

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.600/99

DATE OF DECISION:
Pronounced this the 25th Day of July 2000

Shri S.N. Kamble Applicant.

(By Shri S.P. Saxena, Advocate)

Versus

Shri Union of India & Ors. , Respondents

(By Shri. R.K.Shetty, Advocate) .

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)

(1) To be referred to the Reporter or not: Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal? Yes.

(3) Library. Yes. B-S

(B.N. Bahadur)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 600/1999
Pronounced this the 25 the Day of July 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri S.N.Kamble,
Tinsmith Gr.I
L.S.D. Section,
512, Army Base Workshop
Kirkee, Pune-411003.

..... Applicant

(Applicant represented by Shri S.P.Saxena, Advocate)

vs.

Union of India through

1. The Secretary
Ministry of Defence
DHQ P.O.
2. The Commandant
Army Base Workshop,
Pune - 411 003.
3. The Commanding Officer
Military Hospital
Wellington, Dist.
Nilgris (TN).

(Respondents represented by Shri R.K.Shetty, Advocate)

O R D E R

[Per B.N.Bahadur, Member (A)]:

This is an Application made by Shri S.N.Kamble, Tinsmith Grade I in Respondent's No.2's workshop. The Applicant states that after being initially appointed in Pune as Tinsmith he was later promoted in the post of Tinsmit Grade I in 1986. He was thereafter transferred to the establishment of Respondent No.3, in Wellington, where he joined on 21.1.1997.

2. The Applicant further states in his Application that he was working in Wellington also as Tinsmith Grade I and receiving salary accordingly. On his request for transfer on personal grounds, (A.3) the Respondents accepted his request and the

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Applicant was transferred to office of Respondent No.2 at Pune, vide Movement Order dated 6.8.1998 (A.4). The Applicant continued to received his salary at the same scale of grade I in Pune and even secured an increment in December 1998.

3. The grievance of the Applicant now is that in March 1999 vide Order dated 26.3.1999, (Exh. A.1), he was intimated that in view of instructions of Army Headquarters, he could be posted only as Tinsmith (skilled) in Pune and in case the post is not acceptable to him he could be posted back to his parent unit. An undertaking was accordingly asked for. The Applicant is before us with this grievance seeking the relief as follows.

"a) To declare that the action of the Respondents under challenge is illegal and to quash and set aside the impugned orders dt. 26.03.1999 and 14.7.1999.

b) To declare that the Applicant cannot be subjected to reversion to a lower post as contemplated by the Respondents. Since he has been transferred from Wellington to Pune in the post held by him under Respondent No.3.

c) To direct the Respondents to continue the Applicant at the office of Respondent No.2 since his transfer had the approval of AHQ, New Delhi.

d) To pass any other orders, which may be just and appropriate in the facts and circumsn."

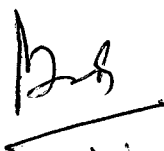
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4. The Respondents have filed a written statement, in reply, stating that any transfer given on compassionate grounds could be given only in the entry level of direct recruitment, which in the present case means the level of tinsmith (skilled) . Respondents takes support of Annexures R.I and R.II filed with their written statement. It is therefore, reiterated that the only choice before the Applicant is either to be sent back to his original posting in Nilgiris in the HSB I or to give undertaking to be absorbed as Tinsmith (Skilled) in his present post of posting (Pune).

5. Respondents further aver that the applicant has already submitted his willingness dated 17.11.1997, for acceptance of regular temporary appointment which means appointment in the entry level Direct Recruitment Grade. Willingness Certificate at R.5 is sought to be depended upon, and it is stated that in the circumstances of a transfer sought to a particular place of convenience, absorption two grades below is not an injustice, specially when the option of going back to Nilgiris at higher post is available. Respondents mention that as per policy laid down by Army Headquarters in letter dated 8.6.1986, transfers on compassionate grounds are not entertained in higher grades so that promotional prospects of others are not affected.

