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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

RA 53/2005
MA 501/2005
OA NO.2134/2004

New Delhi this the 20th July, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Shri Durga Dutt Saini,
Section Officer, Group 'C',
Area Account Officer (Pay),
Western Command,
New Delhi.

(By Advocate: Shri E.J.Varghese)

...Applicant.

Versus

1. The CGDA,
West Block-V, R.K.Puram,
New Delhi.
2. PCDA, Western Command,
Chandigarh.
3. The DCDA,
Area Accounts Officer (Pay),
Delhi Cantt.-110010.
4. Shri Himanshu Shanker,
DCDA, Area Accounts Officer (Pay),
Delhi Cantt.-110010.

...Respondents.

(By Advocate: Shri R.N.Singh)

ORDER (ORAL)

By Mrs. Meera Chhibber, Member (J):

This Review Application has been filed by the respondents against the judgement dated 11.1.2005 on two grounds. 1) In Para 6 of the judgement it has been stated that respondent no.4 Shri Himanshu Shanker has not even rebutted the allegation of malafides by filing his personal affidavit even though he was made party by name in the OA but counter affidavit itself has been filed in the OA by none else then Shri Himanshu Shanker himself. Second the whole judgement is based, as if this was a case of transfer whereas this was the case of posting only and not of transfer. To substantiate his argument, learned counsel for the respondents relied on SR-2 (18) wherein the term 'transfer' means the movement of a



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(2)

Government servant from one Headquarter station in which he is employed to another such station. No other point was urged by the counsel for the respondents.

2. I had issued notice to the original applicant as I found that Shri Himanshu Shanker had indeed filed counter affidavit but neither this fact was brought to my notice by the counsel for the respondents at the time of arguments nor could I see this aspect at the time of dictating the judgement as his name was mentioned only in the verification. However after seeing the affidavit of Shri Himanshu Shankar, I am satisfied that the observations made in judgement in para-6 from sentence-5 to sentence-14 are uncalled for. Therefore, I have no hesitation in recalling these sentences from my order-dated 11.1.2005. The same read:

"In the instant case, applicant has alleged mala fides against Respondent No.4 and had also made him party by name, yet Respondent No.4 has not even bothered to file his own personal affidavit, which means that he has not even bothered to deny the allegations made in his personal capacity. Therefore, on this ground also, the O.A. needs to be allowed. Although the official respondents have stated that no time, date, etc, has been stated by the applicant when Shri Himanshu Shankar had demanded his share of money but if mala fides are alleged against an individual and he is made party by name, the least that is expected from the said officer is to at least file his own affidavit and deny the said allegations. In case no affidavit of rebuttal is filed, the allegations are deemed to have been accepted by the said officer."

3. As far as the contention of the counsel for the respondents that it was not a case of transfer but a case of posting alone is concerned, it is seen from page 12 of the OA that in the relieving order, which was impugned by the applicant the respondents had themselves explained this order as a transfer because the subject itself reads 'transfer'. It was also mentioned in the said order that the applicant is relieved of his duties in the office w.e.f.12.08.2004 (FN) with the directions to report for duty in his new assignment in the office accordingly. Details of availing the CL and RH were also given and it was further mentioned therein that no TA/DA but joining time is admissible as per rules of local transfer. Moreover, in the counter affidavit, the whole emphasis of respondents was as if it was a case

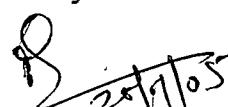


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(3)

of transfer as they had themselves cited various judgements relating to the point on transfer alone and it was also stated by way of objection that the transfer is an incidence of service and also a condition of service. No government servant has a vested right for posting at a particular place of station etc. meaning thereby that even respondents treated it as a case of transfer. Therefore, now in review application, respondents cannot be allowed to set up a new case altogether as it would be outside the scope of review. Even otherwise if it is accepted for the sake of arguments, this was a case of posting and not a case of transfer, still it is necessary to give first posting order to the individual before relieving him. Therefore, I find no merit in the second ground raised by the respondents in review application. The same is accordingly rejected.

4. In view of above order, this review application is partly allowed. Stay is vacated as main order has already been ordered to be corrected. Registry is directed to issue a corrected copy of order to both the parties by deleting lines 5 to 14 from Para-6 of the judgement dated 11.1.2005 opening with the sentence "In the instant cases, applicant has alleged mala fides against Respondent No.4 and ending with accepted by the said officer.


(Meera Chhibber)
Member (J)

/kdr/