

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
AT ALLAHABAD

Allahabad : Dated this 30th day of March, 1999

Original Application No.945 of 1993

District : Kanpur

CORAM :-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnana, A.M.

1. Manohar Bijani,
S/o Shri K.K. Bijani,
R/o Block No.11, House No.288,
Govind Nagar, Kanpur.
2. R.M. Singh,
S/o Shri Ramji Singh,
R/o 2A/408, Azad Nagar, Kanpur.
3. K.C. Gupta,
S/o Shri G.L. Gupta,
R/o 2/392, Nawabganj,
Kanpur.
4. R.C. Trivedi,
S/o Shri Prabhu Dayal,
R/o Type-III, Qtr.No.71,
Kendranchal, Gulmohar Vihar,
Kanpur.
5. M.L. Gandhi,
S/o Shri L.C. Gandhi,
R/o Block No.7, House No.68/9,
Govind Nagar, Kanpur.
6. G.K. Nigam, S/o Shri D. P. Nigam,
R/o 104/198, Sisamau, Kanpur.
7. Jawahar Singh,
S/o Shri Bodhi Singh,
R/o 133/540-A, Transport Nagar,
Kanpur.
8. Mohd. Jamil S/o Shri Noor Mohd,
R/o 157/9, Vijay Nagar,
Kanpur.
9. M.K. Verma
S/o Shri R.B. Verma,
R/o 118/389, Kaushapuri,
Kanpur
10. R.P. Singh,
S/o Shri N.P. Singh,
R/o Sector 'D' House No.885,
World Bank Colony, Kanpur.
11. Ram Sah,
S/o Shri Levi Sah,
R/o Type II, Quarter No.195,
Kendranchal, Gulmohar Vihar,
Kanpur.



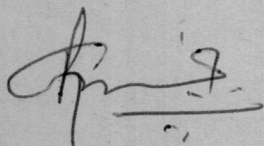
12. A.K. Thanwick,
S/o Shri G.L. Thanwick,
R/o 112/215, B,
Swaroop Nagar,
Kanpur.
13. Manohar Lal
S/o Shri Sajan Lal
R/o Block No.13, House No.140,
Govind Nagar, Kanpur.
14. Radha Mohan,
S/o Shri Sheo Govind,
R/o MET Section 402 Air Force Station,
Chakeri, Kanpur.
15. Munna Lal
S/o Smt. Chandra Kanta,
R/o Plot No.936, Roshan Nagar,
Rawatpur Gaon,
Rawatpur, Kanpur.
16. Prakash Chandra
S/o Shri Sobha Ram,
R/o 113/314, Swarup Nagar,
Kanpur.
17. Narendra Singh,
S/o Shri Gulab Singh,
R/o 01/01, New Idgah Colony,
Behnaujwabar, Distt Kanpur.
18. Smt. S. D. Mishra,
W/o Shri T.N. Mishra
R/o 2/98, Nawabganj, Kanpur.
19. A.K. Pathak,
S/o Shri M.N. Pathak,
R/o 127/315, W-1, Saket Nagar,
Kanpur.
20. U.C. Tewari,
S/o Shri J.P. Tewari,
R/o 108/116-A, Gandhi Nagar,
Kanpur.

(Sri A.V. Srivastava, Advocate)

..... Applicants

versus

1. Union of India
Through Secretary Department of Supplies,
C Wing, Nirman Bhawan,
New Delhi.
2. Director General of Supplies & Disposal
5, Parliament Street, New Delhi.
3. Secretary Defence,
Ministry of Defence,
South Block, New Delhi.
4. Commandant C.C.D., Kanpur.



5. Air Officer Commanding,
402, Air Force Station,
Chakeri, Kanpur.

(Sri N.B. Singh, Advocate)

. . . . Respondents

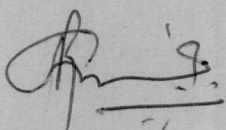
O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by 20 employees who were working as UDs, LDCs, JFD, JPD and Steno under Director of Supplies and Disposal, Kanpur against the decision of the respondents to close down the office of Director of Supplies & Disposal, Kanpur and the order dated 27-7-1992 transferring, the applicants to the Defence Units at Kanpur alongwith their posts.

