

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 312/1999

Date of Order : 10.11.1999

Amit Srivastava S/o Shri J.J. R. Srivastava, aged about 30 years, resident of C/o Sh. H.P. Gaur, Paota B Road, Jodhpur, at present employed on the post of Sub-Inspector (Under Suspension) in the office of Supdt. of Police, CBI, Jodhpur.

..Applicant.

Versus

1. Union of India through Secretary to Department of Personnel & Training, North Block, New Delhi.
2. Director, CBI, CGO Complex, Lodi Road, New Delhi.
3. Dy. Inspector General of Police, CBI, Tilak Marg, C-Scheme, Jaipur.
4. Supdt. Of Police, CBI, Polo-I, Paota, Jodhpur.

..Respondents.

Mr. J.K. Kaushik, counsel for the applicant.

Mr. N.M. Lodha, counsel for the respondents.

CORAM :

Hon'ble Mr. Gopal Singh, Administrative Member.

BY THE COURT :

Applicant, Amit Srivastava, has filed this application under section 19 of the Administrative Tribunals Act, 1985, for setting aside the impugned orders dated 29.10.1999 at Annexure A/1 and dated 29.10.1999 at Annexure A/2. The applicant has further prayed by way of interim relief for staying the operation of Annexure A/1 and A/2.

2. Counsel for both the parties have agreed for disposal of this case by a Single Member Bench, at the admission stage.
3. Applicant's case is that he was initially appointed with the respondent department as Sub Inspector on 8.8.1993. In terms of respondent's letter dated 21.10.1999, the applicant was promoted as Inspector of Police. Further the applicant was placed under

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suspension vide respondents' letter dated 23.10.99 at Annexure A/4. The respondents vide their order dated 29.10.1999 (Annexure A/1) have cancelled the promotion order of the applicant and the headquarter of the applicant during suspension has been changed from Jodhpur to Delhi. Feeling aggrieved, the applicant has approached this Tribunal.

4. Notices were issued to the respondents and they have filed their reply.

5. In their reply the respondents have averred that the intention of the order was not to cancel the promotion of the official but it was to be kept in abeyance during the suspension period of the applicant and, therefore, a fresh order dated 8.11.1999 has been passed whereby the order dated 29.10.99 has been kept in abeyance so far as it relates to the promotion of the applicant. It has also been asserted ~~on~~ by the respondents that the competent authority can change the headquarter of the Government official under suspension as per the existing rules.

6. I have heard the learned counsel for the parties and perused the records of the case.

7. It is seen from order dated 21.10.99 that 51 Sub Inspectors have been promoted to the post of Inspector of Police and the applicant's name figures at serial No. 10 of this promotion list. It has been stated by the respondents that because of the disciplinary action contemplated against the applicant, his promotion orders have been kept in abeyance. In this connection, it is pointed out that the promotion of an official can not be cancelled or kept in abeyance because of contemplated action. The promotion order can only be withheld if a charge sheet has been issued to the official before the issue of promotion order. In that case too recommendations of the D.P.C. are required to be kept in sealed cover.

8. In the light of above discussion I find that the action of the respondents in cancelling the promotion or keeping the same in abeyance is not sustainable in the eyes of law.

9. In regard to the transfer of headquarter from Jodhpur to Lipal of

Delhi, the applicant has relied upon Government of India order dated 8.9.1956 printed at serial No. 9, page 207 of Swamy's Compilation of CCS CCA Rules, 1999 Edition. This order provides as under :-

"(9) Change of headquarters during suspension - An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such, the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance, etc., or other complications.

(G.I., M.H.A. O.M. No. 39/5/56-Ests.(A), dated the 8th September, 1956)

It is the contention of the applicant that the headquarter during suspension can only be changed on the request of the official under suspension. Learned counsel for the respondents has submitted that in terms of Government of India order No. ^{under} 3/SR 153-A, the competent authority can change the headquarter of a Government servant under suspension in the interest of public service.

10. In Government of India order dated 8.9.1956 (supra) it has been provided that the headquarter of a Government servant should normally be assumed to be his last place of duty. In my opinion, this does not mean that headquarter of a Government servant under suspension can not be changed. The last place of posting should normally be the headquarter of the Government servant during suspension. But there can be circumstances where the headquarter of a Government servant under suspension call for a change in public interest and as such I am of the view that the Government is not precluded from changing the headquarter of a Government servant during suspension. It has further been made clear vide Government Of India order No. 3 under SR 153-A that the competent authority can change the headquarter of a Government servant under suspension if this is in the interest of public service.

11. In the light of above discussion, the application deserves to be partly accepted. The OA is accordingly disposed of with the following directions :-

1. Respondents' letter dated 29.10.1999 at Annexure A/1 so far as it relates to cancellation of the promotion of the applicant is set aside. The applicant will be allowed to

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avail the promotion and join his new place of posting.

2. The respondents would be free to take any departmental action against the applicant after the applicant takes over the charge of the new post on promotion.
3. The period from the date of suspension to the date of assumption of charge at the new place of posting will be treated as duty / joining time.

12. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

MEMBER (A)