

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. NO.518/99

Dated, the 1st July, '99

BETWEEN :

V. Parthasarathy

.... Applicant

A N D

1. The Adjutant General Dte,
Genl of Org/Org 4 (civ) (b)
Army H.Q. DHQPO, New Delhi-110011.
2. The Garrison Engineer,
C.E(I)R&D Kanchanbagh,
Hyderabad.
3. The Chief Engineer, CE R&D,
Secunderabad-500 003.

... Respondents

COUNSELS :

For the Applicant : Mr. Surendra Desai

For the Respondents : Mr. B.N.Sarma

CORAM:

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER: HON'BLE MR. B.S.JAI PARAMESHWAR, MEMBER (J)

1. Heard Mr. Surendra Desai learned counsel for the applicant and Mr. M.C. Jacob for Mr. B.N. Sarma, learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act.
3. The application was filed on 5.4.98.
4. During the year 1996, the applicant was working as Pt. Ferro Printer in the Office of the Controllerate of Quality Assurance (for short CQA), OFPM Estate, Yeddu-mailaram, Medak District in the scale of pay of Rs.800-1150 (pre-revised).
5. The applicant made a request for transfer to Hyderabad on compassionage grounds.
6. The SCSO, Director (MP), Org 4 (Civ(b) & (d) by his proceedings No.16000/Comp/Oct/1/96/Org 4 (Civ) (b) dt. 18.10.96 (Annexure-R1 to the reply) transferred the applicant to the O/o the Respondent No.2. Paras 6 & 7 of the said letter are relevant. They are reproduced herein below :

"6. Those individuals who have been transferred in lower scale of pay will be required to submit a willingness certificate in duplicate accepting the same. One copy should be placed in the service Book and other be invariably forwarded to this HQ. If refused an unwillingness certificate may be sent for cancellation of posting order.

7. The pay of the individuals will be fixed in accordance with the following provisions of CPRO 82/90 :

a) In cases where posting/transfer involves no

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change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn. The date of increment will remain unaltered.

- b) In cases where posting/transfer involves change in trade/grade, the service rendered in the previous post will be treated as continuous. In such cases the pay of the individuals will be fixed in the new pay scales at the stage equal to the pay drawn in the old pay scale or if there is no such stage next below that pay, the difference being treated as personal pay to be absorbed in the next increment in the new pay scale.
- c) In cases where posting/transfer involves reduction in the grade/trade the pay of the individuals will be fixed by giving the benefit of completed years of service rendered in the previous post.
- d) When the appointment is made to a new post and the maximum in the time scale of that post is less than his quasi-permanent/substantive pay in respect of the old post, the individual will draw that maximum as initial pay."

7. The applicant reported for duty in the O/o of the Respondent No.2. w.e.f. 13.11.96.

8. At the time of his transfer the basic pay of the applicant was Rs.950/- in the above mentioned scale of pay. The applicant submits that he was allowed to draw ~~the~~ his usual pay and allowances in the said scale of pay in the office of the respondent No.2.

9. The applicant has made certain allegations in para 6 (b) (c) & (d) of the O.A. affidavit against the incumbent of the office of the respondent No.2. The incumbent has not been made a party to the application. Hence, in my humble opinion, I cannot take cognizance of the same and draw inference

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against the said Officer.

10. However, by proceedings of even number dt. 31.10.97, the SCSO(DAAG (MP) (for Adjutant General) repatriated the applicant to his parent Department at Yeddu-mailaram.

11. The applicant then approached this Tribunal in O.A. No.1574/97 challenging his repatriation to the parent department by the order dt. 31.10.97. The respondent No.2 took a stand that in the O/o the respondent No.2 there was no post of Ferro Printer in the scale of pay of Rs.800-1150, but a post ~~pay of pay~~ of Ferro Printer in the scale of pay of Rs.825-1200 was available and that the applicant could not be posted to that higher post and thus justified their stand in repatriating the applicant to his parent department. The applicant while assailing the order of repatriation placed reliance on para 7(b) of the order dt. 18.10.96. As the applicant had not submitted a detailed representation to the respondent authorities for consideration of para 7(b), the Tribunal disposed off the O.A. directing the applicant to submit, if so advised, a detailed representation to the competent authority, specifically bringing notice to the competent authority ~~the~~ para 7(b) of the order dt. 18.10.96. Thus the Tribunal issued directions as under :

"In view of the above, we feel that the applicant now should submit a detailed representation indicating the provisions in para 7(b) of the order dated 18.10.96 to the appropriate respondents. On receipt of the representation the respondents should re-examine this issue and pass a speaking order. Till such time the proposed representation is disposed of the impugned order No.16000/Capp/Oct/1/96/Org.4(Civ) (b) dt.31.10.97 should not be enforced."

