

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

(1)

Date of order: 25-7-1996

OA No. 141/96

Dr. G.S.Somawat

.. Applicant

Versus

Union of India and Ors.

.. Respondents

Applicant present in person

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Dr. G.S.Somawat had prayed that the order dated 13-2-96 (Ann.A1) transferring the applicant to the Office of the Director, National Commission for SCs and STs, Ahmedabad, may be quashed, the respondents may be directed to withdraw their instructions contained in letter dated 19-2-96 (Ann.A2) by which the applicant was asked to take over charge of the Office of Director, National Commission for SCs and STs, Ahmedabad by 29-2-96 and to grant Earned Leave to the applicant which matter is already pending before respondent No.2. He has further prayed that the respondents may be directed not to transfer the applicant till the disposal of the present OA and the OA No. 536/95 which is pending before this Bench of the Tribunal.

2. The applicant had also prayed for grant of interim

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relief to the effect that the operation of transfer order dated 13-2-96 and letter dated 19-2-96 may be stayed till the final disposal of the present OA and the OA No. 536/95 which is still pending. The Tribunal by order dated 29-2-96 had rejected the applicant's request for grant of interim relief as prayed for therein.

3. The facts of the case as stated by the applicant are that he came on transfer to Jaipur office of the National Commission for SCs and STs from Guwahati and was posted as Deputy Director at Jaipur. By order dated 2-1-96 (Ann.A3), the applicant was promoted to the post of Director in the Commission, scale Rs. 3700-5000, on adhoc basis from the date he assumed charge of the post until further orders or till the post is filled up on a regular basis, whichever is earlier. The applicant submitted his joining report for the post of Director at Jaipur. Thereafter vide Ann.A4 dated 16th January, 96, a notification was issued by the Government of India, Ministry of Welfare, appointing the applicant as Director for a period of 6 months or till the post is filled on regular basis, whichever is earlier. It was clarified in the said notification that the appointment is purely on adhoc basis. Thereafter, respondent No.2 i.e. National Commission for SCs and STs passed an order dated 13th February, 96 (Ann.A1) by which the applicant was transferred to the Office of Director, National Commission for SCs and STs, Ahmedabad, in the public interest. Letter dated 19-2-96 (Ann.A2) was subsequently issued by the Commission informing the applicant that he should hand over charge of the Office of Deputy Director, Jaipur to

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the Senior Investigator or in his absence to any of the senior officials immediately and that he should take over charge at Ahmedabad by 29-2-96 after availing himself of the joining time as admissible under the rules. Before that, on 29-1-96 (Ann.A5), the Commission had informed the applicant that at present there is no post of Director at the Jaipur office and therefore, the applicant cannot take charge of that post at Jaipur. He was informed by this letter that his posting as Director in the Commission is under consideration and orders in this regard will be issued shortly. His joining report as Director at Jaipur was returned to him by this communication. The applicant made a representation Ann-A7 dated 7-2-96 praying, in effect, that he may be allowed to continue on his adhoc promotion on the post of Director at the Jaipur office.

4. The applicant's case is that his OA No. 536/95 praying, interalia, for promotion to the post of Director w.e.f. September, 93 is still pending before this Bench of the Tribunal. The contention of the respondents that there is no post of Director at Jaipur is wrong and malafide as is clear from the applicant's transfer order dated 13-2-96 (Ann-A1). The applicant's joining report at Jaipur was accepted w.e.f. 4-1-96 by respondent No.1 i.e. Government of India, Ministry of Welfare. Therefore, the non-acceptance of the joining report of the applicant by respondent No.2 i.e. the National Commission was wrong and malafide. The transfer order of the applicant dated 13-2-96 shows bias of respondent No.2. There is no other Gazetted Officer posted at Jaipur to whom the charge of the office can be handed over by the applicant. Setting of

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a date by respondent No.2 by which the applicant should take over charge at Ahmedabad is unlawful and unreasonable. The applicant has been singled out from amongst various other officers for transfer whereas others have been given posting at the same station from where they have been promoted. The applicant has also served his tenure in the North-Eastern Region but the respondents have singled him out and transferred him from his choice station i.e. Jaipur within the shortest possible period as compared to other officers who have completed their tenure in North-Eastern Region.

