

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Contempt Petition No. 255 of 2001

in

Original Application No. 38 of 2001(U)

Allahabad this the 18th day of July 2003.

QUORUM : HON'BLE MAJ GEN KK SRIVASTAVA, MEMBER (A)
HON'BLE MRS MEERA CHHIBBER, MEMBER (J)

Anand Kumar S/o Pokhai Ram,
R/o Military Farm, Dehradun,
presently working the post of
Veterinary Dresser Grade - II,
Military Farm,
Dehradun.

...Applicant

(By Advocate : Shri N.P.Singh)

Versus

1. Union of India through
Defence Secretary
South Block,
New Delhi.
2. Quarter Master Central Army
Headquarters, Sene Bhawan, New Delhi.
3. Deputy Director General,
Military Farm Q.M.C. Branch,
R.K.Puram, West Block, New Delhi-66.
4. Officer Incharge,
Military Farm,
Dehradun.

...Respondents.

(By Advocate : Shri G.R.Gupta)

O R D E R

BY HON. MRS. MEERA CHHIBBER, MEMBER-J

Applicant has filed this O.A. against order dated 04.11.99 whereby he was transferred from Dehradun to Pani tola the movement order dated 16.02.2002 (page 15). He has

further sought a direction to the respondents to consider his representation dated 15.2.2001 sympathetically and also to decide his representation dated 09.08.2001 and till then his transfer order may be kept in abeyance. The Tribunal after hearing applicant's counsel passed the following order on 29.8.01.

"In case the applicant has not been already relieved from the post he is said to have been holding at Dehradun, the impugned transfer order as well as movement order dated 04.11.99 and 16.2.2001 shall remain in abeyance till next date. Respondents were also directed to dispose off the pending representation of applicant copy of which is annexed as Annexure 10."

2. Subsequently applicant filed Contempt Petition No. 255/01 alleging therein unlawful disobedience of the directions given by Tribunal on 29.8.01 which was still pending so we heard both the parties on O.A. as well as Contempt Petition and are disposing off the same by a common order.

3. It is submitted by applicant that he was initially appointed as Farm Hand in 1984 in the pay scale of 196 - 232 (Annexure 1) as Group 'D' employee. He was sent for training for the post of Veterinary Dresser at N.D.R.Z., Haryana, Karnal in 1985. After successful completion of training, his category was changed from Farm Hand to Veterinary Dresser Grade II vide letter dated 10.9.88 by respondent no. 3 (Annexure 3). Since 1988 he had been working as Veterinary Dresser which is apparent from his service book as well (Annexure 4). In the year, 1999 respondents had passed order dated 04.11.99 as a result of

which applicant was transferred from Dehradun to Pani Tola pursuant to which movement order dated 16.2.01 was issued (Annexure 6). Applicant had submitted that he had not been relieved nor was he paid travelling allowance. He challenged the orders on the ground that he is being transferred to Assam without giving him T.A. when the distance between Dehradun and Pani Tola (Assam) is 2900 Km. He also submitted that he is not attending office from 31.1.2001 and has submitted an application with medical certificate for leave from 01.1.01 to 14.2.2001 (Certificate at Annexure 7).

4. He has challenged these orders on the following grounds :

- i) No. T.A. has been paid to him.
- ii) There are 3 sanctioned posts of Veterinary Dressers at Dehradun against which only 2 are working so no justification to transfer him out therefore being aggrieved he gave representation also on 16.2.01 (Annexure 8).
- iii) Even the representation has not been disposed off.
- iv) He is still on strength of respondent no. 5.
- v) Transfer is done with malafide intention to harrass the applicant.
- vi) Earlier O.A. 03/01 disposed off by directing the respondents to pay salary up to January, 2001 and advance of T.A. before asking him to move. He shall also be entitled to salary from the date of joining till payment of above amounts.
- vii) Moreover he has come to know that in order dt. 04.11.99 he has been shown as Farm Hand being transferred on promotion as Veterinary Dresser even though he is already dresser since 1988 and the delay in issuing movement order shows orders are malafide.