12. Accordingly, the applicant submitted his representation dt. 29.11.97 (Annexure 15 page 1530 to the O.A.)

13. In the meanwhile, the parent unit viz. CQA, OFPM abolished Estate, Yeddu-mailaram had ~~the~~ the post of Ferro Printer (800-1150)



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as could be seen from the letter dt. 3.12.97 of the SCSO, Director (MP) and suggested to allow the applicant to carry his scale of pay. A copy of the letter dt. 3.12.97 is at Annexure-VIII page 22 to the O.A.

14. However, no action appears to have been taken on the basis of the letter dt. 3.12.97 of the Director.

15. On 9.4.98, the AE E/M, AGE(Tech) for Garrison Engineer directed the applicant to submit his application for considering his case to adjust against the vacancy of Duftry in the scale of pay of Rs.775-1025 in the O/o the CCE(R&D), Secunderabad and also to furnish his willintness. A copy of the letter dt. 9.4.97 is at Annexure-IX page 23 of the O.A.

16. The applicant in reply thereof sought a speaking order on his representation in compliance with the directions given in O.A.1574/97.

17. The applicant submits that he had ~~not~~ submitted any application nor expressed his willingness to accept the post of Duftry in the O/o CCE(R&D), Secunderabad.

18. Despite, the Garrison Engineer by his order dated No.111/607/EIB dt. 17.11.98 posted the applicant as Duftry in O/o CCE(R&D) , Secunderabad. A copy of the order is at Annexure-XI, page 25 to the O.A.

19. Then the applicant approached this Tribunal in C.P. No.127/98 in O.A.1594/97, complaining non-compliance of the directions given in O.A.1594/97. That C.P. was disposed off on 23.11.98 observing as under :

"5. We have heard both the sides. Though there may be some force in the argument of the respondents, We are of the opinion that the compliance of the order of this Tribunal dated 24.11.97 requires disposal of his representation and then issue any further ^{order} as required. As that representation is not disposed of, the order dt. 17.11.98 should be stayed and the respondents should be directed to dispose of the representation and reviv^e the order dt. 17.11.98 thereafter if so advised.

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6. In the result, the following direction is given:

The order dt. 17.11.98 is suspended till clear 2 working days after the issue of the reply to the representation dt. 29.11.97."

20. Accordingly, the SCSO, AG considered the representation dt. 29.11.97 by his order dt. 16.3.99 (Annexure-II page 11 to the O.A.) and posted the applicant as Duftry in CE (R&D), Secunderabad.

21. The applicant has filed this application for the following reliefs :

"to call for all the connected records including proceedings No.16000/Camp/Oct/1/96/Org.V(iv) (b) dated 16.3.1999 of the 1st Respondent and quash the same as illegal, improper, arbitrary and contrary to Rule 7(b) of CPRO Rules 82/80 and consequently direct the Respondents not issue Movement Order to the applicant directing him to join the office of the 3rd Respondent in the post of Duftry in the interest of justice

22. The applicant has challenged the impugned order on the following grounds :

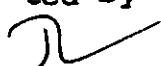
- (a) The impugned order is not in accordance with the direction of this Tribunal dt. 31.10.97.
- (b) The impugned order wrongly interprets the rule 7(b) of the CPRO Rules 1980.
- (c) When the respondents feel that the applicant cannot be put into higher scale of pay i.e. 825-1200 in the O/o the respondent No.2 then naturally, the respondents cannot put him to a lower post of Duftry.
- (d) By the impugned order the respondents are attempting to provide him a lower post of Duftry in the scale of pay of Rs.775-1025 which is a non-technical post.

