CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos 833, 834, 928 and 989 of 2005

Jabalpur, this the 24th of October, 2005.

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

(1) Original Application No. 833 of 2005

Abhay Raj Singh S/o Shri Kanleshwar Singh,
Aged about 49 years R/o Udai Nagar No.1
Vehicle Estate, Panera, Jabalpur (M.P.) Applicant

(By Advocate – Shri Manoj Sharma)

VERSUS

1. Union of India,
Through its Secretary,
Department of Defence, New Delhi.

2. Chairman/Director General,
Ordnance Factory Board, 10-A Shaheed
Khudi Ram Bose Marg, Kolkatta.

3. General Manager, Ordnance Factory,
Khamaria, Jabalpur. Respondents

(By Advocate – Shri S.A. Dharmadhikari)

(2) Original Application No. 834 of 2005

Vazir Khan, S/o Shri Nazeer Khan
Aged about 34 years R/o H.No.887,
Behind Seth Nathumal School,
Gorakhpur, Jabalpur (M.P.) Applicant

(By Advocate – Shri Manoj Sharma)

VERSUS

1. Union of India,
Through its Secretary,
Department of Defence, New Delhi.

2. Chairman/Director General,

Ordnance Factory Board, 10-A Shaheed
Khudi Ram Bose Marg, Kolkatta.

3. General Manager, Ordnance Factory,
Khamaria, Jabalpur. Respondents

(By Advocate – Shri S.A. Dharmadhikari)

(3) Original Application No. 928 of 2005

Rajkumar Choubey, S/o shri Hari Prasad Choubey,
Aged about 50 years, Occupation- Durwan, T.No.S.O.
102/001285, Ordinance Factory, Khamaria, Jabalpur,
Resident of Shivaji Ward, Panagar, Distt. Jabalpur M.P. Applicant

(By Advocate – Shri A.K. Pandey)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Defence, New Delhi.

2. Chairman/Director General,
Ordnance Factory Board, 10-A S
K Bose Road, Kolkata.

3. General Manager, Ordnance Factory,
Khamaria, Jabalpur. Respondents

(By Advocate – Shri S.A. Dharmadhikari)

(4) Original Application No. 989 of 2005

Indrajeet Das, S/o Late M.S. Das
Aged about 33 years R/o Kailash Dham,
Vardha Ghat Khamaria, Jabalpur Applicant

(By Advocate- Shri V.Tripathi on behalf of Shri S.Paul)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Defence, New Delhi.

2. Chairman/Director General,
Ordnance Factory Board, 10-A
S.K.Bose Marg, Kolkatta.

3. General Manager, Ordnance Factory,
Khamaria, Jabalpur. Respondents

(By Advocate – Shri S.A. Dharmadhikari on behalf of
Shri Manish Chourasia)

O R D E R(Oral)

By M.P. Singh, Vice Chairman –

The issue involved in the aforesaid OAs is common and the facts and grounds raised are identical, for the sake of convenience these OAs are being disposed of by this common order.

2. By filing the Original Applications Nos.833 and 834 of 2005, the applicants have sought the following main reliefs :-

> "ii) Quash and set aside the impugned orders dated 31.st August, 2005, Annseure A/1 and the order dated 8.9.2005, annexure-A-2.
>
> iii) Command the respondent authorities to continue the applicant as Darban in Ordnance Factory, Khamaria, Jabalpur."

2.1 By filing the Original Application No.928 of 2005, the applicant has sought the following main reliefs :-

> "(I) .....to quash the order dated 31.8.2005 and consequential order dated 8.9.2005 in their entirely.
>
> (II) ..to direct the respondents to pay the salary to the applicant during the transfer period, and further be pleased to direct the respondents to treat the applicant as if he has not been transferred."

2.2 By filing the Original Application No.989 of 2005, the applicant has sought the following main reliefs :-

> "(ii) Set aside the order dated 31 August 2005 AnnexureA/1 and the order 8.9.2005 Annexure A/2 with all consequential benefits as if the impugned transfer order has never been issued.
>
> (iii)' Direct the respondents to keep applicant posted at the present place of posting i.e. Ordnance Factory Khamaria, Jabalpur."

