

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1119/86
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DATE OF DECISION 22.10.1991

Lakshman Singh

Petitioner

Shri R.L.Sethi

Advocate for the Petitioner(s)

Versus

Union of India, through the Respondent
 Secretary, Ministry of Defence and another

Shri M.L.Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

In this application dated August 1986 the applicant who has been working as Supervisor in the Military Farm Depot, Mathura and was prematurely retired on 4.1.87 has prayed that he should be granted pay and allowances for the period between 1.5.81 and 30.9.82, annual increments with effect from 1.12.81 and temporary duty claim along with interest. The brief facts of the case are as follows.

2. The applicant had been working at the Military Farm Depot, Mathura from 16th May 1979. Due to his failure to maintain milk supply to the troops during April 1981 he was given telephonic movement order for temporary duty from Mathura to Agra which he accepted on 22nd April 1981. On 23.4.81 the applicant went on leave for 15 days due to indisposition

72

which he extended with medical certificate from the Medical Officer, District Hospital, Mathura till 3.6.81. On 4.6.81 when he reported for duty he was not allowed to resume duty and physically pushed out. According to him he has been reporting for duty every day till on 7.6.81 he received a letter dated 3.6.81 informing him that he has been struck off the strength of the Military Farm Depot, Mathura and posted at Military Farm, Namkum in Bihar. On 8.6.81 he submitted an application to the Officer-in-Charge, Military Farm, Agra stating that he had not received any order for permanent posting at Namkum. On 9.6.81 he submitted an appeal against the order of transfer dated 5.6.81 to the Quarter Master General, New Delhi through the Officer-in-Charge, Military Farm, Agra who refused to receive the appeal. Thereafter he sent the appeal to the Deputy Director, Military Farm, Lucknow for onward transmission.

3. According to the respondents the applicant's temporary transfer to Agra was cancelled by signal orders received at Mathura on 22nd April 1981 for transfer to Namkum. Accordingly fresh movement order for his permanent posting to Namkum was issued to the applicant on 24th April 1981, but the same was not accepted by the applicant in person. As such it was sent to him in registered cover. According to the respondents his name was struck off the strength of MFD, Mathura with effect from 24th April 1981. The respondents have conceded that the applicant filed an appeal against his transfer on 9th June 1981 which was sent to the QMG who rejected the same. The rejection intimation was

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conveyed to the applicant by MFD, Mathura on 5th December 1981. According to the respondents the Army Headquarters reconsidered his case and posted him from Namkum to Gwalior on 8th March 1982 and posting order was issued on 9th March 1982. The applicant preferred another appeal against that order on 3.7.1982 for his posting direct from Mathura to Gwalior instead of from Namkum to Gwalior. This was acceded to and a fresh posting order was issued on 23.9.92 and the applicant's name was struck off the strength of MFD, Mathura with effect from 25.9.82. The applicant has argued that in accordance with the Government order dated 14.4.71 at Annexure-X he should not have been moved out of Mathura during the pendency of his appeal to the QMG and that he received his transfer order transferring him from Mathura to Gwalior on 25.9.92 which he complied with and he joined at Gwalior on 1.10.92. He was not given pay and allowances for the period from 1.5.81 to 30.9.82. According to the respondents, the applicant's name had been struck off from the rolls of MFD, Mathura on 24.4.81 and he reported for duty at Gwalior on 1.10.82. He was further considered absent from 24.4.81 to 1.10.82, but this period was regularised

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by grant of earned leave and half pay leave. They have also referred to certain payments which have been made to him on that basis after adjusting the amount due from him on various counts.

4. In the rejoinder the applicant has denied that he was struck off from Mathura on 24.4.81 because in accordance with the respondents' own showing he was struck off from Mathura only on 25.9.82. He used to report for duty every day after 4.6.81 but was not allowed to join. He has argued that since he never applied for leave, regularisation of the period of absence by grant of leave cannot be done and he should be considered to be on duty. He has also challenged the amounts of payment and deduction made by the respondents.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents themselves in the counter affidavit have stated as follows:-

" The petitioner again preferred another appeal dated 3rd July 1982 for his posting direct from MFD Mathura to MF Gwalior instead from Namkum to Gwalior which was acceded to and a fresh posting order dated 23rd September 1982 was issued to MF Records, as such, the petitioner was struck off the strength of MFD Mathura w.e.f. 25 Sept. 1982."

