

OA 735/02

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 26th day of February 2003.

Hon'ble Maj Gen K.K. Srivastava, Member-A  
Hon'ble Mr. A.K. Bhatnagar, Member-J.

Original Application no. 127 of 2001  
Original Application no. 735 of 2002. ✓

LDSK-8061036 Om Ashok Yadav,  
Military Farm,  
ALLAHABAD.

... Applicant  
(in both the OAs)

By Adv : Sri S Khare

Versus

1. Union of India through Secretary,  
Ministry of Defence,  
NEW DELHI.
2. Quarter Master General,  
AMGs', Branch Army HQ,  
NEW DELHI.
3. Deputy Director General Military Farm,  
QMG Branch, West Block III,  
R.K. Puram,  
NEW DELHI.
4. Shri S.S. Shishodia,  
Officer Incharge, Military Farm,  
ALLAHABAD.
5. Sri V.P. Singh, Deputy Director General,  
Military Farm, R.K. Puram,  
NEW DELHI.
6. Sri B.S. Biswas, Director of Military Farm,  
HQ Central Command,  
LUCKNOW.

... Respondents  
(in OA no. 735/02)

By Adv : Sri R.C. Joshi & Sri R. Sharma

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1. Union of India through Secretary,  
Ministry of Defence,  
• NEW DELHI.
2. Quarter Master General,  
QMG's Branch,  
Army Head Quarters,  
NEW DELHI.
3. Adjutant General QMG Branch,  
Army Head Quarters,  
NEW DELHI.
4. Deputy Director General Military Farm,  
QMG Branch, West Block III, R.K. Puram,  
NEW DELHI.
5. Sri V.P. Singh,  
Deputy Director General,  
Military Farm,  
R.K. Puram, West Block-III,  
NEW DELHI.

... Respondents  
(in OA no. 127/01)

By Adv : Sri R. Sharma

ORDER

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Both these OAs have been filed, under section 19 of the A.T. Act, 1985, by the same applicant and since the facts of both the OAs are the same, they are being disposed of by a common order. The leading case being OA 735 of 2002.

OA 127/01

2. In this OA, the applicant has challenged the action of the respondents for declaring the applicant surplus on the post of Lower Division Store Keeper (in short LDSK) and to direct them to give willingness to accept the post of Sub Assistant supervisor (in short SAS) in the same department. The applicant has prayed for quashing the notices dated 21.9.2000, 24.11.2000 & 29.11.2000 besides quashing the orders dated 15.3.2001 & 29.02.2001.

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OA 735/02

3. In this OA the applicant has prayed for quashing the notice dated 22.4.2002 published in daily edition of Amar Ujala dated 23.4.2002. He has further prayed for calling for the records and quashing the order dated 30.11.2001, 18.4.2002 and 20.4.2002 with direction to the respondents to grant promotion to the applicant in the Cadre of Upper Division Store Keeper (in short UDSK) in the pay scale of Rs. 4000-6000. He has sought for further direction to respondent no. 5 to permit the applicant to work on the post of Store Keeper at Military Farm, Allahabad and respondent no. 5 be directed not to interfere in the peaceful functioning of the applicant as Store Keeper, Military Farm, Allahabad. He has also prayed for payment of salary regularly every month as and when it falls due.

4. The facts, in short, giving rise to these OAs are that the applicant, aggrieved by various notices issued to him reducing the rank and cadre of the applicant in as much as in not giving promotion to the applicant to the post of Supervisor in the cadre of LDSK to UDSK, filed OA no 127/01. By the interim order dated 13.2.2001, status quo was maintained and the applicant continued on the post of LDSK. The interim order was subsequently extended from time to time. By order dated 20.4.2002, the applicant was transferred to Katihar by Military Farm Recordy order dated 30.10.2001. The signals Q 3564 dated 18.4.2000 and Q 3365 dated 20.4.2002 were issued with direction to relieve the officer for Military Farm Katihar forthwith. In compliance to the same the movement order dated 22.4.2002 was issued. The applicant, because of the stay order granted from time to time, did not move out of Allahabad, continued working on the post of LDSK and has challenged the notice dated 22.4.2002 published in Amar Ujala, by means of OA no. 735 of 2002. As per applicant

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inspite of the interim order of this Tribunal dated 13.2.2001, the respondents are bent upon uprooting the applicant and compelling him to join at Military Farm, Katihar. He has also not been given the benefit of Assured Career Progression Scheme. (in short ACP:). Both the OAs have been contested by the respondents by filing counter affidavits.