The following reliefs have been sought by the applicants:-

- (i) Issue a writ, order or direction in the nature of Certiorari quashing the Report of the Review Committee of Centralised Purchase of Stores & Equipments No.B-12014/3/90-OM, dated 25-9-1990. (Annexure-1 to the compilation no.1).
- (ii) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 27th July, 1992 (Annexure-A-2 to the compilation no.2).
- (iii) Issue a writ, order or direction in the nature of Mandamus directing the respondents to assign the same work to the applicants as they were doing previously in the Ministry of Supplies.
- (iv) Issue a writ, order or direction in the nature of Mandamus commanding the respondent nos.1 and 2 to take back the applicants in their original department.
- (v) Issue a writ, order or direction in the nature as this Hon'ble Court may deem fit and proper



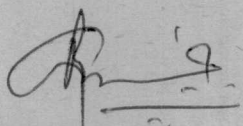
in the circumstances of the case.

(vi) award costs of the petition.

2. During the course of hearing ~~xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~, the counsel for the applicants Shri A.V. Srivastava stated that he did not want to press the relief as mentioned in para 8 (i) reproduced under (i) above.

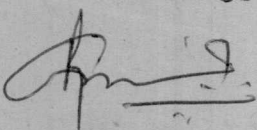
3. The facts which are not under dispute are that the applicants who were working as UD, LD, JFO (Applicant No.2), JFO (Applicant No.3), and Steno (Applicant No.4) were working in the office of the Director of Supplies & Disposal, Kanpur and by the order dated 27-7-1992 they were transferred alongwith their posts to the various organisations to offices of Ministry of Defence in Kanpur area as given in the Annexure to that letter i.e. Office of Commandant, C.O.D., Kanpur, Commanding Officer, Air Force Station, Kanpur, Commandant C.O.D., Chheoki. In all 65 employees were transferred from the Office of Director of Supplies & Disposal, Kanpur, to the above mentioned offices. They were released by a letter dated 3-8-1992 issued by the Directorate General of Supplies & Disposal, New Delhi. According to the order dated 27-7-1992 as well as in the release letter dated 3-8-1992, the officers other than those of the Indian Supply Service and the Staff would be absorbed in the Organisations/Offices of the Ministry of Defence and their seniority would be fixed in consultation with the Department of Personnel & Training and that pending absorption, these officers/ staff would be technically be treated as on deputation.

4. The applicants have challenged the closure of the Office of D.S.&D, Kanpur and their transfer to the Defence Units in Kanpur area on the plea of existence of sufficient justification to continue the Office of D&D, Kanpur, the transfer being against the alleged



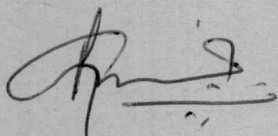
Review Committee's recommendations, they being posted in different units of the Defence Ministry without their consent, their work being different in the transferred units against the recommendation of the Review ~~Review~~ Committee, their numbers of weekly working days being increased to six, they being posted to transferable jobs from non-transferable job and changing their Service Rules and Service Conditions in violation of Article 309 of the Constitution. The applicants also claimed that even though they being treated as on deputation, they were not being paid deputation allowance as per Rules. Further as the seniority of the applicant in the Ministry of Defence including channel of promotion has not been decided, the applicants were blocked and as such the action of the respondents was wholly illegal and without jurisdiction.