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From the above it is clear that the applicant was finally transferred to Gwalior not from Namkum but from Mathura as the applicant did not go to Namkum at all and the respondents agreed to recognise his posting at Mathura valid by transferring him to Gwalior from Mathura by issuing a fresh posting order dated 23rd September 1982. Therefore, it cannot be said with any justification that the petitioner's name was struck off the strength of Mathura with effect from 24.4.81. The respondents have conceded that the applicant went on leave on 23.4.81 though the leave was not formally granted and that the movement order for his temporary duty to Agra was cancelled and the order regarding his permanent posting to Namkum was issued on 24th April 1981, i.e., after the applicant had gone on leave. They have also conceded that the applicant reportedly tried to join duty on 4.6.81 but was not allowed to do so as his name had been struck off the strength of MFD, Mathura. The applicant preferred an appeal on 9th June 1981 which was rejected and the applicant intimated on 5th December 1981. The respondents have not questioned the circular dated 14th April 1971 at Annexure-X in which a decision had been taken that when the staff put up an appeal against their posting, they should not be moved out till the appeals are finally

upon decided. The following extracts from that circular are relevant:-

"3. During last senior Military Farms Officers conference held at Army HQ on 26-28 Nov. 70 it was decided that the staff who put up appeals against their posting to DMF/QMG should not be moved out till their appeals are finally decided by the appellate authority. In this connection it has further been clarified by the DMF Army HQ that the individuals who are desirous of preferring their appeals against postings should do so at once on receipt of posting orders which will be forwarded to this office immediately. Forwarding of such appeals in any case should not take more than a fortnight. If the first appeal of the individuals has been considered and rejected by the DMG, no subsequent appeals or grant of interview with the DMG against their posting would be entertained.

4. However in case such individuals are further desirous of preferring their 2nd appeal to the QMG they will do so within a week from the date of decision of their first appeal is communicated to them which period the same will be considered as time barred and will stand rejected." (emphasis added)

6. Since in the instant case there is nothing to show that the applicant's transfer to Namkum which was ordered on 24.4.81 had been served on him before June 1981, it cannot be said that by appealing against that order on 9.6.81 to the QMG there was any delay on his part. Further the rejection of his appeal was conveyed to him admittedly on 5.12.81. In accordance with the aforesaid circular, therefore, the applicant was entitled to be retained at Mathura till then and his transfer to Namkum was not to be given effect to.

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The fact that the respondents themselves on their own reconsidered his transfer to Namkum, cancelled the same and posted him from Mathura to Gwalior on 23.9.82 till which date, according to the respondents themselves, his name was retained in the strength of MFD, Mathura, the applicant will have to be considered to be on duty at Mathura till 25th September 1982. The respondents have not denied that the applicant has been presenting himself for duty but not allowed to join duty from June 1981, merely on the ground that his name has been struck off the strength of MFD, Mathura with effect from 24.4.81. This, as has been pointed out earlier, was not correct as he continued to be on the strength of MFD, Mathura till 25th September 1982.

7. In the facts and circumstances I allow the application and direct that the applicant should be ~~be treated as~~ considered as on leave as admissible to him from 23.4.81 to 3.6.81 and on duty from 4.6.81 to 30.9.82 with all consequential benefits of leave salary, pay and allowances, increments, revised pension and retirement benefits. He will not, however, be entitled to any interest thereon. This will also be without prejudice to his claims of other dues to which he is entitled in accordance with law. There will be no order as to costs.

S.P. Mukerji
 22.10.91
 (S.P.MUKERJI)
 VICE CHAIRMAN
 22.10.1991

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