5. Respondents have explained that Military Farm Dehradun is authorised to appoint only two Veterinary Dresser accordingly they had appointed applicant and his real brother Shri Sanjay Yadav as Vety. Dresser on 15.9.88 and 24.9.96 respectively. The applicant is liable to be transferred, sent on temporary duty etc but he is avoiding

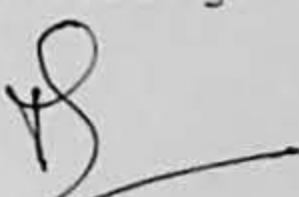
his posting by various means. He has been staying at Dehradun as dresser from last 17 years. vide order dated 04.11.99 various Veterinary Dressers were transferred to different places. Applicant and his brother who was transferred to Kirkee were informed by L.D.C. Sukhbir Singh, the then clerk Incharge Establishment Section, about their posting which is evident from (Annexure CA I). They requested orally to cancel their posting but office Incharge asked them to give representation against it and assured them that he would not relieve them till such time their reliever comes there.

6. During September, 2000, 3 more Farm Hand of Military Farm, Dehradun did their training for Veterinary Dresser out of whom one was posted as Veterinary Dresser at Dehradun itself after promotion and another Veterinary Dresser Shri Sushil Sharma was transferred from Military Farm Meerut to Military Farm Dehradun with direction to report for duty on 20.12.2000. It was at this stage that Military Farm (Record) vide their letter dated 02.5.01 reminded Military Farm Dehradun to relieve the individuals due to requirement of Veterinary Dresser at their place of posting. On 27.1.2001 both the brothers were briefed by office Incharge that they would be relieved by the end of January, 2001. So they should plan their move and give requisition for TA/DA advance. Instead of applying for TA/DA advance, applicant applied for 4 days casual leave on 27.1.01 assuring that he would move on 31.1.01 for posting (Annexure CA 3). On 31st January he did not join but sent a telegram stating himself to be ill (Annexure CA 4). On 02.02.01 respondents sent him a telegram to report back as sanctioned leave had expired or to report to Military Hospital, Lucknow (Annexure CA 5). They have further explained that applicant's brother was relieved on 31.1.01 but applicant could not be moved

out as he was avoiding the same.

7. On 12.2.01 two more Veterinary Dressers were promoted as Veterinary Dresser in Situ, therefore, the same day another telegram was sent to applicant to resume the duty forthwith or disciplinary action would be taken against him (Annexure CA 6). On seeing this telegram he reported for duty on 15.2.2001 after overstaying the sanctioned leave of 4 days to 14 days. He gave an application without medical certificate or fitness certificate to a peon by attaching only a prescription (Annexure CA 7&8) which is apparent from Annexure CA 8.

8. It is further submitted by the respondents that on 15th February, 2001 also applicant was again asked to submit his TA/DA requisition but he deliberately did not go to the cashier nor filled the forms, in absence of which it was not possible to release his TA/DA advance therefore, after cancelling the movement order dated 30.1.01 as new movement order was issued on 16.2.2001 but he refused to receive the same which was endorsed by the concerned staff and matter was brought to the notice of officer Incharge (Annexure CA 9). Looking at his attitude a board was detailed consisting of 4 persons for handing over movement order to applicant in their presence (Annexure CA-10). Accordingly applicant was called before the board. He initially refused to accept the same but later said he would receive it after 10 minutes but never come back after 10 minutes. Thereafter another order was passed on 16.2.2001 (Annexure CA 11) to deliver the movement order at his residence and in case he does not show up to paste the same at his house. The board members once again went to his house to serve the movement order on applicant but his wife said, he is not at home so they pasted the movement order at his main door. Thereafter he was struck off from strength on 16.2.2001.



