

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 02nd day of June, 2003.

Original Application No. 48 of 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

S.S. Sisodia S/o Sri Raghubir Singh Shisodia  
R/o at present posted as Officer Incharge, Military Farm,  
Allahabad.

.....Applicant

Counsel for the applicant :- Sri Sudhir Agarwal

V E R S U S

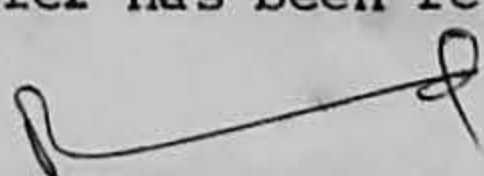
1. Union of India through the Secretary,  
M/o Defence, New Delhi.
2. The Quarter Master General, Army Head Quarter,  
West Block, III, RK.Puram, New Delhi.
3. The Deputy Director, General, Military Farms,  
Q.M.G's Branch, Army Head Quarter, West Block,  
III, R.K.Puram, New Delhi.
4. Sri V.P. Singh, Ex. Brigedier, the then Deputy  
Director General, Military Farm. At present R/o  
Campus of Military Farm Records, Delhi Cantt.

.....Respondents

Counsel for the respondents :- Sri Shishir Kumar

O R D E R (Oral)


By this O.A filed under section 19 of the Administra-  
tive Tribunals Act, 1985, the applicant has challenged the  
order dated 30.12.2002 by which he has been transferred  
from Allahabad to Head Quarter, Western Command (Farms  
Branch). The applicant has also challenged the order dated  
05.02.2003 by which his appeal/representation against the  
impugned order of transfer has been rejected.





2. Sri Sudhir Agarwal, learned counsel for the applicant has submitted that the applicant was appointed as Farm Officer and he could not be transferred to higher post of Dy. Assistant Director, Military Farm (DAD, MF) which is Class-I post, whereas the post of Farm Officer is Class-II post. It is also submitted that the applicant has already served as Staff Officer for three years between August, 1997 to August, 2000 in two establishments i.e. Frieswal Project and Military Farm School and Center, Meerut Cantt, whereas many Farm Officers have never been posted as Staff Officer and they are being continued in Farm only. Learned counsel for the applicant has submitted that the representation of the applicant has not been correctly decided. The authority concerned has been misinformed about the facts and the order rejecting the representation of the applicant is a non-speaking and does not disclose the reasons. The reasons cannot be supplied subsequently by filing Suppl. CA. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of V. Jagannadha Rao and others Vs. State of Andhra Pradesh and others 2002 SCC (L&S)872.

3. Sri Shishir Kumar, learned counsel for the respondents on the other hand has submitted that normally this Tribunal does not interfere with the order of transfer which has been passed in the interest of administration, after taking into account all the facts and circumstances. It is submitted that the applicant has earlier served as Staff Officer in the Head Quarter and he cannot have grievance if asked to serve again in Command Office as Staff Officer. Learned counsel has placed before me the relevant documents which show that ratio of Military Officer and Civilian Officers in Military Farms is 50/50 and can be changed by the Deputy Director General, Military Farms, Army Head Quarter subject to condition that all India sanctioned strength shall not be





affected. Learned counsel for the respondents has also placed reliance on the various judgments of Hon'ble Supreme Court and Hon'ble High Court which are being mentioned below :-

1. Mrs. Shilpi Bose and Ors. Vs. State of Bihar, AIR 1991 SC 532.
2. Union of India and another Vs. N.P. Thomas, AIR, 1993 SC 1605.
3. Union of India and others Vs. S.L. Abbas, AIR, 1993 SC 2444.
4. State of Punjab and others Vs. Joginder Singh Dhatt, AIR, 1993 SC, 2486.

One unreported judgment of Division Bench of Hon'ble High Court, Allahabad dated 21.05.2003 passed in Civil Misc. Writ Petition No. 11296/2003, Om Ashok Yadav Vs. U.O.I and ors. has also been placed by the respondents counsel. Another judgment of Full Bench <sup>in case of</sup> of Director, Rajya Krishi Utpadan Mandi Parishad, Lucknow and others Vs. Natthi Lal 1995 (2) UPLBEC 1128 has also been placed.