5. Respondents in the counter affidavit filed, refuses the claim of the applicants and stated that in pursuance of the decision of Govt. of India of July, 1990 to review the functions of the various departments with a view to achieving economy and particularly to cut down unnecessary expenditure, Department of Supply reviewed the functions of the DS&D and its regional offices, and it was found that the work handled at the Directorate of Supplies & Disposals, Kanpur (DS&D, Kanpur), could be handled elsewhere more economically without any loss of work. Looking to the inadequacy of workload at DS&D, Kanpur and the expenditure involved, DS&D, Kanpur was decided to be closed in public interest as well as to avoid unnecessary waste of expenditure. Independent of this decision, the Govt. had carried out a review of its entire policy of centralised purchase and decided to transfer the procurement work against ad hoc indents

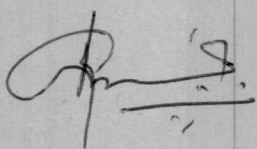


from the DS&D and its regional offices to the indenting Ministries/ Departments themselves alongwith officers and staff of DS&D dealing with such work. Respondents stated that in order to mitigate the problems of the staff of Kanpur, rendered surplus on account of closure of their office, the Department of Supply considered the possibility of accommodating them in Defence Units located at or nearby Kanpur under the policy referred to above of transfer of purchase work to other Ministries/ Departments alongwith staff since bulk of the purchase work dealt with at DS&D, Kanpur related to Ministry of Defence. It was stated that the action taken was in the interest of Administration for effective control and efficiency, in public interest, as well as, to avoid wastage of administrative expenditure and consequent upon the concurrence of the Ministry of Defence, the offices and staff of the closed office DS&D, Kanpur were transferred to the Defence Units located at or nearby Kanpur. They stated that instead of referring the staff rendered surplus from the office of DS&D, Kanpur on its closure to the Surplus Cell of Deptt. of Personnel & Training as per normal practice, the respondents tried to accommodate the applicants at Kanpur itself, so as to avoid any difficulty in the process of their redeployment through the Surplus Cell by which they may be sent to any part of the country.

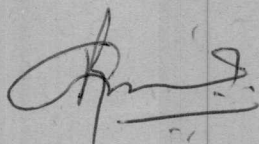
6. According to the respondents, the petition was not maintainable as no cause of action was there for filing the claim petition as by transferring the applicants they were not losing anything but continued stay at Kanpur itself, a step which had been taken in their own interest to avoid disturbing them from Kanpur, and as the decision to close down the



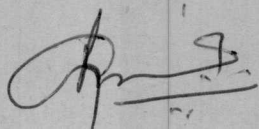
office of DS&D, Kanpur was taken in the public interest aimed at achieving economy and effective administration, the applicants did not have any right to challenge the same so long as their service was not disturbed. The respondents further stated that as the unit of DS&D, Kanpur was not working and was not in existence and its entire work was transferred to the Ministry of Defence, the respondents should not be asked to open the unit at Kanpur to accommodate the applicants. As regards the O.M. No. B-12014/3/90, dated 25-9-1990 (Annexure A-1) which had been referred to by the applicants as a Review Committee Report, the respondents clarified that the same was an extract taken from an agenda item circulated vide Department's letter No. B-12014/3/90 dated 25-9-1990 for consideration/discussion at the 31st meeting of the Departmental Council under JCM of the Department of Supply comprising official & staff sides held on 5-10-1990. No decision or order of the Govt. had been issued vide this O.M dated 25-9-1990 and this did not give any cause of action to the applicants. The Respondents stated that the orders regarding closure of office of DS&D Kanpur, were issued in July, 1992 after orders regarding transfer of work of procurements against ad hoc indents from DS&D Headquarters and its regional offices at Bombay, Madras and Calcutta to the various Central Government Ministries/Departments alongwith officers and staff were issued. Respondents stated that pending final decision about the seniority of the staff posted in Defence Establishments in Kanpur being decided in consultation with Deptt. of Personnel & Training, the applicants were treated as technically on deputation.



