

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 222/97

Date of Decision: 11.3.1998

A.J.Gahukar

Applicant.

Shri S.S.Sohoni

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*


(P.P.SRIVASTAVA)

MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.(N) 222/97

Wednesday this the 11th day of March, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Ashok Jairamji Gahukar
Machinist (Skilled),
Ordnance Factory,
Ambajhari, Nagpur.
R/o 46, Reshimbagh,
Nagpur.

By Advocate Shri S.S.Sohoni

... Applicant

V/S.

1. The Union of India
through its Chairman,
Ordnance Factories Board,
10A, Ockland Road, Calcutta.
2. The General Manager,
Ordnance Factory,
Ambazari, Nagpur.

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan, C.G.S.C.

... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application under Section
19 of the A.T.Act. Respondents have filed reply.
We have heard Shri S.S.Sohoni, learned counsel for
the applicant and Shri S.S.Karkera for Shri P.M.
Pradhan, learned counsel for the respondents.

2. The applicant who was appointed as Machinist
in the Ordnance Factory at Ambazari, Nagpur worked for
few years in that post and afterwards he was deputed
to work in the Gymnastics Hall of the factory where
he was working ^{till} recently. He came to be transferred

.. 2/-



to work as Machinist by the impugned order dated 11.2.1997. Being aggrieved by the order of transfer, he approached the Tribunal for quashing the same. He has further stated that since he has experience of nearly 10 years in coaching students in gymnastics and he was awarded a Certificate by the Sports Authority of India for successfully completing six weeks' Certificate Course in Gymnastics and therefore he prayed for a direction to the respondents to post him as Gymnastics Coach in the Gymnastics Hall in the Ordnance Factory.

3. The respondents' stand is that the transfer is made in the interest of administration. It is stated that the applicant was never appointed as Gymnastics Coach and he was working in the said as he volunteered post to work as Gymnastics Coach. Accordingly, he was engaged to work in the Gymnastics Hall. But now in the interest of work he has been directed to work as Machinist. It is further stated that there is no post of Gymnastics Coach in the factory.

4. The learned counsel for the applicant contended that since the applicant has worked for few years and has gained experience, he should be continued as Gymnastics Coach in the Gymnastics Hall and his transfer should be set aside. Then, he further stated that in view of the experience and work he should be appointed as Training Instructor in the school attached to the school of the Factory. On the other hand, the learned counsel for the respondents contended that the applicant was appointed as Machinist. He has no legal right to work in Gymnastics Hall and his transfer is made in the interest of administration and should not be interfered with. As far as the applicant's request to post him as physical instructor, it is submitted by the learned counsel for the respondents



that it is to be filled up through Employment Exchange and at that time the applicant may also apply for the same as per rules.

5. After hearing both the sides, we are of the view that the main prayer is for setting aside the transfer order dated 11.2.1997. Since admittedly the applicant was appointed as Machinist and had worked for few years as Gymnastics Coach, he did not get any legal right to be always posted as Gymnastics Coach though he worked there for few years. An order of transfer is always an incident of service. It is for the administration to decide where a particular official has to work. The court or Tribunal cannot interfere in the day to day work of the administration. It is also ~~a well settled law that the court or~~ Tribunal ~~over orders of Transfer.~~ cannot sit in appeal. The scope of interference by the Tribunal is very limited and it can interfere when the ~~malafides or is~~ order is vitiated by ~~the order~~ contrary to rules. In this case, the applicant has not ~~produced~~ any material to show that ~~his~~ transfer is malafide or his transfer is contrary to any statutory rules. Therefore, we cannot interfere with the order of transfer dated 11.2.1997.

6. As far as the prayer of the applicant for being posted as ~~a~~ coach is concerned, there is no post of Gymnastics Coach in the Gymnastics Hall but however, there is a post of ~~physical~~ instructor as could be seen from the Recruitment Rules; the post is not filled up. The learned counsel for the respondents has also submitted that the post is not yet sanctioned. However, whenever the respondents initiate recruitment for that post, the applicant

can also apply and if the applicant applies, the management should consider the case of the applicant taking into account his experience and make the recruitment as per the rules. If the post is not sanctioned by the management, the court or Tribunal cannot force the management to sanction the same. As and when recruitment ^{open} takes place, it is for the department or management to consider the applicant for the same as per rules.

The learned counsel for the applicant invited our attention to a case reported in AIR 1990 SC 371 (Bhagwati Prasad vs. Delhi State Mineral Development Corporation), where the question before the Supreme Court was regularisation of some workers who had worked in a post for few years and gained experience. Further there was a case of apprehension that their services would be terminated. In the present case, there is no question of termination of the applicant or question of regularisation arises in this case. Here the applicant wants a direction for appointment to a particular post for which recruitment process has not yet started. Therefore, the said case has no bearing in the present case.

7. In the result, the application is dismissed subject to the observations made above. In the circumstances of the case, there will be no orders as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.

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