9. It was at this stage that he filed O.A. 3/01 by making absolutely wrong statement because there was neither any entry in the register nor he had filed any representation on 16.2.01. They explained that they received the representation only with petition for the first time alongwith Court order which was immediately replied on 29.3.01 (Annexure CA 19) thus they explained that applicant could not be given TA/DA due to his own actions. They also submitted that applicant has not collected his salary for January inspite of several reminders by the Cashier. When he did not receive the same on 31.3.2001 it was sent by D.D. dated 31.3.01 for Rs. 3,256/- to his new unit (Annexure CA 13) as the financial year had to be closed in his books.

10. Tribunal disposed off his first O.A. at admission stage itself on 08.03.01 with direction to pay his salary upto 30.1.01 and advance T^A/D^A for transfer before asking him to move out on posting. His appeal was replied on 29.3.01 by sending the same on 3 available addresses stating therein categorically that no representation dated 16.2.01 was received in office (Annexure CA 19). Even thereafter also on 21.4.2001 applicant was again sent another reminder to submit his TA/DA advance (by registered post this time at both the addresses of applicant). Letter addressed at Lucknow come back undelivered (Annexure CA 15&16) on 01.5.2001 so another letter was sent to him to report for duty and to submit TA/DA requisition (Annexure CA 17&18) at both the addresses. His movement order dated 16.2.2001 was cancelled, when he came to know, movement order has been cancelled, he immediately reported on 04.5.01 (Annexure CA 19). The same day he was given a letter by hand to submit his TA/DA advance requisition and directed to prepare for posting to Pani tola (Annexure CA 20). He went to the cashier on 05.5.01 for collection of pay after 31.1.2001. He was paid Rs.14,248/- i.e. the salary upto April, 2001, as per direction of the Court but once again he did not submit his TA/DA

requisition inspite of being asked to do so by the Cashier. After taking the salary, applicant once again did not report for duty after 05.5.2001 instead he sent an application on 05.5.01(Annexure CA 22) by registered post received in office on 09.5.01 requesting there-in for leave from 07.5.01 to 21.5.01. He was once again sent a telegram on 10.5.01 informing him his leave is not sanctioned, report for duty immediately. He still did not report, so another reminder was given on 16.5.01(Annexure CA 24) asking him to report back and to submit his TA/DA requisition but inspite of it, he has not reported for duty nor his whereabouts are known. On 09.8.01 he filed an appeal directly to the D.D.C.M.F. without giving it through proper channel which is in violation of rules and applicant is liable for disciplinary action. It is relevant, that his earlier contempt petition was also dismissed on 22.11.01. They have submitted that applicant's conduct would show he is avoiding transfer on one pretext or the other and is approaching the Court with unclean hands as he never disclosed all these facts therefore this Q.A. may be dismissed with costs.

11. They have also submitted that looking at the welfare of troops deployed in Northern & Eastern sector, Military Farms are expanding thus experienced hands are required at these places in rotation to meet the requirement of service which is most important. They have thus explained that transfer of applicant was a routine transfer and not on promotion which was clarified by issuing a clarificatory note dated 11.11.99 and he was shown as Farm Hand by mistake.

12. We have heard both the counsel and perused the pleadings as well. Counsel for the applicant had not annexed the earlier order with his petition. The same was produced before us by respondents at the time of arguments.

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13. Counsel for the applicant vehemently argued that the applicant was being transferred by treating it, as if he was being promoted but since he had been promoted already in 1988, the whole premise of transfer gets vitiated and it clearly shows that applicant is being transferred out due to malafides and on top of it, the respondents did not even comply with the Court's directions, therefore, strict action be taken against the respondents. We are shocked at the audacity shown by applicant in this case. It is exactly a case where applicant thinks it is better to be on offensive than to be on the defensive side but he probably forgot that when an individual approaches the court of law, he has to approach with absolutely clean hands or face the consequences. Courts are meant for delivering justice, justice is not only for applicant. Justice means justice to both sides. This is a case where not only applicant has come to the court with unclean hands but he has also abused the process of law and has tried to take advantage of the interim order passed by this Court that too by keeping the court in dark about his own actions which cannot be permitted at all. We would just elaborate few points to show how applicant has abused the process of law.