3. For the sake of convenience we are treating the OA No.833/05 as leading case and the facts of this OA as stated by the applicant are that he was initially appointed as Darwan in Ordnance Factory Khamaria, Jabalpur on 1.1.1983 and vide order dated 10..5.2005 (Annexure-A-3) he has been transferred from Ordnance Factory Khamaria, Jabalpur to Ordnance Factory, Tiruchirapally. He had submitted representation to the respondents, which was not considered ~~and rejected~~. Thereafter the applicant had filed OA No.478/05 and Tribunal's vide order dated 13.5.2005 has directed the respondents to consider and decide the representation of the applicant dated 12.5.2005 (Annexure-A-5) by passing a detailed, reasoned and speaking order. In pursuance to these directions the respondents have considered and rejected the same. Thereafter the applicant has filed another OA 630/05 challenging the rejection order. Vide order dated 08.7.2005, the Tribunal has quashed and set aside the aforesaid orders dated 17.6.2005, 10.5.2005, and also directed the Secretary, Ministry of Defence, New Delhi to reconsider the representation of the applicant. In compliance with the Tribunal's order, the Secretary Ministry of Defence has considered and again rejected the representation of the applicant vide order dated 31.8.2005(Annexure-A-1). Thereafter the respondent No.3 has passed the order dated 8.9.2005 (Annexure-A-2) transferring the applicant from Ordnance Factory Jabalpur to Ordnance Factory, Tiruchirpally. Hence, this OA.

3. Heard the learned counsel for the parties.

4. The preliminary objection taken by the learned counsel for the applicants, is that the General Manager Ordnance Factory Khamaria is not the competent authority to transfer the applicants from Ordnance Factory, Jabalpur to another Ordnance Factory. According to him before passing the

transfer order of the applicants, an approval of the next higher authority i.e. Director General of Ordnance Factories ~~is~~ was required, however in this case no such approval has been obtained by the General Manager, Ordnance Factory Khamaria. Therefore, the transfer orders passed by the incompetent authority are not sustainable in the eye of law.

5. On the other hand, the learned counsel for the respondents submitted that the transfer orders have been passed by the General Manager, Ordnance Factory Khamaria on 10.5.2005 after obtaining the approval of the Director General, Ordnance Factories Board. According to the Tribunal's vide orders dated 6.7.2005 and 8.7.2005, the Secretary, Ministry of Defence, New Delhi had been directed to reconsider the representations of the applicants. Accordingly, the representations have been considered and rejected and thereafter fresh orders have been passed on the strength of the earlier approval given by the Director General, Ordnance Factories Board. The learned counsel for the respondents also submitted that though the orders passed on 8.9.2005 are fresh orders, it did not require a further approval of the Director General, Ordnance Factories Board.

6. We have given careful consideration to the rival contentions made by the learned counsel for the parties.

7. It is an admitted fact that earlier the applicants were transferred vide orders dated 10.5.2005 passed by the General Manager in pursuance to the order of the Director General, Ordnance Factories Board dated 9.5.2005. The applicants had challenged the aforesaid orders in this Tribunal and the Tribunal had directed the respondents to consider and decide the representations of the applicants and the same were considered and rejected on 17.6.2005. Thereafter the applicants had again challenged the orders

dated 17.6.2005, which was passed by the respondents, rejecting the representations of the applicants, by filing OAs Nos.589, 590, 591 and 630 of 2005 and the Tribunal vide orders dated 6th and 8th July, 2005 had quashed the orders dated 17.6.2005 and 10.5.2005. Since, the order dated 10.5.2005 has already been quashed by the Tribunal ~~and~~ this order is no more in existence. It is also not controverted by the learned counsel for the respondents that while passing the orders dated 8.9.2005 the respondents have not obtained the approval of the next higher authority i.e. Director General, Ordnance Factories Board afresh. The learned counsel for the respondents submitted that no fresh approval was required, Since the orders dated 10.5.2005 has been quashed by the Tribunal, the contention of the learned counsel for the respondents is not correct and is accordingly rejected.

8. In view of the facts discussed above, since the orders dated 8.9.2005 passed by the Joint General Manager on behalf of General Manager, Ordnance Factory Khamaria, Jabalpur are not passed by the competent authority i.e. Director General, Ordnance Factories Board these orders are therefore ~~not~~ not sustainable in the eye of law and are liable to be quashed and set aside.

9. In the result, all the aforementioned four OAs are allowed. The impugned orders dated 31.8.2005 and 8.9.2005 are quashed and set aside. The respondents are directed to grant the financial benefits to the applicants as per rules within a period of three months from the date of receipt of a copy of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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