5. Sri S. Khare learned counsel for the applicant, submitted that the action of the respondents is biased as would be seen from the facts that inspite of interim order dated 13.2.2001 various orders and notices have been issued regarding status of the applicant and his transfer from Allahabad to Katihar. The respondents in their short counter affidavit have stated that once the applicant had given his willingness for adjusting him on the post of SAS, the applicant cannot agitate for the same. This is wholly frivolous because there cannot be any estoppel against any instrumentality of states or a Statute. The applicant is fully entitled to challenge the action of the respondents before this Tribunal.

6. Learned counsel for the applicant further submitted that the respondents vide order dated 21.7.1998 (Ann 4 to OA 127/01) have decided that as per recommendation of NFF and Prem Sagar Committees the revised authorisation of Group 'C' will be adopted while submitting the strength returns to work out surplus/and deficiency of various categories of staff. The surplus Foreman/ Store Keepers will be adjusted through retirement while surplus clerks will be transferred to other departments through AG'S branch. Therefore the respondents cannot take stand that the Ministry of Defence can take independent action. Learned counsel for the applicant further submitted that the applicant has been denied the benefit of ACPs even after successful completion of 12 years

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of service. The applicant continues to be in the cadre of UDSK, though he was forced by the respondents to join on the post of SAS under protest.

7. Sri S Khare, learned counsel for the applicant submitted that by order dated 5.2.2002, the applicant has been allowed to cross Efficiency Bar (in short EB) by DPC dated 10.1.2002 and, therefore, till the matter pertaining to grant of increment, EB and fixation of pay is pending, the applicant cannot be relieved from the post of Store Keeper from Military Farm, Allahabad. The applicant has alleged malafide on the part of respondents no. 4 & 5 towards the applicant and due to which he has not been paid a single penny towards salary w.e.f. March 2002 till date despite the interim order maintaining status quo. The applicant has been visiting the office of Store Keeper, Military Farm, Allahabad regularly, but has been directed to work under a junior officer who is incharge of the Cattle Yard. This action of the respondents also shows prejudice and malafide towards the applicant. Third part of the service book of the applicant was missing since 1992 till date and as such the matter pertaining to the increment, the respondents have failed to produce any record indicating that the post of Store Keeper has been abolished after particular cut off date.

8. Learned counsel for the applicant also submitted that if the applicant had not been reduced in rank he would have been working in the pay scale of Rs. 4000-6000 as UDSK. By forcing the applicant to join the post of SAS there is a vast difference of pay between the two posts. All this has been done because the applicant lodged an FIR against the respondent no. 8 under section 409, 420, 504 & 506 of IPC (case crime no. 62006020144 of 28.6.2002).

9. The learned counsel for the applicant finally submitted

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that the applicant has given several representations/letters on 20.3.2002, 12.11.2001, 25.4.2002, 28.8.2002, 7.6.2002, 8.8.2002, 25.9.2002 and 30.9.2002 to respondent no. 5 (in OA no. 735/02) Brig V.P. Singh, but the same are still pending and no action has been taken by the respondent no. 5, which is arbitrary, discriminatory and violative of article 14 of the Constitution of India.

10. Resisting the claim of the applicant Sri R. Sharma, learned counsel for the respondents submitted that the applicant was transferred from Allahabad to Katihar on 30.10.2001. He filed a representation which was rejected and, thereafter, signals were issued on 18.4.2002 and 20.4.2002 to relieve the <sup>an</sup> officer <sup>in for</sup> of Military Farm Katihar. The applicant refused to accept the movement order and, therefore, the movement order was pasted on the main door of the residential accommodation allotted to the applicant. When it was found that the applicant did not take due cognizance of notice, the notice dated 22.4.2002 was published in Amar Ujala dated 25.4.2002 regarding relieving of the applicant. The applicant had filed OA 127 of 2001, wherein he moved an amendment application which was allowed. In the amendment application he has prayed for stay of the notice dated 22.4.2002 published in Amar Ujala. The applicant has wilfully concealed this fact in OA 735 of 2002 that he <sup>has</sup> already sought the relief for stay of notice dated 22.4.2002 in OA no. 127 of 2001. The applicant filed an FIR against respondent no. 4 on 28.6.2002 which was stayed by Hon'ble Allahabad High Court. The police filed final report in favour of respondent no. 5. It would be seen that the conduct of the applicant is not conducive to proper discipline. The contention of the applicant that the transfer order from Allahabad to Katihar cannot be passed by the respondents in view of the status quo granted by this Tribunal on 13.2.2001 is baseless because the status quo had been granted

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in respect of dispute involving the change of cadre from LDSK to SAS. The applicant joined the post of SAS on 9.1.2001 after giving his willingness on 25.11.2000 and, therefore, the interim order dated 13.2.2001 would not change the status of the applicant. Sri R. Sharma, learned counsel for the respondents further submitted that in view of the interim order the applicant has been allowed to work and retain the official accommodation though he has his own house at Allahabad which he has let out.