6. I have heard Learned Counsels on both sides and perused the papers in the case. The hearing was adjourned once to enable Respondents to produce copies of certain Circulars etc. which were not immediately available. These have been produced in the subsequent hearing and considered, wherever relevant.

7. Learned Counsel for the Applicant, Shri S.P. Saxena, argued the case in detail. He took me over the facts of the case and relevant documents and said that it was understood and acceptable



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that the Applicant can be reduced in seniority within the same scale in which he was working viz. Grade I but it was against Rules and totally unacceptable that a transfer on compassionate grounds should entail a two-rank demotion. This was not known to the Applicant when he accepted the transfer and he could have refused the transfer to Pune otherwise. Shri Saxena contended that his agreeing to abide by "the existing Rules Governing Leave Seniority and so on" did not mean that this could be interpreted as blank and unconditional acceptance of any condition. The willingness Certificate regarding Applicants being willing to "except regular temporary appointment transferred on compassionate ground" also did not mean that he could be put in the Grades ^{two} ~~two~~ below. (These Certificates are at R.5.) Learned Counsel contended that this action was against rules/instructions in CPRDs etc.

8. Shri Saxena further countered the argument that others' promotions will be affected, and pointedly stated that none of his Seniors were being affected in Pune. Shri Saxena stated that the Respondents were perhaps mixing up between Compassionate Appointments and Compassionate Transfer and that if such a major sacrifice of a two-rung demotion was entailed, then clear knowledge and clear undertaking is necessary, and this could not be done through ambiguous undertakings. Shri Saxena contended that in none of the instructions or CPRDs, was this clearly mentioned, and drew attention to para 3 and 4 of letter dated 8.1.1986 at R2 the instructions where it was stated that matters could be referred to the Army Headquarters. He pointed out that his transfer orders have been issued with the approval of Army

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Headquarters and in case it has to be inferred, that all compassionate transfers will be at base level only, then has to be inferred, that this case has been approved by Army Headquarters in relaxation of these instructions dated 8.1.1986, a copy of which is at Annexure R.2. It was further argued that in case of any doubt, it was the normal instructions regarding such transfers, as issued by Department of Personnel, that would apply and these are clearly, justify the case of Applicant.

9. Arguing the case on behalf of Respondents the Learned Counsel Shri R.K.Shetty, took us over the facts in detail. He stated that the Applicant had clearly undertaken through willingness given (page 44) that he would be fitted in accordance with the rules relating to Transfer on Compassionate Grounds and that he was willing to accept regular temporary appointment. Shri Shetty stated that Applicant was erroneously fitted for some time, in Grade I in Pune, and Show Cause Notice has been given to correct this mistake. His basic pay was being protected. Shri Shetty referred us to the various copies of instructions/rules CPROs as annexed by Respondents as also those handed over during arguments. It was contended that the transfer on compassionate grounds was made only in the categories in which direct recruitment is carried out as per policy governing such transfers as detailed in the instructions dated 17th September, 1988 (copy at page 32 to 34). Para 12 of these instructions, was vital and crucial, Shri Shetty argued. He also drew attention to instructions at page 37 and to para 3 and 4 of document at R.2 already referred to above by Shri Saxena in Applicant's defence.

10. I have carefully considered all the papers in the case, as also the arguments made by Learned Counsels for either side.



11. Now in the first place, let us look at the point relating to the undertakings by the Applicant when he accepted the transfer to Pune on his request. Two Certificates were given, copies of which are annexed at R.5 (page 44). Basically, he has agreed to travel at his own expense and stated that he agrees "to abide by the existing Rules Governing Leave, Seniority and so on". There is a second Certificate, where the Applicant has indicated willingness "to accept regular temporary appointment when transferred on compassionate grounds" It is clear that all willingness will be considered only with reference to the Rules, the second part regarding regular temporary appointment being nondetailed will also need to be read with reference to Rules. No blanket willingness can be construed in the sense that Applicant can be bound by whatever decision the Respondents take merely because of the Willingness Certificate. This is being mentioned since the point regarding willingness given was stressed more than once during arguments by Learned Counsel for Respondents.

