

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1061/97

4. 9. 98

Date of Decision:

M.S.Masurkar

.. Applicant

Shri G.K.Masand

.. Advocate for
Applicant

versus

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble **Shri D.S.Baweja, Member (A)**

(1) To be referred to the Reporter or not ? ✓

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

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

OA. NO. 1061/97

this the 4th day of September 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

Manohar S.Masurkar,
Upper Division Clerk,
Central Ordnance Depot,
Kandivli (E), Mumbai-101.

By Advocate Shri G.K.Masand

... Applicant

V/S.

1. Union of India
through the Secretary
in the Ministry of Commerce,
Department of Supply,
Poorti Vibhag, New Delhi.
2. Director of Supplies (Textiles),
New C.G.O.Building,
5th Floor, New Marine Lines,
Mumbai.
3. Commandant,
Central Ordnance Depot,
Kandivli (E), Mumbai.

By Advocate Shri R.K.Shetty

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

The applicant joined the Government service
in the Office of Director of Supplies (Textiles), Mumbai
as a Lower Division Clerk on 25.1.1973. He was promoted
as Upper Division Clerk from 15.10.1985. Ministry of
Commerce, Department of Supply, Government of India
in 1991 carried out/review/the policy of Centralised
purchase of Stores and Equipments required by the
Central Government Departments. It was decided that
henceforth, the indenting Ministry would be responsible
for purchase of the Stores concerning their respective

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Ministries. With regard to the transfer of the posts for staff and ~~and~~ decentralisation of the purchases, details ~~instructions~~ are laid down as per letter dated 30.12.1991. As per this letter, certain number of posts were transferred along with the ~~staff~~ staff. The applicant with the other staff was transferred to the Office of Respondent No.3, Commandant, Central Ordnance Depot, Kandivli (E), Mumbai as per letter dated 13.2.1993. Since then the applicant is working in this office. Options were called by Respondent No. 3 as per the letter dated 13.6.1997 from such of a staff who would like to be repatriated to their parent department. The applicant gave his option as per his letter dated 17.6.1997 for transfer back to his earlier office i.e. Respondent No. 2. Thereafter, the applicant has been pursuing the matter for transfer back to his parent department but no action has been taken by the Respondent No. 2. Applicant has further contended that Respondent No. 3 has been also communicating with Respondent No. 2 for repatriation of staff who have given their option for repatriation. Respondent No. 2 has also made a reference to Ministry of Defence. Having not received any response for his repatriation as per the option, the applicant has filed the present application on 24.11.1997 seeking judicial interference for the following reliefs :-(a) to declare that applicant's transfer to the Office of Respondent No. 3 w.e.f. 1.2.1993 is a temporary transfer on deputation with lien maintained in the Office of Respondent No.2, (b) to direct the respondents to repatriate the applicant from the office

the
of Respondent No. 3 to the office of Respondent
No. 2, (c) to direct the Respondent No. 2 to grant
all the benefits which have been enjoyed by the
juniors of the applicant in the office of Respondent
No. 2 with regard to promotions and special pay, etc.

2. The main ground advanced for seeking the relief by the applicant is that the transfer of the applicant from the Office of Respondent No. 3 to the Office of Respondent No. 2 in terms of policy decision as per letter dated 30.12.1991 was not voluntary transfer but a transfer on deputation with a lien maintained in the Office of Respondent No. 2. The applicant is, therefore, entitled for repatriation back to the office of Respondent No. 2 where the lien is maintained as the applicant is not willing to be absorbed in the Office of Respondent No. 3. The applicant has also relied upon the order of Calcutta Bench dated 10.3.1997 in OA. NO. 71/96, Rajat Mukhopadhyay & Ors. vs. Union of India & Ors., wherein the same issue has been considered and decided in the favour of the applicants.

3. The Respondents No. 1 & 2 in the written reply while referring to the policy decision for transfer of the staff along with the posts to implement the scheme of decentralisation as per the order dated 30.12.1991 have submitted that the applicant along with the other staff have been transferred to the host department along with the posts and such staff is to be absorbed in the host department. It is further stated that necessary policy allowing the seniority to such staff is laid down as per letter dated 24/26.4.1995. In

view of this, the applicant has no case for repatriation and he has to be absorbed in the host department. The respondents have also brought out that similar action has been taken by other department where the staff were transferred on decentralisation. As regards the application of the order of Calcutta Bench referred to earlier, the respondents contend that Office Memorandum dated 30.12.1991 was not applicable to the staff working under Calcutta region and therefore the conditions laid down in Office Memorandum dated 30.12.1991 ~~were~~ not applicable to the staff working in the Calcutta office. In view of this, the respondents' plea is that the order of the Calcutta Bench ~~does~~ not apply to the case of the applicant who has been transferred along with the post as per the policy instructions laid down in letter dated 30.12.1991.

4. Respondent No. 3 has filed a separate written reply. The Respondent No. 3 has contended that the decision regarding decentralisation of purchases and transfer of the staff along with the posts is a ~~policy~~ matter and therefore the Tribunal has no jurisdiction to question this policy decision or to modify or nullify the same.

5. The applicant has not filed any rejoinder ^{the} reply for the written statement of Respondents No. 1 & 2 and Respondent No. 3.

6. We have heard the arguments of Shri G.K.Masand, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents. The material brought on record has been carefully gone into.

