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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 29/2008

Date of order: 01.02.2008

Hon'ble Mr. Justice A.K. Yog, Member (J)

G.R. Choudhary S/o Shri Binja Ram, aged about 54 years, Resident of Plot No. 165, Village Digari Kalan Post Paota, Jodhpur, presently working on the post of Fire Master in the 224 ABOD PIN 909224 C/o 56 A.P.O.

...Applicant.

By Advocate – Shri S.K. Malik.

VERSUS

1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The A.O.C. (Records), Pin – 900 453 C/o 56 A.P.O.
3. The Commandant, 224, ABOD PIN 909224, C/o 56 A.P.O.
4. The Commandant, 19 F.A.D. PIN – 909019 C/o 56 A.P.O.
5. Shri Dhanna Ram Fire Master, C/o The Administrative Officer, 224, ABOD PIN 909 224 C/o 56 A.P.O.

... Respondents.



ORDER

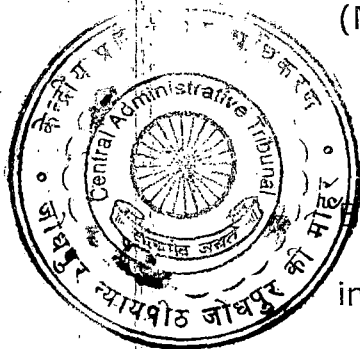
Justice A.K. Yog, Member (J)

By means of this Original Application, Shri G.R. Choudhary has impugned transfer order dated 05th January, 2008 (Annexure A/1 to the O.A.), requiring to move from his present posting in 224 ABOD at Jodhpur to 25 Amn Coy at Barmer (vide para 4.11 of the O.A.) within 30 days of receipt of the said impugned order.

The sole grievance of the applicant is that in view of Paras 11 to 25 of R.O.I. C/3/93 (referred to in Para 4 of the impugned

order - Annexure A/1 to the O.A.), transfer of the applicant from 224 ABOD (Jodhpur) to 25 Amn Coy (Barmer) cannot be justified; in view of Paras of the said R.O.I. C/3/93 itself, which deal with the - primary issue i.e. to determine inter-se station seniority and the criterion to post out, the impugned order cannot be sustained. Relevant facts in this respect are given in para 4.2 to 4.14 and the legal contentions are given in para 5 (A), (B) of the O.A.

According to the applicant, in the case of Dhanna Ram referred to in the impugned order and impleaded as respondent No. 5, the impugned order itself shows that said Dhanna Ram was temporarily adjusted/posted to 75 (I) Inf Bde Gp OMC (Bhuj) w.e.f. 25 Oct 1991 by 19 FAD order No. 2504/410/Est (NI) dated 09 Jul 1991.



According to the applicant, the said temporary posting at Bhuj cannot be 'excluded' (as mentioned in para 3 (c) of the impugned order) in view of R.O.I C/3/93 as contended in para 5 (b) of the O.A. The above plea has been taken by the Applicant - throughout - as will be evident from his representation dated 02.07.2007 (Annexure A/3 to the O.A.).

The applicant further points out that this Tribunal vide order dated 04.10.2007 - in O.A. No.260/2007 - (Annexure A/8 to the O.A.) had required the concerned authority to decide this issue i.e. whether the period 25th October 1991 to 23rd August, 1992 - (when Dhanna Ram had moved to Bhuj as given in Para 3 (c) of the impugned order) is capable of being ignored and treated as break of tenure in his unit 6 FOD (now 224 ABOD) or this period

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is to be clubbed/counted towards his service rendered in his said unit at Jodhpur. Such contention was again reiterated by the Applicant in his last representation dated 06.10.2007 (Annexure A/9 to the O.A.).

In support of his above contention, the applicant refers to Signal dated 06th July 2007 (annexure A/4 to the O.A.) which says that seniority of Dhanna Ram is to be computed w.e.f. 1975. On the other hand, the stand taken in the impugned order appears to be based on information vide Signal dated 28.09.2007 (Annexure A/6 to the O.A.).

The impugned order does not quote or refer to relevant Para of R.O.I. (in question) to dispel the contention of the Applicant. The Respondent authority must disclose the reason/basis/ground – sustainable in law – to reject the above contention of the Applicant and to justify its stand taken in para 3 (c) of the impugned order.



Considering expediency in the matter and to have efficacious adjudication, I direct the applicant to file, within two weeks from today, fresh representation along with a complete copy of this O.A. (with all annexures) and also a certified copy of this order before appropriate authority at Jodhpur to enable said authority to decide the case afresh taking into account relevant Paras of R.O.I. C/3/93 on the question whether temporary adjustment/posting of Dhanna Ram at 'Bhuj' – is to be treated as 'break in stay' in his Unit at Jodhpur, giving reasons and reference of particular Para/clause of R.O.I. in question – in

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support of his conclusion/decision and pass fresh orders as expeditiously as possible.

The representation shall be decided by the authority on 'merit' as per record and relevant circulars/rules/instructions etc., exercising unfettered discretion without being influenced by any of the observations made above in this order.

In order to ensure that the object of filing of fresh representation is not rendered infructuous, I provide that impugned order of transfer should not be given effect to till the decision on the above representation - subject, however, to the condition that the Applicant files 'representation' within the time stipulated in this order or otherwise this order shall be rendered automatically infructuous. The impugned order of transfer shall be subject to the order of Respondent on the above representation.

The O.A. is being finally disposed of subject to the observations and directions given above, since no useful purpose shall be served by issuing notice and keeping the O.A. pending particularly considering the facts and nature of relief claimed in this O.A.

Respondents are at liberty, if they feel aggrieved against this order, to approach the Tribunal for recalling of this order.


O.A. stands finally disposed of.

No costs.

(A.K. Yog)
Member (J)



Part II and III destroyed
in my presence on 6/12/14
under the supervision of
section officer (1) as per
order dated 19/8/14
Section officer (Records)

Rec

S. K. Malik
Adv
4/2/06