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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1290 of 1993

Allahabad this the 19th day of May 1995

Hon'ble Dr. R.K. Saxena, Member(Judicial)

J.A. Saidd, S/o Late M.A. Saidd, R/o 141 Harding Road,
Meerpur Cantt, Kanpur.

Applicant.

By Advocate Shri G.D. Mukherji

Versus

1. The Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Officer Incharge(Records) Secunderabad.
3. The Officer Commanding MAG No. 11 Care of Station Workshop, E.M.E., Kanpur.
4. The Commander, Technical Group, E.M. Delhi Cantt. 110010
5. Officer Incharge, Station Workshop, E.M.E., Kanpur.

Respondents.

By Advocate Shri N.B. Singh.

O R D E R

BY HON'BLE Dr. R.K. SAXENA, Member(Jud.)

The applicant has approached^e the Tribunal challenging the order dated June, 1993(Annexure-6).

2. The brief facts of the case are that the the applicant was appointed as Lower Division Clerk in 508 Army Base Workshop, Fort, Allahabad. He sought his transfer to Kanpur because of illness of his parents . He was, however, accommodated and was posted at Workshop

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E.M.E., Kanpur on 02.8.1969 on compassionate grounds. He was again posted to M.A.G.No.11 (Maintainability Advisor Group) on re-organisation of the Workshop, E.M.E. The M.A.G.No.11 was located at Kanpur itself and the applicant was ordered by ~~15.5.1981~~ ^{15.5.1981} to join thereat. The case of the applicant is that he had opposed this transfer to MAG No.11 and had made representation but, it was not cancelled. He was intimated vide order dated 25.7.1989 (Annexure-2) that the transfer was made in accordance with the provisions of Para 3(a) of Record Office Instructions. The applicant who was working in M.A.G. No.11, was promoted as U.D.C. on 31.10.1987. When this M.A.G.No.11 was shifted from Kanpur to Pachkula, the applicant was also ordered to go alongwith the unit. The applicant resisted on the ground that he could not be removed out of Kanpur because he was civilian and he could not be compelled to move alongwith the unit. The representation was made but the same was rejected, hence, this O.A.

3. The respondents contested the case bringing out the brief history of the applicant. It is averred that the applicant was initially appointed as Storeman on month to month basis with ~~at Kanpur~~ C.O.D., Kanpur on 28.11.1962. He was, however, provided alternative appointment as L.D.C. and was posted to 508 Army Base Workshop, Allahabad on 28.12.1963. The applicant had requested

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his transfer to Kanpur on compassionate ground. He was accommodated and posted on 02.8.1969. When Workshop E.M.E. Kanpur was re-organised within the same station and M.A.G.No.11 was created, the applicant was posted on 15.5.1981 and he was promoted as U.D.C. on 31.10.1987. It is also contended that although the civilians posted to a unit are normally allowed to work with the same unit but, they are liable for being posted in any part of the country for serving with EME units or other establishments. It is further averred that transfer to any other station ^{is} in accordance with EME ROI (EME Record Office Instruction) No.60/71. It is ~~o~~ pointed out that the applicant avoided to move along with the unit on flimsy grounds. He did not hand over the charge to his substitute and left the office with all the keys of Cup-Boards/Almirah of the office. He had also refused to accept the movement order. Ultimately, the Officer Commanding Station Workshop was forced to order ~~to~~ break open all the Cup Boards and almirahs to get the urgent and necessary papers and files. The plea of the respondents is also to ^{the} effect that the applicant who had accepted promotion in the unit to which he was attached, he cannot refuse his movement ~~order~~ with the unit ^{which} itself was moving from Kanpur to Chandimandir. The contention of respondents, therefore, is that the application be rejected.

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4. I have heard the learned counsel for the applicant as well as the learned counsel for the respondents and have gone through the record.

5. In this case, question for determination is whether the applicant could be transferred or not. Interestingly the applicant as well as the respondents have placed reliance on E.M.E. Record Office Instructions. R.O.I.No. 60/71 deals with Non-Industrial Personnel Postings : Centrally Controlled Civilian. The aim of these instructions is to formulate a procedure for the posting of Civilian personnel who are centrally controlled by E.M.E. Record to meet the requirement of the Corps of E.M.E. and individual. Paras 2 and 3 of R.O.I. No.60/71 are as under;

"Para 2

(a) All centrally controlled non-industrial personnel are liable for posting to any part within the Union Territory for serving with E.M.E. units and other establishments as per their PE/WE/Interim establishment and to carry out specific commitments as ordered by competent authorities.

(b) Postings once ordered will not be represented against unless there are genuine and exceptional grounds.

