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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1193/90

Date of decision: 9.4.91

R.B. Malik

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri D.R. Gupta, counsel for the applicant.

Shri N.S. Mehta, Sr. Standing Counsel for the respondents.

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Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman(J).

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble Justice Shri Ram Pal Singh, Vice-Chairman (J).)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the directions to respondents to obtain fresh option from him according to orders passed by the Supreme Court on 15.5.89. He further prays that his transfer to Central Industrial Security Force (for short CISF) on the basis of option exercised on 13.11.87, is not binding on him.

2. The applicant was recruited to the post of Lower Division Clerk by Mobile Civil Emergency Force (for short MCEF), a Government organisation which was created in 1962, under the Ministry of Home Affairs. The Union of India by their orders dated 29.7.89 took a decision to wind up the MCEF and absorb the personnel in the various Central Police organisations and the deputationists were to be accommodated thus to complete their tenure. On 23.9.87, it was proposed that the entire personnel of MCEF be absorbed in the C.I.S.F. The applicant contends that by order dated 5.11.87, the previous Government orders were superseded and it was directed to transfer the MCEF employees to C.I.S.F. The employees

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thus were required to give their options to join the CISF. On 13.11.87, the applicant exercised his option to join the CISF as LDC (civilian non-uniform). The applicant further avers that the respondents never cared to post and transfer the applicant to CISF and he continued to work in MCEF till the filing of the application, though the respondents have shown him on the rolls of the CISF. The applicant further contends in his application that in MCEF he was promoted as Upper Division Clerk on 22.6.89 in the pay scale of Rs. 1200-2040 and was placed on probation for two years and now the applicant has become due for grant of his annual increment w.e.f. 1.4.1990 in the post of Upper Division Clerk in the pay scale of Rs. 1200-2040. According to him, the respondents have not granted his annual increment and the applicant has been deprived of his dues. In the application, the applicant further contends that before the Principal Bench in OA 1637/87, the Mobile Civil Emergency Force Non-gazetted Employees' Welfare Association (Regd.) challenged the order dated 9.11.87 regarding the winding up of the MCEF and subsequent transfer of the civilian employees to the CISF is against their wishes. The said O.A. was dismissed and it was held that the decision of the Government to wind up MCEF is final. Aggrieved by this order of the Central Administrative Tribunal, Principal Bench, New Delhi, the Association preferred a Special Leave Petition before the Supreme Court of India. The order passed by the Supreme Court of India is being reproduced for convenience:

"SLP(C) No. 7105/89

Special leave granted. As regards the prayer for interim order the following order is made: Such of the employees of the MCEF (which is alleged to have been wound up by the Government) who exercise option to join the Central Industrial Security Force

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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. Liberty to mention within six months.

SLP (C) No. 13238/87 and WP 1574/87

Issue notice on the Special Leave Petition, Writ Petition and stay applications.

Mrs. Sushma Suri accepts notice."

3. The applicant also contends that he had submitted his representation to the respondents which was rejected. Another representation was also submitted to the Home Secretary, Government of India, but its reply is awaited. The applicant sought the following reliefs:

(1) Directions to respondents to obtain a fresh option from the applicant in terms of the interim orders passed by the Supreme Court of India on 15.5.1989.

(2) The option obtained from the applicant on 13.11.87 to join the CISF as LDC has become dishonest and illegal and is not binding upon the applicant and the applicant further prays for direction to the respondents to continue to pay the applicant his salary along with increments and arrears on month to month basis.

4. This matter was taken up by the Bench on 8.6.90 in which it was directed to issue notice to the respondents on admission and interim relief. After service of the notice, the matter was taken up on 1.11.90 in which none appeared for the respondents. Consequently, the Bench passed an interim order which is being reproduced below for convenience:

"We direct that the applicant shall be paid his salary from the CISF for the month of October, 1990

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and subsequent periods without prejudice to rights and contentions of both parties. Status quo as regards the continuance of the applicant in the service of the CISF be also maintained."