7. The learned counsel for the respondents during the arguments strongly contended that the decision of Govt. of India for decentralisation of purchases, transfer of the staff along with the posts and absorption of the staff is a policy matter and therefore the Tribunal has no jurisdiction to interfere with the policy decision or to issue any direction to modify or nullify the same. The respondents relied upon the judgement of the Hon'ble Supreme Court in the case of State of Andhra Pradesh vs. B.C.Subbarayudu & Ors., 1998 SCC (L&S) 605, in support of this contention. We have carefully gone through this judgement. The issue involved in this case was the taking over the cadre of Divisional Accounts from the Accountant General. State Government laid down policy instructions for this purpose which were challenged. The Hon'ble Supreme Court has observed while considering the issue that it is a matter of policy which has been decided by the State Government in its wisdom by creation of a separate cadre and therefore Supreme Court cannot give any direction to the State Government to have a different policy. Keeping in view what is held by the Supreme Court, we fairly concede that the matter with regard to decentralisation and laying down instructions regarding transfer of staff is a policy matter and within the competence of the Government of India and no direction could be issued to modify the existing policy or ~~laid~~ down any modified policy. The applicant in this case has sought relief in terms of the policy laid down in the letter dated 30.12.91 and has not asked for any modification of the policy instructions. Therefore, the issue involved in this OA. would be considered on merits within the frame work of the policy instructions laid down as per the letter dated 30.12.1991 to find out if the claim made out by the applicant is sustainable.

8. As indicated earlier, the main thrust of the arguments of the applicant is that the applicant was transferred in terms of the policy instructions (30.12.1991) along with the post to the Office of Respondent No. 3 on a deputation basis with lien maintained in the Office of Respondent No. 2. In view of this, the applicant's contention is that if he is not willing to get absorbed in the Office of Respondent No. 3, he is entitled to be repatriated to the Office of Respondent No. 2. The respondents, on the other hand, have contended that the applicant was transferred along with the post to the Office of Respondent No. 3 and in terms of Para 3 of letter dated 30.12.1991, the applicant along with the other staff has to be absorbed in the host department. We have carefully gone through the Para 3 of the letter dated 30.12.1991. We are unable to appreciate the contention of the respondents. Para 3.1 lays down the number of posts to be transferred on decentralisation to the various offices. Para 3.1 stipulates that corresponding number of officers and staff as per the posts transferred shall also stand transferred. Paras 3.2 and 3.3 lay down as to how the transfer of such staff along with the posts should be treated. Para 3.2 covers the officers of Indian supply Service who would continue to be borne on the cadre of Indian Supply Service and the cadre will be controlled by the Department of Supply, while Para 3.3 covers the rest of the officers and staff. Para 3.3 provides that officers and staff will be transferred on deputation and will have an option to get absorbed in the receiving Ministry/Department

including their field units, if they so choose. In view of this clear provision, the interpretation made by the respondents that the transfer of the staff to the receiving Ministry/field unit was on absorption basis is not sustainable. In the present case, the applicant is not willing for absorption in the Office of Respondent No. 3 and therefore he is entitled to be repatriated back to the Office of Respondent No. 2.

9. The contention of the respondents that the staff was transferred on absorption basis also does not stand if the matter is considered from another angle. If the staff is to be absorbed in the receiving Ministry/Field Unit, then the transfer of the staff should have been done on the basis of seniority. It is not the case of the respondents that the staff as per the order dated 1.2.1993 was transferred as per the seniority. As understood from the averments of the applicant that the staff who was ~~dealing~~ with the purchases of Respondent No. 3 was transferred irrespective of the seniority. If the staff was not transferred on ^{as per seniority} absorption basis to the receiving Ministry/Field Unit, then the senior who is not willing to be absorbed cannot be forced to be absorbed in the receiving field unit.

10. The applicant has relied upon the order of the Calcutta Bench in the case of Rajat Mukhopadhyay ^{as} & Ors. vs. Union of India & Ors. referred to earlier. The respondents have contended that the decision in this case is not applicable to the case of the applicant as the instructions laid down in the letter dated 30.12.91 are not applicable to the staff posted in Calcutta Unit.

We have carefully gone through this order and we are unable to appreciate the contention of the respondents. The issue involved in this OA. was also the implementation of the instructions laid down in the letter dated 30.12.1991. The issue involved in the OA. is exactly the same as involved in the present OA. The staff who had been transferred to the host unit were not willing to get absorbed and wanted to be repatriated to parent department. The Bench in this order had come to the conclusion that only the junior most could have been transferred on the absorption basis in the host unit and therefore the plea of the applicants was accepted. We are in full agreement with what has been held in this order and, therefore, the applicant in the present OA. is entitled for the relief prayed for.

11. In the light of the above discussion, we allow the OA. with the following directions :-

- (a) The applicant shall be repatriated to the Office of Respondent No. 2 as per his option either against the existing vacancy, if any. If there is no vacancy available, the vacancy may be created by transferring the junior most.
- (b) The applicant on transfer back shall be entitled to all the consequential benefits as available with regard to his junior as per the extant rules.

(c) The compliance of the order shall be done within a period of four months from the date of receipt of the order.

(d) No order as to costs.

D.S.Baweja
(D.S.BAWEJA)
MEMBER (AG)

mrj.

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN