

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1045/90 with 199
T.A. No. MP No. 80/91 and
MP No. 301/91

DATE OF DECISION 26.7.91

Naib Sub Mahabir Singh Petitioner Applicant

Shri Mahesh Srivastava Advocate for the Petitioner(s) Applicant

Versus

U.O.I & ors. Respondents

Shri N.S. Mehta, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER(A)

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? / N
4. Whether it needs to be circulated to other Benches of the Tribunal? / N

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A))

This application has been filed under Section 19 of the Administrative Tribunals, 1985 by Naib Subedar Mahabir Singh working with the Mobile Civil Emergency Force(MCEF) under the Director General, Civil Defence, Ministry of Home Affairs seeking reliefs of (a) salary as Naib Subedar with effect from 7.8.89 and (b) sending the applicant to the surplus establishment of the Ministry of Home Affairs rather than forcing him to get absorbed in the Central Industrial Security Force(CISF).

2. The applicant was recruited as a Constable in the MCEF which was created after the Chinese in 1962 under the Ministry of Home Affairs. The Union of India vide their order dated 7.9.89 took a decision to wind up MCEF and absorb the personnel of MCEF in CISF. Those not opting to join CISF

were to be sent to the Surplus Cell and for this purpose supernumerary posts had to be created.

3. The applicant had been promoted as Naib in 1967, ^{in 1978 An} Havildar and Naib Subedar on 2.9.86. On 26.12.88, he was reverted to the post of Havildar and again on 1.8.89 he was promoted as Naib Subedar. On 8.9.89, Government of India issued orders for winding up MCEF and the applicant reported for duty to the DIG North Zone, CISF. However, he was refused permission to join as Naib Subedar and had no option but to continue in his original post in the MCEF at Saket. The applicant has complained that he is not getting his salary with effect from 7.9.89.

4. The MCEF Non Gazetted Employees Welfare Association filed OA 1637/87 in this Tribunal wherein they challenged order dated 9.11.87 issued by the Assistant Director General (Civil Defence), Government of India, Ministry of Home of Affairs, New Delhi by which all the MCEF personnel in Grades 'A', 'B' and 'C' are to stand transferred to the Director General, CISF for further deployment and those who do not want to join the CISF would be treated as surplus and surrendered to the Surplus Cell under the Directorate General, Employment and Training for redeployment. Further, in case they are not redeployed during the period of six months, they would stand retrenched. In its judgement dated 4.5.89, the Tribunal held that the impugned order does not suffer from any legal infirmity. The application was accordingly dismissed.

5. In SLP (Civil) No.7105/89 filed in the Supreme Court against the aforesaid judgement, the Supreme Court has passed an interim order on 15.5.89 to the effect that "such of the employees of the MCEF (which is all to have been wound up by the Govt.) who exercise option to join Central Security Force may be permitted to join the CISF during the pendency

of the appeal. Those who do not exercise such option may be sent to the Central Surplus Cell subject to any further orders to be made by this court."

6. On 7.9.89, the respondents issued the order regarding the winding up of the MCEF. This order refers to the earlier order dated 9.11.87, the judgement of this Tribunal dated 4.5.89 in OA 1637/87, the order dated 15.5.89 passed by the Supreme Court and the Office Memorandum dated 1.4.89 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi regarding the scheme for dealing with the surplus staff. It reads as follows:-

"Pursuant to the decision of Government of India, to wind up the Mobile Civil Emergency Force and to abolish all categories of post born on its strength and to the above referred orders, the President is pleased to direct that the Mobile Civil Emergency Force at Delhi established under the Ministry of Home Affairs, be wound up with immediate effect.

2. All the permanent posts on the strength of MCEF will hereby stand abolished and in lieu thereof supernumerary posts will be deemed to have been created in the surplus staff establishment Ministry of Home Affairs and all the temporary posts shall stand transferred to the said establishment. The employees of MCEF rendered surplus will be governed by the scheme outlined in Personnel and Training O.M. No.1/18/88-CS III dated 1.4.1989 as amended from time to time.

3. This issues with concurrence of the Ministry of Finance with their Dy. No.2578/SE/89 dated 7.7.89 and integrated Finance Divn. of the ministry vide their Dy. No.2628(FW) 89 dated 6.9.1989."

7. The applicant has contended that he should be sent to the surplus establishment subject to the order to be made by the Supreme Court, mentioned above and the order issued by the respondents on 7.9.89 after a final decision is given by the Supreme Court.

8. On 14.9.90, orders were passed by the Tribunal to the effect that the applicant may receive the outstanding amounts from the CISF in accordance with the last pay certificate without prejudice to his rights and contentions in the present application.

9. The respondents have stated that not only the applicant failed to turn up to receive the salary but when the Drawing and Disbursing Officer went to his house for disbursement, he refused to accept it. The applicant had joined the CISF on 30.6.89 after exercising his option. Hence he is now a member of the CISF which being an Armed Force of the Union is outside the jurisdiction of the Tribunal as per provisions of Section 2(a) of the Administrative Tribunals Act, 1985. The applicant cannot claim to be sent to the Central Surplus Cell under the orders of the Hon'ble Supreme Court dated 15.5.89 as he has already exercised his option to join CISF and had in fact joined CISF on 30.6.89 (vide Annexure A to the counter affidavit page 32 of the paperbook).

10. In Misc.Petition No.301/91, the applicant has stated that he fell sick in October 1990 and was under treatment till 18.1.91 when he reported for duty. He again complained that he has not received any salary since October 1990. The respondents have stated in their reply to the Misc.Petition that the applicant was transferred from CISF Northern Zone, Saket, New Delhi to CISF Unit, OCS, Shakurbasti with effect from 21.9.90 but he failed to report to his new place of posting. His salary and other dues will be paid to him as soon as he reports for duty at his new place of posting. On 8.4.91, the Tribunal passed an order to the effect that the applicant will be at liberty to collect his salary from the office at Shakurbasti without prejudice to his rights and contentions in the case filed before the Tribunal.

11. We have gone through the records of the case carefully and have considered the rival contentions. Having exercised the option to join CISF and joined it on 30.6.89, the applicant has become a member of

CISF which is an Armed Force of the Union. This Tribunal has no jurisdiction over CISF in view of the provisions of Section 2(a) of the Administrative Tribunals Act, 1985. The order issued by the respondents on 7.9.89 does not indicate that it superceded earlier options exercised by the employees of the MCEF. In view of this, we see no merit in the claim of the applicant that he should be sent to the surplus cell. We do not find any force in the present application and the same is dismissed. Misc. Petition Nos. 80 of 1991 and 301 of 1991 are also dismissed.

There will be no order as to costs.

B.N.DHOUNDIYAL
(B.N.DHOUNDIYAL)
MEMBER(A) 24713,

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26/2/81
(P.K.KARTHA)
VICE CHAIRMAN(J)