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23. The respondents have filed their reply. They submit that at the time when the applicant was transferred from CQA Yeddu-mailaram to the O/o the Respondent No.2, the basic pay was Rs.950/-.. They submit that they allowed the applicant to continue in the same pay and allowances. When they considered the case of granting an increment to the applicant they noticed that there was no post of Ferro Printer in the O/o the Respondent No.2 in the scale of pay of Rs.800-1150; and that the post of Ferro Printer in the O/o the Respondent No.2 carried the scale of pay of Rs.825-1200; that the applicant could not have been transferred to a higher scale of pay; that therefore, then by the order dt. 31.10.97, (Annexure-R2), the respondents attempted to repatriate the applicant to his parent department; that then the applicant approached this Tribunal; that in accordance with the directions given by this Tribunal in the said application, the applicant submitted a detailed representation dt. 29.11.97 and the same was considered and passed the impugned order dt. 16.3.99. Thus they justify their action and further submit that all by the representation dt. 18.4.97, the applicant himself had sought for posting him in a lower grade and thus he was posted in the ~~grade~~ ^{of pay} scale of Rs.775-1025 in the post of Duftry in the O/o CE(R&D), Secunderabad.

24. The main grievance of the applicant is that even though he was transferred to the O/o the respondent No.2 on compassionage grounds, he could not have been given a lower scale of pay. He submits that he reported in the O/o the respondent No.2 as per order dt. 18.10.96 on 13.11.96. At that time, the respondent No.2 allowed him to work in the same scale of pay. However, without disclosing any reasons he was repatriated by the impugned order dt. 31.10.97.



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25. The transfer dt. 18.10.96 provides for fixing of scale of pay and also provides for obtaining options from those employees who were posted/transferred to a lower post. So far as the applicant was concerned no remarks were made in the order dt. 18.10.96. It is after a lapse of nearly 1 year, the respondents thought of reverting him back to his parent department viz., CQA, Yeddu-mailaram. The explanation given by the respondents is that there was no post of Ferro Printer in the scale of pay of Rs.800-1150 which the applicant was carrying on at CQA Yeddu-mailaram; that the post of Ferro Printer in the O/o the respondent No.2 carried the scale of pay of Rs.825-1200; that the applicant could not have been posted to a higher scale of pay on transfer on compassionate grounds; that therefore relying upon the representation dated 18.10.93, they thought it proper to post him to the post of Durwan in the O/o CE(R&D), Secunderabad.

26. The contention of the applicant is that when the respondents felt that he could not be posted to a higher scale in the O/o respondent No.2, likewise without his willingness, he could not be posted to a lower post even on transfer on compassionate grounds. The respondent authorities before passing the impugned transfer order dt. 18.10.96 they should have considered the pros and cons of his transfer to the O/o the respondent No.2. It is not as if they were not aware of the position. The para 7(b) of CPRD Rules 1980 relied upon by the applicant is clear on the subject. It is not as if an employee on compassionate grounds could be transferred to a higher scale of pay. If they felt that such a thing was not permissible under the rules they should have explained the rule position to the applicant and

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should have sought whether he was willing to accept any lower post which according to the rules was available. Instead of doing that without stating any reasons thereof, they passed the impugned order dt. 31.10.97. That order was challenged by the applicant in O.A.1574/97 when the respondents took such a contention, then the applicant relied upon para 7(b) of CPRD Rules 82 of 1980, the Tribunal thought it proper to consider that rule position before implementing the order of repatriation dt. 31.10.97.

27. In the impugned order dt. 16.3.99, the explanation offered by the respondents are not convincing.

28. Further during the course of the arguments, the learned counsel for the respondents relied upon the O.M. of the Department of Expenditure bearing No.13(2)/IC/92 dt. 7.4.95 to contend that by the said O.M. the 2 scales of pay viz. Rs.775-1025 and Rs.800-1150 were merged into a single and elongated scale of pay of Rs.775-1150.