12. Careful consideration has been given to the Annexures filed on either side. These are important as they constitute the Rules and instructions on which both sides are depending. It has been accepted by the Applicant during arguments by his learned Counsel that he will admittedly, be given bottom seniority in seniority in the Tinsmith Gde.I. The point of controversy that remains still to be decided is whether he will go down to the category of Tinsmith (skilled) i.e. 2 rungs below the present Grade in which he works.

13. I first turn to the instructions contained in Appendix to Army Headquarters letter dated 17.09.1983 annexed at page 32 of

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the Paper Book. It is stated in para 12 that transfers under these provisions "are admissible only in the same grade in which Direct Recruitment is carried out." The heading is "Transfers on Mutual Basis". It is, therefore, not clear whether these instructions are restricted only on transfers on mutual basis. We, therefore, move on to see the contents of annexure R.II which is copy of Army Headquarter letter dated 8.1.1986. Paras 3 and 4 of the communication read as under:

"3. Applications for compassionate postings in respect of serving Highly Skilled Grade-I and Grade-II cannot be entertained as they would block the promotional avenues to the serving skilled personnel of the unit for fitment to Highly skilled Grade II/I.

4. In case of posting orders issued by EME/AG's Branch for the cases already registered with them, those personnel who are still in skilled level alone be posted out. In case any of those having attained Highly Skilled Grade I/Highly Skilled Grade II in the meantime, their cases will be referred to this HQ and posting carried out only on confirmation."

Here also the indication seems to be, that transfers on compassionate grounds cannot be made only in respect of lowest

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Grade. However, there is a provision in para 4 that in case such cases are to be considered, these can be referred to the Army Headquarters. There is, therefore, some good ground for the Learned Counsel for Respondents to argue that even assuming that such transfers can be made only in the lowest grade, the implication of para 4 referred to above, would be that Army Headquarters would have the authority of waiving this restriction and that Applicant's transfer orders having the approval of Army Headquarters it has to be concluded that the condition that all postings will be in lowest grade have been exempted.

14. On a careful reading of all instructions etc. which were referred to by learned counsels by both sides, it is strange that there is no direct categorical assertion that any one in Grade I or Grade II who is transferred on compassionate grounds will revert in seniority to the lowest grade. All references to the effect that transfers will be only from the lowest grade/grade in which Direct Recruitment is made are taken to imply that reversion by one stage or two stages, as the case may be will result automatically, in case of compassionate transfers. This is something which is difficult to accept ^{by sheer implication PWS} It must be realised ^{one or two} that any person who should be made to step down by two grades in the hiererachial set up must be made to be clearly aware of such an eventuality through very clearly laid down, and not through indirect assertions in letters, and instructions or even in SROs.

15. It was rightly argued out that in the absence of a very clear and unambiguous rule in this regard, the normal administrative principles followed in civil employment would prevail i.e. that the person who seeks transfer on compassionate grounds, would need to be fixed at bottom seniority, in the same

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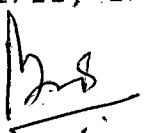
scale. An argument was advanced again on the basis of the instructions that the promotion chances of juniors will be effected, in the new station, if persons like applicants are allowed to retain their Grades. This cannot be an argument unless the applicant is decidedly junior in terms of length of service in relevant grade, in the new station to persons working in lower grades there. When a query was raised on this point by the Tribunal during argument, learned counsel for the Applicant stated that none of the persons in the two grades below Tinsmith Grade I in the Pune Workshop were senior to the Applicant. This was not refuted by the Respondents.

16. Another arguments taken by Respondents was that the salary of the Applicant has been protected. It must be remembered that having to be made to work in a position two ranks below is far too serious a matter to be compensated by the mere fact of protection of salary, and that too because of a transfer on compassionate grounds.