11. Learned counsel for the respondents, finally submitted that since there is no stay of the applicant's transfer order, the applicant is legally not entitled to retain the Govt. accommodation. He has not joined his place of posting and the issue regarding payment of his salary after 22.4.2001 is to be decided by Military Farm, Katihar, on whose strength the applicant has been taken.

12. We have heard learned counsel for the parties, considered their submissions and perused records.

13. The main contention of the applicant is that the post of Store Keeper could not be abolished as no recommendation in this regard has been given by NFF and Prem Sagar Committee. He has also contended that he has accepted the post of SAS under protest. We have gone through NFF and Prem Sagar Committee report and find that the main recommendation is regarding reduction in staff. Besides, it is not necessary for the Govt. to accept all the recommendations given by any committee. Govt. has power to examine the staff establishment and reduce/increase the same as per requirement. The Peace Establishment (in short PE) of the Military Farm has been revised by the Govt. vide letter no. B/05316/MP-1 (PP & Coord) dated 15.11.1999

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and the post of Store Keeper has been abolished. The applicant vide his letter dated 25.11.2000 (Ann 3 to OA 127 of 2001) gave his willingness to accept the post of SAS in the department under protest. In the same letter he has given his qualification also. Since the post of Store Keeper has been abolished there is nothing wrong in the action of the respondents to adjust the applicant as SAS, though the applicant has used the word 'Protest' in his letter dated 20.11.2000. It would make no difference as the applicant could not have continued as Store Keeper in absence of the post of Store Keeper. Since the applicant gave his willingness as SAS on 25.11.2000 and he joined as SAS on 9.1.2001, he has to be treated as SAS. The interim order dated 13.2.2001 reads as under :-

"In the meantime status quo as prevailing on today shall be maintained."

The applicant on 13.2.2001 was working only as SAS, though as per him under protest. As per interim order he retains the status quo which he was holding on 13.2.2001. On 13.2.2001, he was on the strength on Military Farm as SAS. Therefore, he continues to be as SAS and once the applicant was transferred as SAS to Military Farm Katihar it was expected that the applicant as a disciplined employee complied with the orders and moved to Military Farm, Katihar on transfer because service in Military Farm carries All India Liability.

14. On revision of PE of Military farm the post of Store Keeper stood abolished and, therefore, the respondents have committed no illegality in declaring him surplus and calling for his willingness to join as SAS. Once the applicant was appointed as SAS, he was expected to work where SAS is supposed to. By positioning him in Cattle Yard, we do not find any act of malafide on the part of respondents no. 4 & 5.

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15. During April 2002 action was taken to relieve the applicant for Military Farm Katihar , but from perusal of records we do find that the applicant has adopted all means, including filing an FIR in June 2002 against respondent no. 4 (final report filed by the Police), not to move out of Allahabad. The interim order dated 13.2.2001 is regarding status/Cadre on that date. Therefore, the plea of the applicant's counsel that the applicant could not be moved out of Allahabad on transfer to Military Farm, Katihar because of interim order <sup>has no</sup> ~~has~~ <sup>in</sup> ~~on~~ <sup>force</sup> is not in force. The respondents in view of the interim order dated 13.2.2001 allowed the applicant to work and also to retain the official accommodation, though the applicant has his own house at Allahabad. It has also been submitted by the respondents that the applicant is neither discharging his duties nor is he vacating the Govt. accommodation in spite of the notice given to him to vacate the Govt. accommodation. The respondents <sup>had</sup> ~~had~~ <sup>no</sup> ~~no alternative but to publish the notice dated 22.4.2002 in daily edition of Amar Ujala dated 23.4.2002. In our view no illegality has been committed by the respondents. Besides from the perusal of records and also the development of events, it appears that the conduct of the applicant is not fair and we do not appreciate the same as the applicant is supposed to exhibit sense of discipline and responsibility.~~

16. In the facts and circumstances and our aforesaid discussion we do not find any merit in both the OAs which are liable to be dismissed. Accordingly both the OAs ie. OA no. 127 of 2001 and 735 of 2002 are dismissed. The interim order dated 13.2.2001 stands vacated as it is merged with this order. There shall be no order as to costs.