5. The respondents filed their reply in which the contentions of the applicant were controverted and, inter alia, it was submitted that on the basis of the option exercised by the applicant on 13.11.87, he was permitted to join on 30.6.89. According to the respondents, the applicant stands posted to CISF since 30.6.89 and the applicant is being paid his pay and allowances from CISF. For administrative purposes, he is looking after the work of the Surplus Cell under the administrative control of the Director General of the CISF. Respondents further contend that the applicant joined in the rank of L.D.C. on 30.6.89 and the order of his promotion as Upper Division Clerk in MCEF after joining the CISF issued by Shri R.S. Sharma was completely illegal. The respondents also deny the averment of the applicant in the application that on 9.11.89, the Government superseded its earlier orders. They further contend that the transfer of the applicant to CISF is not against his will, but is in accordance with the option exercised by him. The respondents also contend in their return that the option to join the CISF by the applicant in 1987 is in accordance with the interim order dated 15.5.89 of the Supreme Court of India that those employees of the MCEF who have not exercised their option to join the CISF are likely to be sent to the Central Surplus Cell subject to the orders subsequently made by the Court. According to the joining report, the respondents contend, the applicant joined the CISF on 30.6.89 i.e. after the interim order was passed by the Supreme Court of India and Office Memorandum of the Department of Personnel

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& Training datd 1.4.89. According to the respondents, the Government of India order dated 7.9.89 notifying the winding up of the MCEF Delhi was final. They deny that the transfer of the applicant to CISF was against the will of the applicant and they contend that the option exercised by the applicant in the rank of Lower Division Clerk was accepted by the CSIF which permitted him to join the rank of L.D.C. on 30.6.89. They deny the averment that the action of the respondents is arbitrary, baseless and against the principles of natural justice. According to the respondents, the applicant, after joining the CISF on 30.6.89, and after filing his option, is drawing his pay and allowances from the CISF Headquarters and it is only for the administrative purposes that he is looking after the work of the Surplus Cell under the administrative control of the Director General of CISF. With regard to the undertaking given by Shri G. Ramaswamy, the Additional Solicitor General of India, it was only for those personnel of MCEF who did not or have not exercised their option to join the CISF. That is why the name of the applicant could not be included for deployment in the Central Surplus Cell. In the end, they contend that the MCEF, New Delhi, has already been wound up by the Government of India and as such, there is no question of the applicant continuing to work in the wounded up MCEF, New Delhi. They, in the end, contend in their return that the applicant is not entitled to any relief.

6. The applicant filed MP No. 677/91 praying for summoning of the records from the respondents. This Bench on 8.3.91 declined to issue any direction to the respondents to produce all the records mentioned in the M.P. and thus the M.P. was disposed of and orders passed on the basis of the assurance of the learned counsel for the respondents that they have submitted all the relevant records of the Department for the purpose of the persual of the Tribunal.

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7. The questions which require adjudication in this

application are:

(i) whether, after the winding up of the MCEF and after filing his option on 13.11.87 by the applicant for joining the CISF as LDC, the applicant was working for CISF or MCEF;

(ii) whether after filing of the option by the applicant on 13.11.87 to CISF, the alleged promotion of the applicant to the post of Upper Division Clerk by the MCEF in the higher pay scale would be valid;

(iii) whether the respondents can be directed to obtain fresh option from the applicant in terms of the interim order passed by the Supreme Court of India;

(iv) whether the option filed by the applicant on 13.11.87 was illegal, non-est and not binding upon the applicant?.

7. All these four issues are inter-related and we need not record our findings separately on each issue. Before we take up the discussion on these issues, we would like to quote Roshan Lal Vs. Union of India (AIR 1967 S.C. 1889) which throws light with regard to the relationship of an employer with the employee:

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and

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not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employees. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by law and in the enforcement of these duties society has an interest. In the language of jurisprudence, status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

Keeping these principles in view, we examine the entire spectrum of the matter.

8. "Option" as understood in law is a wish, right of election, a choice, preference...; In the commercial field, this word denotes an agreement to give a person the option to purchase lands within a given time at a named price, but it is neither a sale nor an agreement to sell. It is simply a contract by which the owner of the property agrees with another person that he shall have the right to buy this property at a fixed price within a certain time. Thus, the

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word option is synonym for "choice" or "preference". We speak of option only as regards one's freedom from external constraints in the act of choosing the option or the power of choosing is given and the choice itself is made. Hence, we say a thing is at a person's option.