17. In view of the detailed discussions made above, it has to be concluded that there is no basis for the Respondents in their having taken the action as they have done through their inter office note dated 26.3.1999, (Annexure A.1) and second note dated 14.7.1999 (Annexure A.2); it has to be held that whereas the Applicant would certainly have to be put bottom seniority in the Grade of Tinsmith Grade I it would not be proper to place him in the initial grade of Tinsmith (Skilled) on the ground of his being granted a transfer on Compassionate Grounds.

18. Consequently this O.A. is allowed and Respondents are hereby ordered to continue the Applicant in the Establishment of

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the Respondent No.2, and give him bottom Seniority in the grade of Tinsmith Grade 1. Action as proposed to be taken vide inter Office Notes dated 26.3.1999 and 14.7.1999 should not be taken, and these inter Office Notes are hereby quashed and set aside.

19. There will be no orders as to costs.

B.N. Bahadur

(B.N. Bahadur),

Member (A)

25/07/2000

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Review Petition No.67/2000
IN
Original Application No. 600/1999

Dated: 1.2.2001

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri S.N.Kamble,
Tinsmith Gr.I
L.S.D. Section,
512, Army Base Workshop
Kirkee, Pune-411003. Applicant
(Applicant by Advocate Shri S.P.Saxena)

vs.

Union of India through
1. The Secretary
Ministry of Defence
DHQ P.O.
2. The Commandant
Army Base Workshop,
Pune - 411 003.
3. The Commanding Officer
Military Hospital
Wellington, Dist.
Nilgris (TN).
(Respondents by Advocate Shri R.K.Shetty)

O R D E R

[Per Shri B.N.Bahadur, Member (A)]

I am considering today Review Petition No.67/2000 in Original Application No.600/99, as also Misc. Petition No.1012/2000, the latter having been filed as a prayer for condonation of delay in filing of the aforesaid Review Petition. The notices were issued to both sides, before hearing the Petition and I have had the benefit of hearing Learned Counsels Shri R.K.Shetty and Shri S.P.Saxena, for the respective sides.

2. At the very start, I remind myself that a Review Petition is heard on the principles laid down in the CPC, and that it will

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have to be considered whether there is any error apparent on the face of the record or whether this is a case of some new facts having come to light, which facts were not within the knowledge of the Review Petitioner, even considering due diligence etc.

3. I have gone through the Review Petition and I have heard the Learned Counsel Shri R.K.Shetty and find that basically this is not a case of any error apparent on the face of the record in the orders made. What is being sought is a re-assessment of the arguments and facts ^{merits} and re-interpretation. In fact, more than once, a point has been made in argument that certain aspects have been wrongly appreciated and there has been legal impropriety in the Judgment. Well, as the original Respondents have a right to entertain such grievances, these cannot be agitated through a Review Petition, as is being done. They have to be agitated in the appropriate forum, provided as per law. They cannot come up as a matter for relief in a Review Petition.

4. In respect of a point of information furnished regarding seniority list, this is also not a case of simple error on record. In fact, no new documents can be stated to have come to light. It is seen from the Roznama that more than one chance were given for production of documents. Even here, considering the arguments made, what is being sought is a re-appreciation of the points covered in detail in the order dt. 25.7.2000.

5. Since the matter fails on merit, I am not going into the aspect of the delay, which clearly exists.

6. The Review Petition is therefore dismissed. No orders as to costs.

B.N. Bahadur

(B.N. BAHADUR), 01-02-2001.
MEMBER (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

CP NO.7/2005 in
OA No.600/1999


26th Sept, 2005


Applicant by Shri S.P.Saxena. Respondents
by Shri R.K.Shetty.

Learned counsel for respondents stated
that the order of Tribunal dated 25/7/2000 and
confirmed by High Court order dated 9/7/2004 has
been complied with vide order dated 24th Sept, 2005.

Learned counsel for applicant ^{also} submits that
the direction of the Tribunal has been complied
with.

In view of this Contempt Petition 7/2005
is dismissed. Notices to contemnors are
discharged.


(Smt. Bharati Ray)
Member (J)


(A.K. Agarwal)
Vice Chairman

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