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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2299/93

New Delhi this the 7th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Sri Krishan,
32/446, D.M.S. Colony,
Hari Nagar, New Delhi.

...Applicant

(By Advocate Sh. B.Krishnan)

Versus

1. General Manager,
Delhi Milk Scheme,
Ministry of Agriculture,
West Patel Nagar,
New Delhi.

2. Shri Kul Bhushan,
Dresser C/O
The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

...Respondents

(By Advocates Ms. Jasvinder Kaur, proxy for Sh. K.C.
Mittal and Sh. C.B. Pillai).

ORDER(ORAL)

(Mr. N.V. Krishnan)

The applicant has prayed for the following
reliefs in this O.A.:-

"8(I) That the impugned order of relieving
the applicant dated 28th August, 1993
may please be quashed and set aside.

(II) That the impugned order dated 29.9.1990
(Annexure A-1) may also please be quashed
and set aside.

(III) The applicant may be allowed to
continue to work in the same capacity
as a Dresser as before and the period
of leave from 26.8.1993 may also please
be directed to be regularised.

(IV) That suitable directions may be given
to the respondent No.1 to adjust the appli-
cant against the post of Dresser in Delhi
Milk Scheme and relieve the respondent
No.2, if need be.

(V) In the alternative the applicant may
be directed to be adjusted against any
post of Dresser in any of the Dispensaries/
Hospitals under the Central Government
with all the benefits of past service."

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2. His grievance has arisen in the following manner:-

2.1 The applicant ^U was a Dresser in the Delhi Milk Scheme (DMS) and ⁱⁿ the seniority list among five Dressers, shown at Annexure A-1, the applicant is the second seniormost person.

2.2 While so, on the recommendation of the Staff Inspection Unit a circular dated 12.3.90 (Annexure A-2) was issued, which, among other things, declared that out of the five posts of Dressers two have been declared surplus. The circular further states as follows:-

"Under the Govt. scheme for re-deployment of surplus staff, it is provided that the persons who would suo-moto like to be declared surplus in preference to their juniors can exercise option to do so. In this regard the facilities as provided under Rule 29, 48 and 48-A of the CCS (Pension) Rules-1972 and various clauses of FR-56 would also be applicable to the persons who have opted to be declared surplus in preference to their juniors.

The persons who desire to exercise their option can do so on the prescribed proforma which can be obtained from the concerned Estt. Section. The option may be exercised in triplicate. The option duly exercised may be submitted in the concerned Estt. Section by 17.3.1990."

2.3 Accordingly, the applicant exercised his option, a copy of which has been produced at Annexure I of the reply of the first respondent. Consequent upon the receipt of this option, office order No.17 dated 29.3.90 was passed by the first respondent declaring two Dressers to be surplus and they were identified as the applicant and the second respondent in that order, the latter being the juniormost in the Annexure A-1 seniority list.

2.4 The applicant, however, sent a letter dated 30.4.90, addressed to the first respondent (Annexure-A-4) under certificate of posting in which he raised the following points:-

- i) The surplus should be on the basis of 'last come first go' and, therefore, in the Annexure A-3 order the applicant's name should figure below that of the second respondent.
- ii) The applicant can be placed in the surplus list only if his immediate junior is also placed in that list.
- iii) He is confirmed as a Dresser since 1.1.68 and as the substantive post has not been abolished, his lien cannot be terminated though he has given his option to be declared as surplus.
- iv) The option given by him is not binding indefinitely and that he has a right to withdraw the above option. He, therefore, requested that the Annexure A-3 order be amended suitably. No reply was issued to him by the first respondent.

2.5 Subsequently, by the office order dated 29.7.93 (Annexure A-5) the applicant was informed that, being sponsored by the Surplus Cell of the Directorate of Employment and Training, he should report for duty as a peon/messenger in the Director General of Central Public Works Department and that he would be relieved on 9.8.93. At the request of the applicant this order was stayed till further orders by the order dated 7.8.93 (Annexure A) and he was allowed to continue as Dresser as before in the D.M.S.