(c) There are no tenure stations in respect of civilians. Their postings are ordered to meet exigencies of service and for purpose shown under para 3 below.

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Para 3

Postings of civilian personnel who are borne on the Corps roster may be ordered for purposes or on grounds shown below :

- (a) To adjust surpluses/deficiencies in units/establishments/formations;
- (b) To meet specific requirements and adjust posts/grades commensurate with commitments;
- (c) To bring newly raised units/establishments to authorised strength;
- (d) On disciplinary grounds;
- (e) On compassionate/medical grounds;
- (f) On promotion/absorption into regular cadre;
- (g) Mutual postings."

6. Reading of these two paras makes it quite clear that Non-Industrial Personnel who are centrally controlled are liable for posting to any part within the Union Territory for serving with E.M.E. units and other establishments. The contention of the learned counsel for the applicant ^{is} that the applicant cannot be transferred alongwith the unit to other place then the present place of posting at Kanpur. In this connection, my attention has been drawn towards para 3 and it was pointed out that only surplus personnel should be sent to such unit. It may again be pointed out that para 3 is laying down only guidelines. [&] It does not prohibit the posting of civilian personnel on the corps on other grounds. There is no doubt that the applicant belongs to the civilian personnel who are controlled centrally by Delhi. The applicant has himself filed annexure-3

which is copy of a letter written by Captain J.S. Handa, Records Officer on 05.8.1989. In this letter, it was made crystal clear that all the M.A.G.s are under the control of Headquarter TGEME, Delhi and the posting or movement had been ordered by Delhi. In such a situation, the applicant cannot draw any benefit from para 3 of R.O.I. No.60/71.

7. The contention of the applicant is also to the effect that he was posted against substantive vacancy at Station Workshop E.M.E., Kanpur and therefore, he cannot be transferred to any other place. This facts is belied from the factual averment made by the respondents and which has not been specifically denied also. I have already given those facts but ⁱⁿ ~~an~~ order to make the point clear, the repetition cannot be avoided. According to these averments, applicant was appointed as Storeman on month to month basis with C.O.D. Kanpur on 28.11.1962. His regular appointment as L.D.C. was made on 28.12.1963 when he was posted to 508 Army Base Workshop, Allahabad, If, the contention of the applicant that he was substantively posted at Kanpur is taken into consideration, it comes out that he was actually posted at Allahabad and his initial and main workshop was 508 Army Base Workshop, Allahabad. Since, the applicant ^{started} ~~held~~ from ² ~~the~~ Kanpur, he sought his transfer to Station Workshop E.M.E.

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Kanpur on compassionate ground and was obliged by being posted on 02.8.1969. Since then, the applicant continued at Kanpur in two capacities. First capacity was ^{where} ~~that~~ he had been Lower Division Clerk at Station Workshop E.M.E. Kanpur before 15.5.1981. When re-organisation took place and M.A.G.No.11(Maintainability Advisor Group) was created at Kanpur itself, ^{the} applicant was posted in M.A.G.No.11. It appears that the applicant had resisted this posting in the ^{begin} ~~begin~~ing but, he ultimately accepted the posting because he continued there and he also got promotion as U.D.C. on 31.10.1987. As a matter of fact, the applicant was transferred to M.A.G.No. 11 on 15.5.1981 and if, he was unwilling to go there or his representations were rejected illegally or without taking due care of his problems or legal position, he ought to have approached the Court only in 1981 but it was not done. At present no order of transfer has been passed but what has been challenged by the applicant is the movement alongwith the unit to Pa-chkula. When the applicant had accepted his posting with M.A.G.No.11 in the year 1981 and got promotion in the year 1987, he cannot take the plea of the said transfer in the year 1993 when the unit moved from Kanpur to Pa-chkula. As a matter of fact, there was no order of ~~transfer~~ in ~~the~~ year 1993. He was required to move from Kanpur because



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the unit in which he was posted, was shifted from Kanpur itself.

8. What appears from the facts of the case ^{is} ~~are~~ that so long as the applicant was allowed to continue at Kanpur, the orders were legal and valid and were not required to ^{be} challenged in the Court but when he was asked to move alongwith the unit in which he was working, out of Kanpur, he tried to make out a case by challenging the transfer order which was given effect in the year 1981. In my opinion, the applicant cannot raise this question now. Moreover, the applicant according to para 2 of R.O.I. No.60/71 is required to be posted at any place in Union Territory. Thus, the order of movement of the applicant alongwith the unit is neither illegal nor in violation of any rules or regulations. The application is devoid of merits and is, therefore, rejected. The application is disposed of accordingly. No order as to costs.



Member (Jud.)

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