himself confirms the position that the proposal made for combatization of the cadre of CASOs had not yet materialised and the cadre came under the command and control of respective Directorate of Army Headquarters. He categorically states that the AG's Branch of Army Headquarters was not empowered to issue posting order of the applicant without concurrence of the DGEME of Army Headquarters, who was the appointing authority. It is rather strange that the same officer (Col. Parkash Singh) who sent this communication dated 20th August, 1988 and signed on behalf of the Commandant of 505 Army Base Workshop, took a different position in the counter-affidavit filed by him in this case. Such an apparent contradiction in the stand of the respondents exposes the weakness of their case.

8. Unless a centralised cadre of CASOs is formed and a common seniority list is formulated and operated upon, the transfer of an incumbent from one Branch to another is bound to affect his career in the matter of confirmation and promotions, and therefore, transfer from one Branch to another without protecting the seniority of the officer concerned in his original Unit cannot be sustained.

A. Kumar

9. In view of the above discussion, the present application is allowed and the impugned order dated 18th July, 1988 and the order dated 7th October, 1988 issued by the Adjutant General's Branch, Army Headquarters, in so far as they relate to the transfer and movement of the applicant from 505 ABW, Delhi Cantt., are hereby quashed. All the M.P.s filed in this case also stand disposed of. There shall be no order as to costs.



(KAUSHAL KUMAR)
MEMBER.