2.6 Subsequently, by the Annexure A-11 order dated 28.8.93 the applicant was informed that he was being relieved of his duties as Dresser from 1.9.93 and he was required to take up appointment as peon/messenger in the Director General of Works of Central Public Works Department, as ordered earlier.

2.7 It is in these circumstances that the applicant has filed this OA, seeking the above reliefs.

3. The respondents 1 and 2 have filed separate replies. In the reply of the first respondent it is denied that the applicant is entitled to any relief. He has given an option dated 16.3.90 (Annexure I to the reply) in terms of which he is now being redeployed by the Surplus Cell for appointment as peon in the C.P.W.D.

4. The second respondent has also filed a similar reply stating that the applicant cannot have any grievance against him.

5.5. We have heard the learned counsel for the parties. The learned counsel for the applicant submits that the option given by the applicant (Annexure-I of the first respondent's reply) cannot be valid indefinitely. He states that it should be deemed to have expired within six months from the date of his being declared surplus by the Annexure A-3 order. In this connection he draws our attention to the provisions of option which read as follows;-

"I, (Shri Krishan Sharma serving as Dresser in the office of the Delhi Milk Scheme, West Patel Nagar, New Delhi-8 hereby volunteer myself for being declared surplus and transferred to the Surplus Staff Establishment in preference to my juniors, in accordance with the provisions of the Revised Scheme for disposal of Surplus

Staff, I understand that my transfer to the Surplus Staff Establishment is subject to all the attendant consequences of such transfer under the said Scheme and rules/orders issued under it.

Caution:-

A surplus employee who refuses or fails to join the redeployment arranged for him, including in a post carrying a lower scale of pay or a lower classification may be retrenched/retired on compensation pension (if admissible). If he holds lien on a lower continuing permanent post in his parent organisation he will be reverted to such post on the expiry of the period of six months from the date from which he was declared surplus or refuses to accept or fails to join the post/training course arranged for him, whichever is earlier."

6. He has strongly relied on the latter portion of the caution contained in the proforma for exercising option. That states that if the optee was holding a lien on a lower post in his parent organisation, he would be reverted to such lower post on the expiry of six months from the date he was declared surplus.

7. We have carefully considered the terms of the option. We are unable to agree with the learned counsel for the applicant. The purport of the caution is to inform every optee as follows:-

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- i) Having opted to be declared surplus voluntarily, he is bound to accept any redeployment offered to him, including a post carrying lower scale of pay or a lower classification. If, however, he refuses or fails to join the post of redeployment he could be retrenched or retired on compensation pension.
- ii) If, however, he already holds a lien in the parent department on a post lower to the post in respect of which he has been declared surplus, then, the authority has to revert him to such post on the expiry of the period of six months from the date he was declared surplus or refuses to accept or fails to join the post of redeployment. It is admitted that there is no post lower to that of Dress in the establishment of the D.M.S.

In the circumstances, we are of the view that the second part is not applicable to him, as is evident from the narrative given above. He cannot claim, on the basis of this provision, that the option has only a limited validity. That is not correct. This provision does not, and is not intended, to lay such a limitation.

8. We now come to the point made by the learned counsel that in the Annexure A-3 order his name should not have been placed at all because there were two persons junior to him who could have been

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declared surplus and even if his name is to be included he should be placed at serial No.2 below the name of the second respondent who is the last person in the seniority list.

9. We have carefully considered the argument also. We find it untenable. The Annexure A-2 circular, extract of which has been reproduced in paragraph-2.2 above, makes it clear that a person who, suo motu, likes to be declared surplus in preference to his juniors may exercise his option. In other words, the right to be declared surplus can be preempted by senior persons by exercising that option. As the applicant, being a senior Dresser, had exercised his option and as no other senior Dresser had exercised such an option the respondents were perfectly right in considering the applicant as the first surplus person in the Annexure A-3 order and to place below him the second person who is the last person in the seniority list. But for the option, the plea of 'last come first go' would have applied and the second respondent Kul Bhushan and Om Prakash the next persons higher in the seniority list would have been declared surplus in that order. The order has been changed only because of the option and the terms attached to the option. It is also to be highlighted that in the option it is stated by the applicant as follows:- "Ivolunteer myself for being declared surplus and transferred to the Surplus Staff Establishment in preference to my juniors". Therefore, it automatically follows that shifting to the Surplus Cell will be on the basis of the option of the senior person.