9. The applicant submitted his option to join the CISF on 13.11.87. It shall be presumed, therefore, that the option filed by him was of his own choice and in the absence of any allegation of pressure or duress upon him before filing of option, it will have to be held that the applicant filed his option on 13.11.87 of his own free will to join the CISF after the winding up of the MCEF as L.D.C. (civilian non-uniform).

10. We have perused the order of the Supreme Court of India dated 22.12.89 in which it has been observed as quoted above, that the personnel from the MCEF have been attached to Surplus of the CISF only for the administrative convenience and nothing more. Consequently, the option filed by the applicant on 13.11.87 was not under pressure from the respondents, but was the result of his independent decision. After winding up of the MCEF and after the applicant filed his option, it is clear that the applicant was working in the Surplus Cell of CSIF as being attached for the administrative convenience and for the good of the employees. After the interim order passed by this Court, the applicant is receiving his pay, salary and allowances from the CISF and not from the MCEF. Undoubtedly, the applicant was a staff of the MCEF and the applicant joined the CSIF of his own accord because of the winding up of the MCEF. By an interim order, referred to above, it was also directed that status quo as regard continuance of the applicant in the CISF be also maintained. Consequently, we conclude that the applicant is a surplus employee of the MCEF and on his option,

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he continues to work in the CSIF/and receiving his pay and allowances from that very organisation. The interim order of the Supreme Court directs the filing of the options by those members of the MCEF staff who have not as yet filed their options for joining CISF and it does not govern those who have already filed their options. Thus, the respondents cannot be directed, as prayed for by the applicant, to obtain fresh option from him.

11. The order of the Supreme Court dated 22.12.89 does not indicate that any fresh option has to be filed by those who are members of the MCEF Non-gazetted Employees Association. If the above option had been filed on 13.11.87, on account of the free will of the applicant and it was not subsequently withdrawn, then that option becomes final and the applicant is estopped from submitting that he will be permitted to file a fresh option. Hence, the respondents cannot be directed to obtain fresh option from the applicant.

12. We have examined the records, including the service book of the applicant, produced by the respondents. After perusing the records, it can safely be concluded that in page 26 of the service book, there is an order of promotion of the applicant from the post of LDC to the post of UDC w.e.f. 1.4.88 in the pay scale of Rs. 1200-30-156-EB-40-20-2040. This order further provides that R.B. Malik, the applicant, will be on probation for a period of two years from the date of the appointment, i.e. 22.6.89. There is no reason to doubt the authenticity of this promotion order and it cannot be said that the applicant could not be promoted to the post of UDC before it was decided to wind up the Mobile Civil Emergency Force. This entry is authentic and no doubt is cast upon its correctness and legality. We have, therefore, arrived at the conclusion that the promotion order of the applicant, passed by the MCEF, the parent body, to the post of UDC was valid and in

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accordance with law. The applicant was promoted by MCEF on 22.6.89 to the post of U.D.C. and he joined CISF on 30.6.89. Thus before he joined the CISF, the applicant was working as UDC in MCEF, though he filed the option to join CISF as L.D.C. as back as 13.11.87.

13. We, therefore, conclude that the option filed by the applicant on 13.11.87 was legal and final. We also conclude that the promotion order of the applicant to the post of Upper Division Clerk was also valid and proper and he is entitled to the higher pay scale in which he was working by his promotion order. We also conclude that in view of the Supreme Court's interim order, no fresh option is required to be filed by the applicant. The applicant shall be deemed to be working in the Surplus Cell of CISF not as L.D.C. but as U.D.C. ^{on probation} from the date of his promotion given by his parent employer, MCEF, and shall be entitled to receive his pay and allowances as such. The option filed by the applicant shall also stand modified to the extent that from the date of his promotion, he shall be deemed to be working as U.D.C. on probation and not as L.D.C. in CISF.

14. Consequently, this petition is finally disposed of in the terms indicated hereinabove. Parties are directed to bear their own costs.

C. C. 9/5/1991
(P.C. JAIN)
MEMBER (A)

8. 2/5/91
(RAM PAL SINGH)
VICE-CHAIRMAN (J)