

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No 689 of 2005

Jabalpur, this the 27th day of September 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

R.K. Bhatt, son of Shri B.L. Bhatt,
Aged about 46 years,
Assistant Foreman, Senior Quality Assurance
Establishment (Electronics), Gun Carriage
Factory, Jabalpur (M.P.)

Applicant

(By Advocate – Shri A.P.Shrotri)

V E R S U S

1. Union of India
Through Secretary Ministry of Defence,
Department of Defence Production and
Supplies New Delhi.
2. Director General (Quality Assurance)
Department of Defence Production and
Supplies (DGQA) Government of India
Ministry of Defence DHQ, New Delhi.
3. Senior Quality Assurance Officer,
Senior Quality Assurance
Establishment (Electronics),
Gun Carriage Factory PO,
Jabalpur (M.P.) 482 001.
4. Junior Technical Officer C/o
Senior Quality Assurance Officer
Senior Quality Assurance
Establishment (Electronics),
Gun Carriage Factory PO,
Jabalpur (M.P.) 482 001.

Respondents

(By Advocate – Shri Manish Chourasia)



ORDER (ORAL)

By Madan Mohan, Judicial Member -

By filing this Original Application, the applicant has sought the following main reliefs :-

“(1) Quash the orders, dated 25.7.2005 as reproduced in order, dated 26.7.2005 (Annexure A/1), 26.7.2005 (Annexure A/1) and 27.7.2005 (Annexure A/4), insofar as it is related to the applicant;

(2) Direct the respondents to produce the entire records pertaining to the posting of the applicant to Chennai before this Hon. Tribunal.”

2. The brief facts of the case are that the applicant is working as Assistant Foreman in Senior Quality Assurance Establishment (Electronics) (for short 'SQAE (L)'). Vide order dated 26.7.005 (Annexure-A-1), the applicant has been transferred to Controllerate of Quality Assurance (AVL), Chennai under Temporary Transfer of Post Policy dated 4.3.2003 (Annexure-A-2). This order has been passed by the respondent No.4. The perusal of the same would clear that the same is reproduction of an order dated 25.7.2005. The copy of the aforesaid order dated 25.7.2005 is not supplied to the applicant inspite of his demand. Under the aforesaid Temporary Transfer of Post Policy, dated 4.3.2003 (Annexure-A-2), the Hon'ble President of India has delegated the powers to the respondent No.2 for temporary transfer of posts and not the persons. Such delegation was valid for the period of three years from 9.7.2002 to 9.7.2005. Thus, the orders dated 25.7.2005 and 26.7.2005 (Annexure-A-1) are illegal. Only respondent No.2 DGQA could pass any order under the aforesaid Temporary Transfer of Post Policy as well as the power under Temporary Transfer of post Policy could not be exercised beyond 9.7.2005 and the impugned orders are passed beyond 9.7.2005. The applicant contended that in furtherance of the aforesaid orders, dated 25.7.2004 and 26.7.2005 the respondent No.4 has passed movement order dated 27.7.2005 (Annexure-A-4), whereby the applicant has



been directed to be relieved from his duties w.e.f. 5.8.2005 and will be SOS (Struck Off Strength) of the establishment w.e.f. the same date. The order further mentions that the applicant is being sent under Temporary Transfer of posts policy on duty of permanent nature. As the aforesaid order is passed by an incompetent authority, the same is illegal. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant has argued that a similar type of matter has been considered and decided by this Tribunal on 10.1.2005 in OA No.715/2004 in the case of R.K. Shroti Vs. UOI & Ors., which was allowed. He also argued that vide order dated 25.7.2005 (Annexure-A/2-A), he has been temporarily transferred to CQA (AVA) Chennai. Under Temporary Transfer of Post Policy, dated 4.3.1999 the DGQA is competent to pass such order and the aforesaid impugned order dated 25.7.2005 has neither been passed by the DGQA nor has been approved by the DGQA. A bare perusal of the aforesaid impugned order dated 25.7.2005 would clear that no time limit is specified. Moreover, if the post is temporarily transferred, the duty move cannot be permanent. Thus, as the impugned order does not mention that it is a temporary duty move for a period less than 180 days, hence this order cannot be said to be passed under Circular dated 17.4.1971 (Annexure-R-2). Approval of the applicant's transfer, dated 21.7.2005 does not say that it is a temporary duty move but say that it is a transfer of manpower under DGQA note, dated 12.5.2005, whereas there is nothing on record to suggest that the DGQA approved the transfer of applicant R.K. Bhatt. The learned counsel for the applicant further argued that temporary transfer of post policy has already been expired on 9.7.2005. Thus, no action could be taken in pursuance thereof. Hence, the applicant is entitled for the relief claimed.