They stated that there was no question of the applicants to work in the establishments of Defence continuing on the roll of office of D&D, Kanpur as the same ceased to exist on transfer of its work to the Ministry of Defence. Further they had been drawing their salaries etc. from the defence organisations and such transferred officers & staff were being treated as on deputation only in technical sense, as certain terms & conditions in regard to their redeployment were to be worked out in consultation of the Ministry of Defence and within the frame work of the rules on the subject and, therefore, there could not be any question of grant of deputation allowance. Respondents submitted that the redeployment of staff of D&D, Kanpur as a whole was necessitated consequent upon the Govt.'s decision to transfer the entire work from there and to close the office and that it was incumbent upon the Government to take a decision simultaneously about redeployment of all the staff in the best possible manner ensuring minimum possible hardship on such redeployment and that arrangements were made in consultation with the Ministry of Defence to retain all the staff at Kanpur itself thereby avoiding any dislocation of their personal establishments and under such circumstances it was not considered necessary by the respondents to take personal consent from the applicants and other staff of D&D, Kanpur. Further they stated ~~that~~ the defence organisations were free to decide the best possible manner of utilisation of the services of the transferred employees, and that the applicants could not claim that on transfer to the organisation of Ministry of Defence they should be given work relating to procurement activities only especially when even in D&D, Kanpur all of them were not assigned

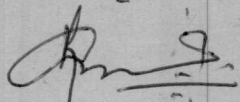


the work of procurement only, and they were periodically rotated amongst the various sections and assigned various kinds of duties as and when administrative exigency so wanted. As regards the office timings of Govt. of India Offices and its field formations were not necessarily unique and and that working hours/office timings vary depending upon the functional requirements of office/field units and the Govt. servants were obliged to observe such timings. Regarding transferability it was stated that a Govt. employee was liable to serve anywhere in the country and it was only a matter of convenience that Group 'C' & 'D' employees recruited locally were not transferred out of their station under the same organisation. As regards the contention of the applicants that according to the Review Committee Report only 20-25% employees were to be transferred, it was stated by the respondents that apart from there being no Review Committee Report, in this particular case the entire office of DS&D, Kanpur had been closed down and as such the entire staff had been transferred to the Ministry of Defence. As regards the applicants' statement that their service rules and service conditions had been changed in clear violation of the principles of natural justice and Constitution of India, it was stated by the respondents that the basic service rules & service conditions of the applicants had not undergone any change as they continue to be governed by the same Fundamental and Supplementary Rules. As regards the contention of the applicants that while the Department of Supply was in existence, they (the applicants) had been transferred to the Ministry of Defence, it was stated that the Department of

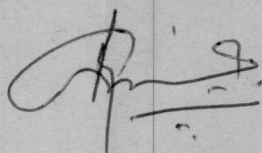


Supply being the administrative department was altogether different from the erstwhile office of DS&D, Kanpur, which was a subordinate office. As regards the applicants reference to Article 309 of the Constitution of India, it was stated that the same was entirely misplaced as there had been no change in the status of the transferred applicants except for their office which had been closed and that the applicants continue to hold the same posts which they held prior to their redeployment and that in fact they had been transferred alongwith their posts and hence the question of any change in the status of their posts did not arise. As regards the channel of promotion of the transferred applicants being blocked it was stated that once the terms & conditions of their absorption were worked out, avenue of promotion would be opened for them. Respondents stated that in view of the facts and circumstances, the applicants were not entitled for any relief as prayed for by them, and that the application was liable to be dismissed.

7. In the R.A. filed by the applicant, they reiterated what had been stated by them in the O.A. and gave details as to how the closure of the office of DS&D, Kanpur was not in public interest by giving details of the work which was done by that office. They also stated that some of the applicants on their transfer to the Defence Organisation were not doing the work which they were doing earlier and some of them did not have any work at all. It was also that some of the employees transferred to the Defence Units in and around Kanpur area have All India Seniority and in such cases sending the seniors to the Ministry of Defence for absorption without any option and retaining their juniors in DS&D/DS was an illegal act. They quoted the case of one Sri R.B. Yadav, AD(S). During the