10. In the circumstances, we find that the respondents cannot be faulted on the action taken.

11. The applicant has also stated that he has not yet been relieved because the Annexure A-11 office order dated 28.8.93 was served on him at his house while he was on medical leave. He contends that a person cannot be relieved while on leave. We are of the view that this submission has no basis. Relief can be ordered even when a person is on leave.

12. The applicant states that he has a number of problems on account of which he submitted the option and that at the fag end of his service career he cannot be employed as a peon in some other department. He, therefore, prays for consideration of his case on this ground. We are of the view that the applicant has exercised the option fully knowing the implications thereof, as the proforma of the option has cautioned him about it. Nevertheless, we are of the view that if the applicant does not wish to be employed as a peon, it should be open to him to seek voluntary retirement from the service of respondent No.1 and in case such an application is made the first respondent is bound to consider that in accordance with law.

13. That takes us to the reliefs prayed for in the O.A. We are of the view that in so far as the reliefs (iii) & (iv) are concerned, the applicant has no right in the matter and, therefore, no direction can be issued by us. However, ^eit is open to the respondents to consider the case of the applicant and in case they find any merit in it, it is open to

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them to adjust the applicant as a Dresser at any place, without prejudice to the interests of the second respondent. That entirely is a matter left to the discretion of the respondents.

14. In so far as the prayers at serial Nos. (1) and (ii) are concerned, we do not find any merit in them and the OA deserves to be dismissed.

15. At this stage, the learned counsel for the applicant submitted that the applicant was willing to join the Directorate General of C.P.W.D as a peon as ordered in Annexure A-1 order. He prays that in the circumstances, the period from the date he is stated to be relieved till he is appointed as a peon may be treated as leave due to him.

16. The applicant has not impleaded Director General of Works, C.P.W.D. and, therefore, no direction can be given to that authority in this O.A. However, the applicant is at liberty to submit his application to the Director General of Works, C.P.W.D. for this purpose through the first respondent within a period of 15 days from the date of receipt of this order, enclosing a copy of this order. In case, such an application is received, the first respondent is directed to forward it to the Director General of Works, C.P.W.D. alongwith a copy of this order for considering the request made by the applicant, requesting him to communicate his decision positively within 3 months. In case, the latter authority appoints the applicant as a peon/messenger, as mentioned in the Annexure A-1 order, the consequences mentioned in para 17 will follow.

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17. If no reply is received by the first respondent from the Director General of Works, C.P.W.D. regarding the appointment of the applicant as a peon/messenger in his establishment within three months from the date on which he forwards the application of the applicant to that authority or such appointment is refused, the first respondent will be at liberty to retire the applicant on compassionate pension, as provided for in the option (Annexure-I to the counter-affidavit) given by the applicant. It is made clear that such retirement will be from the post of Dresser.

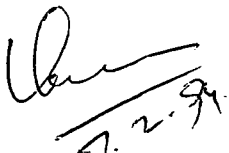
18. In either case, i.e., whether the applicant is taken by the Director General of Works, C.P.W.D. as a peon/messenger or whether he is retired by the first respondent, the absence of the applicant from 1.9.93, i.e., the date on which he is relieved by the Annexure A-11 order, till the date of his appointment as peon or the date of his retirement on compassionate pension, as the case may be, shall be treated by the first respondent as leave that may be due to the applicant, including leave without pay.

19. We do not find any merit in the prayers at serial Nos. (1) and (ii) of para 8 of the O.A and to this extent the OA is dismissed.

20. The OA is disposed of with the observations, order and directions, as in paras 13 and 16 to 18 supra.


(B.S. Hegde)
Member(J)

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(N.V. Krishnan)
Vice-Chairman