i) transfer order was issued on 04.11.99 but applicant was allowed to continue at same place at Dehradun as reliever had not joined. Movement order issued on 16.2.01 and both these orders were challenged by applicant by filing O.A.no. 3/01 on 4 grounds viz. against 3 sanctioned posts only 2 dressers working as such his transfer would further decrease the strength. Applicant had already represented and in case of surplus Shri S.Sharma should have been transferred out and that no TA/DA has been given to him. Tribunal decided his O.A. at admission stage itself on 08.3.2001 by observing specifically that none of these grounds are such which would be valid for grant of relief to the applicant. However since applicant had stated that he has neither been paid salary for January, 2001 nor TA, Tribunal directed the respondents to pay him salary upto the month of January, 2001 and advance of TA before asking the applicant to move from his place of posting.

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14.1 Perusal of this Judgement shows that transfer of applicant had been upheld and all that respondents were directed was to pay him TA advance and salary. Respondents have demonstrated with documents that on 29.3.01 officer Incharge informed the applicant that no representation dt.

16.2.2001 has been received in office and how he has been avoiding his transfer and movement on one pretext or the other. He was also informed through the said reply that inspite of instructions he had neither collected his salary nor TA advance requisition was given by him. He has already been struck off from strength on 16.2.2001 after the movement order was pasted at his door of the house. He was once again asked to submit his TA requisition so that advance and salary may be paid to him before 31st March, 2001 failing which salary would be sent to new unit. It was also made clear that if he does not collect the advance and salary, office would not be responsible for same.

15. Thereafter, applicant filed Contempt Petition No. 70/01 which too was dismissed on 22nd November, 2001 after recording that applicant reported on 04.5.2001 and has taken the salary upto 30.4.2001 but without submitting TA requisition inspite of being told by the cashier thereafter he has not come for duty.

16. Therefore, the 1st question is whether applicant could have filed the 2nd O.A. again against the same orders obviously the answer is No. It is seen present O.A. was filed on 17th August, 2001. In which applicant purposely did not file the copy of order passed in 1st O.A. and only gave the extract of directions given to the respondents.

17. Applicant also did not inform the court that he was not attending the duties without any sanction and was not reporting for duty inspite of various letters asking him to report back and also that he could not be paid



the TA as he had himself not submitted the requisition for claiming advance. He also did not inform the Court that he reported in office only on 04.5.01 and 05.5.01 to collect his salary upto April, 2002 and after 5th May is again not reporting for duties. He also did not inform the court that his application for leave given on 09.5.01 has been rejected by respondents on 10.5.01 but he did not join/report back inspite of directions.

18. He took the stay order from Court on 29.8.01 but has not reported for duty till date even though there are many letters/telegrams on record to show that respondents had directed the applicant to report for duty or to submit his requisition for advance which clearly show that applicant had been misusing the interim order granted by Court. Interim order does not mean that applicant can sit at home without joining the duties. The documents annexed by the respondents clearly show that they had taken all possible steps to comply with the orders passed by Tribunal but it was applicant who was himself behaving in a fashion which is most unbecoming of a civil Government servant.

19. It goes without saying that transfer is a condition of service and once a person is transferred out, he must carry it out, specially when it is upheld by the court also. Applicant cannot be allowed to challenge it on the ground that he has not been paid the TA advance, when he has himself not applied for same, inspite of several instructions to do so. The conduct of the applicant in this case is so bad, that this is a fit case which should be dismissed with heavy costs, in order to deter such persons from repeating their actions.

20. In nutshell from 31.1.01 till date applicant has been avoiding his move on one pretext or the other and is also absent from duty unauthorisedly since 05.5.01 inspite of various letters issued by department to report back for duty.

The latest letter is dated 01.4.03 which was written to the applicant asking him to join back and was shown to us at the time of hearing. Department has not taken any action against the applicant obviously because the matter was subjudiced. In view of the facts as explained above we give liberty to the department to initiate disciplinary action against the applicant, in accordance with law.

21. Since all the averments made by respondents are supported by documents and they have also explained how in the order dated 4.11.99 applicant along with his brother was wrongly shown as Farm Hand Headquarters have since issued another order on 11.11.99 for amending para 2 in the order dated 04.11.99 and to read Vet. Dresser as against applicant and Shri Sanjay Yadav. We are convinced no relief can be granted to the applicant.

22. It is correct that there is mistake in the order dated 4.11.99 inasmuch as applicant had been shown as Farm Hands being transferred on promotion. The respondents have amended only the designation of applicant and Shri Sanjay Yadav by subsequent order dated 11.11.99 but it would have been appropriate for Headquarters to issue a separate order for these two persons because they are admittedly working as Vet. Dresser from 1988 and 96 respectively, therefore, they can not be put on probation now as is reflected in order dated 4.11.99. Therefore, to that extent this order suffers from a lacuna. It is however relevant to note that transfer order had been upheld by this Tribunal in earlier O.A. and the movement order dated 16.2.01 has already been cancelled on 01.5.2001. Thereafter applicant has not reported for duty, therefore, respondents could not have issued the movement order. Respondents are now given liberty to issue an amended order & movement order for applicant. Since respondents have explained the facts, it cannot be said that order was issued with any malafide intention. Infact the transfer orders were issued by the Headquarters and at Military Farm

Dehradun the officer Incharge had himself not relieved the applicant for good almost 1½ years as no reliever had joined. It was only when others were promoted that officer Incharge briefed both the brothers to move out therefore, the allegation of malafides are totally misconceived. It is seen both the brothers were transferred by same order. Though Shri Sanjay Yadav carried out the transfer order, applicant played every trick possible to avoid his transfer. Such type of employees cannot be allowed to take any advantage of their own misdeeds, that too by abusing the process of law. Therefore, in the given facts of case, this case is liable to be dismissed looking at applicant's conduct itself apart from merit of the case. This O.A. is, therefore, dismissed with cost of Rs.2000/- as against the applicant and in favour of respondents. Interim orders are vacated and respondents are given liberty to take disciplinary action against the applicant.

23. As far as Contempt Petition is concerned, we have seen, grievance of applicant was that his representation was not decided by respondents inspite of directions but when applicant initially filed Contempt Petition, he did not even implead the DDGMF whereas the said representation was sent to DDGMF Headquarters QMG Branch R.K.Puram, New Delhi directly. DDGMF was impleaded as respondents only subsequently but after impleadment no notice was issued by the registry to the newly impleaded respondents, therefore, no case for contempt is made out as against DDGMF. The representation could not have been disposed off by Officer 24. Even the petition was not filed with the Officer Incharge, Dehradun from as it was neither addressed to him nor filed in his office. Therefore, it cannot be said that officer Incharge had disobeyed the directions willfully.

24. Even otherwise we have prused the entire Contempt Petition. There is not a single everment in the entire contempt petition that applicant went to report but he was not permitted to j

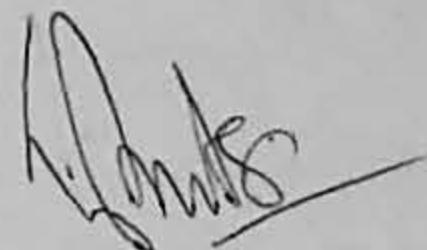
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not permitted to join as is being suggested by applicant's counsel now. On the contrary there are letters on record to show that respondents had repeatedly asked applicant to report for duty and to submit his requisition form for TA advance for movement to Panitola but applicant did not apply for same. Therefore, he cannot blame the respondents for his own actions. Infact it was recorded even in the first order passed in earlier contempt petition that applicant ~~had not~~ submitted TA requisition. We are, therefore, satisfied that no case is made out for contempt also. Accordingly Contempt Petition is dismissed. Notices issued to respondents are discharged. To sum up Contempt Petition is dismissed with no costs but O.A. is dismissed with cost of Rs.2000/- as against applicant and in favour of respondents.



Member-J



Member-A

Brijesh/-