5. The respondents in their reply have stated that the promotion of the applicant, ordered by Ann-A3 dated 2-1-96 was to take effect from the date of assuming charge of the post of Director. Since the post of Director at Jaipur was abolished by the Ministry of Welfare on 12-3-92 vide Ann-P1, the applicant's report dated 4-1-96 regarding joining duty as Director in the Jaipur office submitted to the Commission was returned to him vide Commission's letter dated 29-1-96 (Ann-A5), with the direction that since there was no post of Director at Jaipur, he could not take charge of the post of Director at Jaipur. By communication dated 29-1-96 he was informed that his posting as Director was under consideration and vide communication dated 19-2-96 the Commission had directed him to hand over charge of the Jaipur office and join at Ahmedabad on the post of Director. According to the respondents these instructions were ignored by the applicant. The promotion of the applicant on the post of Director on adhoc basis was in the normal course and not at all with a view to frustrating the purpose of the pending OA No. 536/95 filed

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by the applicant which is still pending. The applicant's representation dated 7-2-96 was duly considered but since there was no post of Director at Jaipur, it was not possible to accede to his request to allow him to continue at Jaipur on the post of Director. The applicant has wrongly sent his joining at Jaipur to the Ministry of Welfare directly although he was aware that the post was not in existence at Jaipur. The notification Ann.A4 dated 16-1-96 had been issued by the Ministry of Welfare, Government of India (respondent No.1) under the wrong impression created by the joining report submitted by the applicant. While there was no post of Director at Jaipur, the applicant was posted to Ahmedabad where this post exists as that place is nearest the home state of the applicant which is Rajasthan. As regards the earned leave matter, the applicant had applied for earned leave for 26 days. This leave was sanctioned on 7-3-96.

6. During the arguments, the applicant reiterated that the post of Director is available at Jaipur and he can be allowed to continue against the said post. He further stated that at present, he is continuing at Jaipur as a Deputy Director and is drawing scale of the post of Deputy Director only, because his pay in the post of Director which ~~has~~ to be fixed by the respondents has not yet been fixed. The learned counsel for the respondents stated during the arguments that although the adhoc promotion of the applicant to the post of Director is for a period of 6 months, this period of 6 months would be reckoned from the date he joins the post of Director at Ahmedabad. This position has also been clarified by the respondents in communication Ann.R3 dated 7th March, 96, addressed to the applicant.

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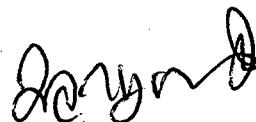
7. We have heard the applicant and the learned counsel for the respondents and have gone through the material on record.

8. The respondents have taken an unequivocal stand that there is no post of Director of the Commission at Jaipur. No doubt, in the order Ann.A3 dated 2-1-96 by which the applicant was promoted as Director, there is no mention of the place where he has to join duty as Director. Also, on the applicant's submitting his joining report, respondent No.1 issued notification Ann.A4 dated 16th January, 96 appointing him to the post of Director w.e.f. 4.1.96 (FM) but no place is mentioned where he has to join duty. The respondents have stated that it was not proper for the applicant to have submitted joining report directly to respondent No.1 because he was working directly under respondent No.2. Therefore, it was under an ~~erroneous~~ impression created by the applicant that respondent No.1 issued the notification Ann.A4 appointing the applicant to the post of Director w.e.f. 4-1-96. Actually an appointment takes effect only when the person concerned joins duty at the place at which he is posted. There was, no doubt, no place of posting mentioned in Ann.A3, the promotion order, as already mentioned above. Subsequently, the position has been clarified by the respondents firstly by issuing communication Ann.A5 dated 29-1-96 and thereafter by passing the formal order of transfer Ann.A1 dated 13-2-96. A further clarification was also issued by Ann.A2 dated 19-2-96 asking him to hand over charge at Jaipur to the seniormost officer available there and to join duty at Ahmedabad by a specific date. When no post of Director was available at Jaipur,

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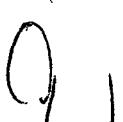
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there was no question of the applicant's joining duty as Director at Jaipur. At most on account of some misunderstanding created by order Ann.A3 dated 2-1-96 by which the applicant was promoted and in which no place of posting was mentioned, the applicant could perhaps assume that he was to function as Director at Jaipur but this position could not continue after the applicant received communication Ann.A5 dated 29-1-96. We do not see how the applicant could continue in the office of the Commission at Jaipur as the post against which he has to function does not exist. Therefore, there is no question of quashing the order of transfer to Ahmedabad on the ground that the post of Director at Jaipur exists. As regards the other grounds raised which have been mentioned in his representation dated 7-2-96, the respondents are expected to judge the situation in the light of the factual position prevailing on the ground and we would not like to interfere with the order of transfer on account of the grounds mentioned by the applicant in Ann.A7 dated 7-2-96. As regards the applicant's grievance relating to non-sanctioning of his leave, it has already been redressed by the respondents. In the circumstances, we find no merit in this application now and it is dismissed with no order as to costs, at the stage of admission.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member