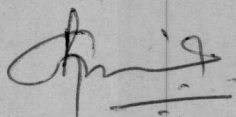
pendency of the O.A. by means of a Supplementary Affidavit filed by applicant no.6 on behalf of the applicants brought out the transfer of applicant no.2 to Mumbai Regional Office of the DGS&D. In the said supplementary affidavit it was also brought out that whereas the applicants who were posted under COD, Kanpur were treated as having been permanently absorbed in that unit, the applicants who were posted under Air Force Station, Kanpur, their status had not been decided. A supplementary counter affidavit was filed on behalf of the respondents in which apart from reiterating the statements made in the counter affidavit it was stated that applicant no.2 was transferred to Mumbai Regional Office on his request as he was a J.F.O. with all India Seniority. It was also stated that once the terms and conditions of absorption are finalised, the transferred officers and staff will stand permanently absorbed in the transferred organisation. Supplementary RA was filed by the applicants. In a further affidavit filed by the applicants, they brought out that the organisation under the Ministry of Defence had asked for the willingness of the applicants for their permanent absorption in the organisations where they were transferred. Respondents stated in reply that the same was done with a view to finalise the terms & conditions of their absorption and that once the terms & conditions of the absorption were decided, the same would be effective from the date they were initially transferred.



8. During the course of hearing, the judgement delivered by the Calcutta Bench of this Tribunal in O.A. No.71 of 1996 between Shri Rajat Mukhopadhyay and Others Vs. Union of India and Others, and the instructions issued by the Ministry of Defence under MOD ID No.23(1)/93/ D (D1)/ D(MC), dated 9-4-97, and the instructions issued by DS&D, under No.A-22020/1/92-A-2, dated 19-9-1994 were brought to our notice.

9. We have heard the learned counsel for the parties and have given careful consideration to the pleadings by the parties and have perused the whole records.

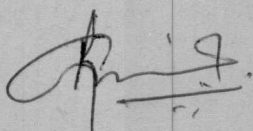
10. As stated earlier, during the hearing, our attention was drawn to the judgement delivered by the Calcutta Bench of this Tribunal in OA No.71 of 1996 and it was pleaded that the ratio of the said judgement may be made applicable in this case also. We have examined the judgement. The facts and circumstances in that OA No.71 of 1996 are not similar to the ones existing in this OA. In that OA the employees of the Calcutta Regional Office of DS&D, who were transferred to the Defence Organisations had approached the Tribunal. In that case, the Calcutta Regional Office was not closed down completely. Only the employees dealing with procurement against ad hoc indents were transferred on "as is where is" basis which gave rise to the grievance and the Calcutta Bench of the Tribunal ordered for giving an option to those employees as the Regional Office was continuing. This is not the case in the present OA. The Office of DS&D, Kanpur was completely closed down and all the staff and officers of that office were transferred to the Defence Organisations. Therefore, the ratio of the judgement of Calcutta Bench



of the Tribunal cannot be applied as such. Giving an option to the staff of DS&D, Kanpur to either continue in the Office of DS&D, Kanpur or get transferred to the Defence Organisations, is not possible as ~~xx~~ the Office of DS&D, Kanpur is closed down.

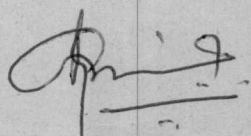
11. The Office of DS&D, Kanpur was closed as a result of the review carried out by the Department of Supply, Ministry of Commerce, of the functions of DS&D and its Regional Offices in pursuance of the decision of the Government of India to review the functions of the various Departments with a view to achieving economy and particularly to cut down unnecessary expenditure. It has been averred that the Department felt that the work handled at Kanpur could be handled elsewhere more economically without any loss of work and the decision to close down DS&D, Kanpur was taken in public interest and to avoid unnecessary waste of expenditure. At around the same time, Government of India took a policy decision to decentralise purchase of stores and equipments required by various Government Departments from DS&D and the scheme of such decentralisation was contained in the Department of Supply's OM dated 30-3-1992 as far as Calcutta Regional Office is concerned. It is in this context and the transfer of some employees from the Calcutta Regional Office to the organisation under Ministry of Defence, that some of the affected employees approached the Calcutta Bench of this Tribunal by filing OA No. 71 of 1996. The Calcutta Bench of this Tribunal had observed as follows in the judgement of that OA:-

"Since this is a policy decision of the Govt. nobody can have any legitimate grievance against such policy decision to ventilate before any court or Tribunal."