29. The applicant in his rejoinder has stated that this O.M. is dt.7.4.95 is not at all considered by the Fifth Pay Commission and that the Fifth Pay Commission has considered the scales of pay separately. He relied upon the revised scales of pay for Rs.775-1150 revised to Rs.2610-3540 and for Rs.800-1150 revised to Rs.2650-4000. Thus he contends that the O.M. dt. 7.4.95 is not at all in existence now and therefore it cannot be said that there is an elongated scale of pay for Rs.775-1150 as indicated in the O.M. There is substance in the contention of the applicant.

30. The main grievance of the applicant is that the respondents are attempting to transfer him to CE(R&D), Secunderabad to a lower post i.e. Duftry which carries the scale of pay of Rs.775-1150. It is his contention that the respondents themselves are/interpreting para 7(b) of the order dt. 18.10.96. In the impugned order dt. 16.3.99

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the respondents have not properly explained how they interpreted para 7(b) of the order dt. 18.10.96. If they felt that there was any difficulty for them to give proper interpretation, they should have sought necessary instructions from their superior officers. In fact, they were fully aware that the parent department of the applicant viz. CQA, OFPM Estate, Yeddu-mailaram had not kept a lien of the applicant in their establishment. Knowing this fully well, the SCSO, Director, for A.G. in his letter dt. 3.12.97 (Annexure-8 page 22 to the O.A.) suggested to continue the applicant to carry his scale of pay of Rs.800-1150. The proposal suggested by the SCSO, Director, clearly indicates that the respondents can accommodate the applicant in the scale of pay of Rs.800-1150 in Hyderabad or Secunderabad.

31. As a background the applicant narrates certain incidents that made the respondent No.2 to take steps to send the applicant to his parent department. I am not accepting the contention of the applicant in this regard. The respondents are/interpreting para 7(b) in letter and spirit. If they take a decision that the applicant cannot be accommodated in Hyderabad or Secunderabad protecting his pay on compassionate transfer then they must explain the rule position to the applicant and obtain his willingness for accepting any lower grade post in Hyderabad or Secunderabad and take a decision only after his acceptance is received. The respondents themselves allowed the applicant to continue his scale of pay for a period of nearly one year. It is only on 31.10.97 they attempted to repatriate the applicant to his parent department. However, by the letter dt. 3.12.97, they came to know that the post of Ferro Printer in the parent department of the applicant viz. CQA, OFPM Estate, Yeddu-mailaram was abolished. In case the applicant fails to



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express his willingness to accept any post in a lower grade at Hyderabad or Secunderabad even though protection of his pay is assured then the respondent authorities may correspond with the parent department of the applicant and request them to take back post the applicant in his own scale of pay ^{in any} having ~~the~~ the post or the respondents may consider the feasibility of transferring the applicant along with the post of Ferro Printer from the parent department. Without protecting the scale of pay the respondents must not attempt to transfer the applicant from the parent department on compassionate grounds. I have no objection, if the applicant expresses his willingness to accept a lower grade post in Secunderabad or Hyderabad. Then the respondents may provide the said post without any loss of pay to the applicant.

32. Till such time, I feel it proper to allow the applicant to continue in the scale of pay of Rs.800-1150 as has been done earlier.

33. Hence, the following directions are given.

- a) The impugned order dt. 16.3.99 is hereby set aside.
- b) The respondents ~~may~~ consider the feasibility of transferring the applicant along with the post to Secunderabad or Hyderabad.
- c) The respondents shall properly interpret the para 7(b) of the order dt. 18.10.96 and provide protection of pay to the applicant. If they feel any difficulty in giving proper interpretation to the said clause they may take necessary guidance from their superior officers.

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d) In case the respondents take a decision that it may not be feasible for them to accommodate the applicant in the scale of pay of Rs.800-1150, then they must explain the rule position to the applicant in writing and may seek his willingness to accept any of the lower post in Hyderabad or Secunderabad and on his option they may act as per rules.

e) Till such time, the applicant shall be continued as has been done upto now i.e. allow him to work at Hyderabad in the scale of pay of Rs.800-1150.

f) The respondents shall take a decision on these aspects within 4 months from the date of receipt of a copy of this order.

34. With the above directions the O.A. is disposed off.
No order as to costs.

B. S. Jai Parameshwar
 (B.S. JAI PARAMESHWAR)
 Member (Judl.)

Dated, the 15th July, '99

Ans
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