

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1285 OF 2004.

ALLAHABAD THIS THE 2nd DAY OF Jan. 2008.

Hon'ble Mr. Justice Khem Karan, V.C.

R.H Verma s/o Shri Kali Charan Verma,
R/o 554-1, Bichchia Railway Colony, Gorakhpur.

.....Applicant

(By Advocate: Shri Bashist Tiwari)

Versus

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Presiding Officer, AF Sec, Air Head Quarter, Vayu Bhawan, New Delhi.
3. AOP, Air Head Quarter, Vayu Bhawan, New Delhi.
4. Air Officer Commanding, 17 Wing Air Force Station, Gorakhpur.

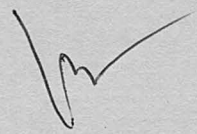
.....Respondents

(By Advocate: Shri R.K. Tiwari)

O R D E R


It is prayed that order dated 16.9.2004 issued by Air Head Quarter of Vayu Bhawan, New Delhi (Annexure 1) as well as letter No. Air HQ/23077/3404/PC-3 dated 3.2.1994 (Annexure 4 to the reply) are quashed, being illegal and ultra virus.

2. There is no dispute that at the time impugned order dated 16.09.2004 was issued, applicant was working as U.D.C. in the scale of Rs.4000-6000 in 17 Wing Air Force at Gorakhpur. By this letter, applicant has been declared surplus alongwith one more and has been shifted/transferred to 24, ED AF at Bamrauli. What the



applicant alleges is that firstly the decision declaring four Civilian Clerks in 17 Wing Air Force at Gorakhpur as surplus is not sound in view of letter dated 25.4.1995, order dated 5.8.1999, order dated 5.8.1956 issued by Air Head Quarter Vayu Bhawan, New Delhi as the ratio between the Airmen clerks and Civilian Clerks is to be maintained 80:20 and secondly even if some clerks are to be declared surplus, junior most persons should be shifted and redeployed in view of Govt. of India's letter dated 28.4.1978 (Annexure A-4). Attempt has been made to say that in 17 Wing Air Force, Gorakhpur, eight Civilian Clerks are required as 34 Airmen Clerks are working. In other words, he wants to say that if the ratio of 80:20 in between Airmen Clerks and Civilian Clerks is to be maintained then eight Civilian Clerks will be needed as against 34 Airmen Clerks. According to him, guidelines dated 3.2.1994 issued by Air Head Quarter providing for shifting of longest stayee, in place of junior most persons, being contrary to Government of India's directions (Annexure A-4) deserves to be quashed.

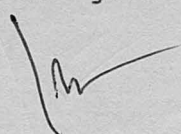
3. By filing a reply, the respondents have tried to protect the impugned order dated 16.9.2004 as well as letter dated 3.2.1994, lying down guidelines of transfer/redeployment of surplus staff. They say that on revision of cadre strength of the Unit, two clerks including the applicant were declared surplus and so were shifted in terms of letter dated 3.2.2004. According to



them, letter dated 5.9.1999, 25.4.1956 and 28.8.1978 mentioned by the applicant are not relevant in the case in hand as the applicant is not being declared surplus from the organization but is being declared surplus from one Unit of the organization and is being taken to another unit. They say, office memorandum dated 28.8.1978 issued by Government of India lay down the policy of retrenchment of employee from an Organization and so the same cannot be pressed into service in the case in hand, as here the applicant is not being retrenched from nor is being declared surplus, to the Indian Air Force.

4. I have heard Shri Bashist Tiwari, the learned counsel for the applicant and Shri R.K. Tiwari, the learned counsel for the respondents and have perused the entire material on record.

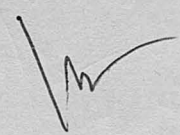
5. Shri Bashist Tiwari, the learned counsel for the applicant has contended that in view of policy letter dated 5.8.1999 (Annexure A-3), ratio of 80:20 in between Airmen Clerks and Civilian Clerks is to be maintained in all static units and so 17 Wing Air Force, Gorakhpur should have strength of eight Civilian Clerks, as the strength of Airmen Clerks is 34. Shri Bashist Tiwari says that according to the available material on record, there were only seven posts of Civilian Clerks as against eight, so none of the persons working as Civilian Clerks could have been declared surplus. He goes on to argue



that one Shri S.C. Chaudhary, Assistant had already retired in the month of April 2004 and so only seven persons were left out of whom one Bacha Singh was going to retire in the month of December 2004 and Shri P.D. Pandey was promoted as Assistant.

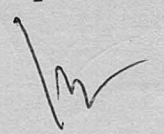
6. On the other hand, Shri R.K. Tiwari, the learned counsel for the respondents has submitted that the revision of cadre strength at 17 Wing Air Force at Gorakhpur by Air Force Standing Establishment Committee cannot be questioned in this way. He says, it rests in the discretion of Authority concerned as to how much posts are needed at a particular unit or a particular organization and the Courts or Tribunals should not enter into this area as the same is one of policy. Shri R.K. Tiwari says that matter was represented to Air Force Standing Establishment Committee for reconsidering the matter and to sanction the post of Assistant but it was not agreed to.

7. I have considered the respective contentions on the point as to whether the decision of respondents to declare certain Civilian Clerks, as surplus in 17 Wing Air Force at Gorakhpur is justified or unjustified. It is never the contention of Shri Bashist Tiwari that the respondents have no power to revise the cadre strength of Civilian Clerks in a particular unit of Air Force or in the Air Force itself. It is always in the power of



Government to increase or decrease the strength of a particular cadre. While taking a decision for reducing cadre strength of Civilian Clerks from eight to ^{two or} three, in ^{^4} the unit in question, Air Force Standing Establishment Committee must have considered all the aspects of matter including the ratio to be maintained in between Airmen Clerks and Civilian Clerks. How much Civilian Clerks are needed at 17 Wing Air Force, Gorakhpur cannot be gone by the Courts or Tribunals as it is a matter to be considered by the Authority Concerned in accordance with policy laid down by the Government of India and Air Head Quarter. So I am not prepared to accept the argument of Shri Bashist Tiwari that the decision of respondents for declaring certain Civilian Clerks as surplus at 17 Wing Air Force, Gorakhpur is unjustified or illegal or is contrary to any direction of Government of India or Air Head Quarter.

8. The next argument of Shri Bashist Tiwari is that even if two Civilian Clerks of 17 Wing Air Force, Gorakhpur are found surplus, junior most clerks should be declared surplus and redeployed and not the applicant, who is senior to few. He says, according to guidelines/directions (Annexure A-4) regulating the retrenchment and redeployment of surplus employees, permanent employee in the grade should be retrenched in the reverse order of their seniority. Shri R.K. Tiwari has said that the provision relied on by the applicant in



regard to retrenchment of employee and their redeployment are not relevant in the case in hand as here the employee is not being declared surplus from the Air Force but is being declared surplus in one unit of the same organization and he is being shifted in accordance with the guidelines dated 3.2.1994 (A-4 to reply).

9. I am of the view that Shri R.K. Tiwari, learned counsel for the respondents is perfectly correct in saying that general Rules, regulating retrenchment of employees and their redeployment are not attracted to the case in hand, for the simple reason that here certain employees are being declared surplus in 17 Wing Air Force, Gorakhpur and are being taken to another unit of the same organization. They are not surplus to the organization but they are surplus to one unit of the organization and so are being taken to the other unit of the same organization. I have not been able to appreciate as to how transfer policy dated 3.2.1994 issued by Air Head Quarter, Vayu Bhawan, New Delhi is being termed as illegal or contrary to the guidelines or policy decision of Govt. of India. It says that in cases where posts in centralized controlled categories are rendered surplus to the unit and employees are to adjusted within the Air Force, the longest stayees in the unit will be posted out first provided he/she has more than two years of service left before superannuation. It goes on to say that in cases where posts are rendered surplus to the Air Force,

✓

the junior most persons in the grade will be declared surplus by the Air HQ for further adjustment under the surplus/deficiencies scheme. The applicant appears to have built up his entire case on the basis of Government of India's guidelines regulating retrenchment of employees from the organization concerned and their ^{re-deployment} ~~retrenchment~~. Letter dated 3.2.1994 cannot be said to be contrary to the general guidelines regulating retrenchment from the organization, so nothing wrong could be found with the transfer policy dated 3.2.1994 (Annexure A-4 to the reply).

10. It is not disputed by the applicant that his was the longest stayee at 17 Wing Air Force, Gorakhpur. So in view of guidelines dated 3.2.1994, he was rightly shifted to another unit of Air Force. Order dated 16.9.2004 (Annexure A-1) cannot be said to be unjust, improper or contrary to any guidelines.

11. The Original Application is devoid of merits and deserves to be dismissed. It is accordingly dismissed. Interim stay order dated 02.11.2004 directing the status quo is vacated.

No order as to costs.

11 Dec 04
02.1.08

Vice-Chairman

Manish/-