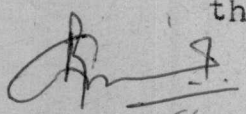
12. In this O.A., the decision to close down DS&D, Kanpur was taken, with a view to avoid unnecessary expenditure and in the public interest by the Department of Supply and instructions to this effect were issued by Department of Supply under their OM Dated 27-7-1992. On the same analogy as held by the Calcutta Bench of this Tribunal, we also hold that now one can have a legitimate grievance against such a decision to agitate before any Court or Tribunal as the same is aimed at achieving economy by cutting down unnecessary expenditure. Moreover, we feel that it was well within the right of the Government to decide as to how and by whom the work of procurement of stores required by the different Ministries/Departments is to be done. Therefore, we respectfully agree with the observations of the Calcutta Bench of this Tribunal in OA No. 71 of 1996 and do not propose go into the decision of the Govt. to close down the decision of the Govt. to close down the office of DS&D, Kanpur. Thus the closure of the Office of DS&D, Kanpur is a fait accompli.

13. With the closure of the office of D.S.&D, Kanpur the staff and officers of that office became surplus. Respondent nos. 1 and 2 could have reported the matter to the Surplus Cell of the DOP&T. Instead the said respondents in consultation with the Ministry of Defence have accommodated all the sixty five of them in Kanpur itself in the Defence Units by transferring them alongwith their posts. As the respondents have transferred all the staff and officers to the Defence Units in Kanpur area without any discrimination, we do not find anything illegal in the same. Further it is noted that only 20^{out} of the 65 have filed this OA,



which leads us to think that the rest have no grievance in this matter. Therefore, if this Tribunal considers the relief prayed for under para 8(ii) of the OA (i.e. quashing of the OM dated 27-7-1992), the same will affect the rest of the persons of the erstwhile office of DS&D, Kanpur.

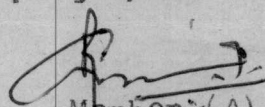
14. Applicants have put forth a number of grounds for the reliefs claimed. As observed by us, how the procurement work should be done i.e. by whom, from whom etc. are the matters lying within the jurisdiction of the Government and we do not propose to enter into this issue. We have carefully considered the pleas put forth by the respondents in reply to the various grounds/reasons given by the applicants. We are in agreement with pleas of the respondents. We find that the applicants have not made out a case for our interference in the matter. The applicants' conditions of service and Rules of Service had not been changed in that they are governed by the same Fundamental and Supplementary Rules (FR&SR) whether they work under Department of Supply or Ministry of Defence. We also hold that ^{/weekly} working days and nature of work cannot be accepted as ground for the reliefs claimed because even if they were working in the same department, the above could have been changed. The applicants' case for grant of Deputation allowance is also not sustainable because, the office from which they were sent on deputation is no longer in existence. Therefore, we accept the plea of the respondents that the term 'Deputation' has been used only in a technical sense. The only ground on which the applicants have made out a case for our interference is the non-finalisation of the terms of their transfer to the Defence Units. The

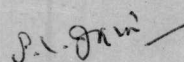


The applicants were transferred in July, 1992 and this OA was filed in 1993 but the terms of their absorption in the units of Defence department which were to be finalised in consultation with the DOP & T had not been finalised even at the time of hearing. It is not at all possible to appreciate that the Government of India had not been able to decide the service conditions of these 65 staff and officers for all these years. In the circumstances, we direct the respondent nos.1 and 3 to finalise the terms and conditions of transfer of these 65 employees to Defence Units within a period of three months from the date of receipt of the copy of this judgement.

15. We also gave careful consideration to the judgement of Hon'ble Supreme Court in CA No.8876 of 1997 decided on 19-12-1997 - Orissa Electrical Engineers Service Association Vs. State of Orissa & Others reported in 1998 SCC(L&S) 666 relied upon by the learned counsel for the applicants. We are of the view that the ratio of the said judgement has no applicability in the facts and circumstances of the present O.A.

16. In view of the detailed analysis given above the applicants do not become entitled to any of the reliefs claimed but only for a direction regarding finalisation of terms of transfer to the Defence Units within a definite time frame. Accordingly, this OA is disposed of with the direction to the respondent nos.1 and 3 as given in paragraph 14 with no order as to costs


Member (A)


Member (J)

Dube/