5. In reply, the learned counsel for the respondents argued that the facts and circumstances of the case of R.K. Shrotri (supra) are not similar to the present case because certain facts could have not been placed during the hearing of the aforesaid case whereas certain new orders and documents are filed in the present OA. He also argued that the Government of India Ministry of Defence vide letter dated 4.3.2003 had delegated the power of temporary transfer of posts with the DGQA establishments. The power has been delegated to Director General of Quality Assurance for temporary transfer of service and civilian posts within the Directorate General of Quality Assurance subject to certain terms and conditions as laid down in Annexure-R-1. These powers were valid up to 8.7.2005 and a review was to be conducted thereafter. The same is under consideration of the Government. In accordance with the powers delegated as above, the proposals submitted by different Directors of DGQA were vetted by Standing Review Committee on 5.4.2005. The Standing Review Committee has recommended transfer of manpower for Electronics Discipline to CQA (AVL) Avadi from different establishments of Electronic discipline. The same was issued vide letter dated 12.5.2005 (Annexure-R-4). The Standing Review Committee approved the proposal of transfer of three posts of in which one post of Jabalpur has been transferred to Avadi. He further argued that the number of A/F authorized in CQA (AVL), Avadi stands therefore, enhanced by this additional post. Director of Quality Assurance (Electronics) who is the competent authority for issuing promotion and posting order of NGOs as per letter dated 17.4.1971 (Annexure-R-2), has issued the posting order dated 29.7.2005 (Annexure-R-3) in respect of the applicant. The learned counsel for the respondents has drawn our attention towards order dated 25.7.2005 (Annexure-A-2A) issued by the Director in compliance with DGQA note dated 12.5.2005 New Delhi by which it has been ordered to transfer the applicant from Jabalpur to Avadi,




Chennai and he has also drawn our attention towards Annexure-R-5, which bears signature of AS(DP) and DGQA on 4.5.2005.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the arguments advanced on behalf of the respondents that at the time of passing of order dated 10.1.2005 passed in OA No. 715/04 certain documents could not have been produced by the respondents, therefore that OA has been allowed by this Tribunal, the applicant cannot take benefit of the aforesaid order of the Tribunal. This arguments seems to be correct because on that time the respondents have not produced the certain documents. We have perused order dated 25.7.2005 (Annexure-A-2A) by which the applicant was ordered to be transferred from Jabalpur to Avadi, Chennai issued by the Director, New Delhi in compliance with the DGQA note dated 12.5.2005. We also find that the argument of the applicant is that the temporary transfer of post policy expired on 9.7.2005 and the aforesaid order 25.7.2005 was passed after expiry of period. In this regard the respondents have clearly mentioned in their reply that the delegated powers to DGQA were valid for a period of three years w.e.f. 9.7.2002 to 8.7.2005. However, thereafter a review was to be conducted and the same is under consideration of the Government. In accordance with the powers delegated as above, the proposals submitted by different Directors of DGQA were vetted by Standing review Committee on 5.4.2005. The Standing Review Committee has recommended transfer of manpower for Electronics Discipline to CQA (AVL) Avadi from different establishments of Electronic discipline. The same was issued vide letter dated 12.5.2005. The Standing Review Committee approved the proposal of transfer of three post out of which, one post from SQAE(L) Jabalpur to CQA (AVL), Avadi. It is further clarified that the number of A/F authorized in CQA (AVL). Avadi stands therefore, enhanced by this additional post. The Director of Quality Assurance (Electronics) who is the competent authority for issuing promotion and posting order of



NGOs in accordance with the Director General of Inspection letter dated 17.4.1971 (Annexure-R-2) and he has issued the posting order dated 29.7.2005 (Annexure-R-3) in respect of the applicant. We also find that the proposal dated 28.4.2005 (Annexure-R-5) for delegating the power to temporary transfer of posts for the calendar year 2005 to the concerned director has already considered and approved by the AS(DP) and DGQA on 4.5.2005. However, the approval is under consideration to Government. We also find in the order dated 25.7.2005 that the respondents have transferred the applicant under the temporary transfer of posts due to exigencies of service. It is a settled legal position that who should be posted where is the sole prerogative of the competent authority. In this view of the matter we do not find any ground to interfere with this matter at this stage.

7. After considering all the facts and circumstances of the case, we are of the considered opinion this OA is bereft of merits. Accordingly, the same is dismissed and our interim order dated 2.8.2005 stands vacated. No costs.


(Madan Mohan)
Judicial Member


M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जयलपुर, दि.....

चलितदिपि जारी दिवस:-

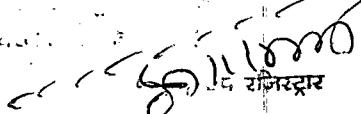
(1) सचिव, उच्च न्यायालय, जयलपुर

(2) आदेशक, जयलपुर के कार्यालय

(3) प्रत्यक्षी, जयलपुर के कार्यालय

(4) वांछना, जयलपुर के कार्यालय

सूचना एवं आदेश


रामेश्वर

Filed
2.11.05