4. I have carefully considered the submissions made by the learned counsel for the parties.

5. It is true that this Tribunal normally does not interfere with the orders of transfer. However, when the case of arbitrariness or case of illegality and malice is established, this Tribunal may interfere. It is to be seen from the record whether any such case has been made out. The applicant in his representation dated 03.01.2003 made following prayer :-

"Keeping in view of the position explained above, my posting from Military Farm, Allahabad to HQ, Western Command, Chandimandir may kindly be cancelled and I may be allowed to serve at M.F, Allahabad till April, 2003 and thereafter, I may be considered for posting to M.F, Pathankot. In case, it is not possible at all to adjust me at M.F, Pathankot, I may be

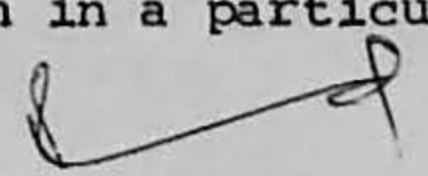
✓

considered for posting to one of the following farms as all the officers posted in undermentioned farms have also completed their tenure :-

- (a) Military Farm, Jammu
- (b) Military Farm, Srinagar
- (c) Military Farm, Guwahati
- (d) Military Farm, Mhow

In this representation applicant also mentioned that he has already served for three years as Staff Officer between August, 1997 to August, 2000. Representation has been rejected by a short order dated 05.02.2003, para 2 whereof shows 'The appeal was put up to QMG. After careful examination he rejected the appeal.'. No reasons have been disclosed. However, the respondents have tried to supply reasons by filing CA. Alongwith Suppl. CA notes dated 20.01.2003 (Annexure SCA-4) and notes dated 27.01.2003 (Annexure SCA- 5) have been filed. In note dated 20.01.2003 it has been stated that the officer so far has not been exercised in Command staff duties. The authority rejecting the representation, it appears, has not considered the representation of the applicant where he asserted clearly that he has already served for three years as Staff Officer in two establishments. Similarly the request of the applicant, that if he could not be posted in Military Farm, Pathankot, he may be transferred to some other Military Farm mentioned in his representation, has not been considered. No reason<sup>s</sup> has been assigned as to why he could not be<sup>u</sup> accommodated against the other Military Farms. Hon'ble Supreme Court in case of V. Jagannadha Rao (Supra) in para 15 has clearly held as under :-

"It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular place or in a





particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is made to a post pigher than what a government servant is holding. In other words, It is generally a lateral and not vertical movement within the employer's organization."

6. In my opinion, the aforesaid judgment of Hon'ble Supreme Court is squarely applicable in the present case and transfer of the applicant to the higher post cannot be justified in any manner. No reasons have been recorded in the impugned order while rejecting the representation of the applicant, why the applicant is being transferred to a higher post. In the notes also no reasons have been given for posting the applicant to a higher post for which he is not entitled. Normally employee is not expected to discharge duties of higher responsibility while he is <sup>being</sup> paid lower pay-scale. In the facts and circumstances, in my opinion, the case requires reconsideration by the respondent No. 3.

7. For the reasons stated above this O.A is allowed in part. The order dated 05.02.2002 (Annexure A- 1A) is quashed. The respondent No. 3 is directed to reconsider the representation of the applicant in the light of judgment of Hon'ble Supreme Court in case of V. Jagannadha Rao (Supra) and in the light of observations made in this order and pass fresh reasoned order within a month from the date a copy of this order is filed.


8. As the applicant has already mentioned that he does not wish to stay at Allahabad beyond 30.04.2003 and other officer has been already posted, there is no reason to continue the interim order further. The officer who has been transferred to Allahabad in place of applicant has not been impleaded in this O.A. so the order passed in his



favour cannot be questioned. He may join as incharge M.F. Allahabad in place of the applicant. The applicant may join at Command Office, which shall be subject to order passed on the representation or in alternative if the applicant applied to stay at Allahabad he may be allowed to stay for six weeks or till the representation is decided whichever is earlier.

9. There will be no order as to costs.

Copy of this order be given to counsel for the parties within three days.

  
Vice-Chairman

Anand/