

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 1122 of 2004

Jabalpur, this the 18th day of April, 2005

Hon'ble Shri Madan Mohan, Judicial Member

Vinod Kumar Shrivastava, S/o. Shri S.P.
Shrivastava, Date of birth – 16.7.1959, Machinist
(Skilled), Token No. 08 MM 2491, Ordnance
Factory, Katni, R/o. 2017, Shastri Nagar, Ordnance
Factory Estate, Katni.

.... Applicant

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

V e r s u s

1. Union of India, through its Secretary,
Ministry of Defence, New Delhi.
2. The Chairman, Ordnance Factory Board,
10-A, SK Bose Marg, Kolkata.
3. The General Manager, Ordnance
Factory, Katni.
4. The General Manager, Small Arms
Factory, Kalpi Road, Kanpur-1.

.... Respondents

(By Advocate – Shri S.A. Dharmadhikari)

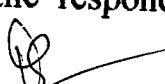
O R D E R

By filing this Original Application the applicant has claimed the following main relief :

“(ii) set aside the order dated 15.9.2004 Annexure A-1,

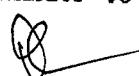
(iii) direct the respondents to transfer and relieve the applicant to the respondent No. 4 factory and the respondent No. 4 be directed to permit the applicant to join their services in the facts and circumstances of the present case.”

2. The brief facts of the case are that the applicant is presently working as Machinist (HS) with the respondent No. 3. He preferred



representation for his transfer to respondent No 4 which is a sister establishment/industry of respondent No. 2. His application was forwarded and it is learnt that respondent No. 4 accepted the applicant's transfer vide letter dated 11.12.2003. The applicant was relieved vide order dated 20.12.2003 (Annexure A-2) by the respondent No. 3 with a direction to join at Kanpur. In compliance of this order, the applicant submitted his joining report well within the time stipulated in the order. But vide order dated 23.12.2003 (Annexure A-3) the respondent No. 4 refused the joining of the applicant on the ground that offer of transfer of the applicant was accepted by the Kanpur Factory on the post of Machinist (Semi Skilled), whereas the applicant became Machinist (High Skilled). On this ground the applicant was directed to report back to the respondent No. 3. When the applicant came to know that his ACP promotion as Machinist (High Skilled) is the impediment, he vide representation dated 24.12.2003 (Annexure A-4) made a request to forgo the same. The applicant preferred detailed representation to the respondents and he also filed OA No. 406/2004 which was decided at the admission stage itself by the Tribunal vide order dated 12.5.2004, direct the respondent No. 2 to consider and decide the representation of the applicant dated 29.4.2004. This representation of the applicant was rejected vide order dated 15.9.2004 (Annexure A-1) on flimsy grounds. The departmental enquiry pending against the applicant had already been concluded by the respondents prior to his transfer on compassionate ground. The applicant cannot be returned back on the ground that the past record of the applicant is not good. The respondents are bound by the principle of promissory estoppel. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.
4. It is argued on behalf of the applicant that the applicant submitted representation requesting for his transfer to Kanpur due to his family



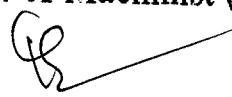
circumstances. The applicant submitted his joining report in the office of the respondent No. 4 i.e. Small Arms Factory (in short SAF), Kanpur but vide letter dated 23.12.2003 (Annexure A-3) the respondent No. 4 did not permit him to join on the ground that the offer of transfer of the applicant was accepted by the Kanpur Factory on the post of Machinist (Semi Skilled), whereas he is Machinist (High Skilled). On the very next date i.e. on 24.12.2003, the applicant moved an application to the General Manager, Ordnance Factory, Katni for forgoing his promotion because the applicant was facing some unavoidable problem and his transfer from Katni to Kanpur was necessary according to his family circumstances and it was much necessary than his promotion. But the respondents did not consider it and the applicant filed OA No. 406/2004 (Annexure A-8) and vide order dated 12th May, 2004, the respondents were directed to consider and decide the representation of the applicant dated 29.4.2004 by passing a speaking, detailed and reasoned order within a period of two months. The respondents have passed the impugned order dated 15.9.2004 (Annexure A-1) by which they have rejected the representation of the applicant in flimsy grounds by ignoring the compliance of the aforesaid order of the Tribunal. The respondents are bound by the principle of promissory estoppel. Hence, he is entitled for the reliefs claimed.

5. In reply the learned counsel for the respondents argued that with certain conditions, the transfer order of the applicant was accepted by the SAF, Kanpur viz. that the applicant had clear record of services and no disciplinary action is pending/being contemplated on the individual, which was ultimately regretted by SAF, as he had past record of disciplinary action. He further argued that the applicant while submitting the application for inter-factory transfer was Machinist (SS) promoted to SK grade after debarment of five years period as stipulated in moderation of penalty order by the competent authority. Subsequently, vide restructuring of IEs cadre as ordered by Ministry of Defence, the applicant was promoted as Machinist (High Skilled) with effect from 20.5.2003. As



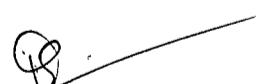
such by the time his acceptance of service by SAF, Kanpur he was promoted upto Machinist (HS) but he was not having clean record of service like dismissal from service which was moderated to reversion to the post of Machinist (SS) for the period of 5 years, as such after apprised, his transfer was order was not accepted by the SAF, Kanpur and the applicant was asked to report back to Ordnance Factory, Katni without permitting to join SAF, Kanpur. The respondent No. 3 i.e. General Manager, Ordnance Factory, Katni has not shown his past performance of unclean record with the contention that his past performance might be known to them where as only it was stated their in that no any disciplinary action is pending against him, whereas the applicant had past record of several disciplinary action like dismissal and further moderation of penalty to reinstatement on reversion from Machinist (SK) to Machinist (SS) on permanent transfer to Ordnance Factory, Katni. The application of the applicant for forgoing his promotion was not accepted. The applicant is not having clean record of past service, hence his transfer was denied. The respondents have duly complied with the order passed by the Tribunal in OA No. 406/2004 by passing the order dated 15.9.2004 (Annexure R-1). He further argued that transfer is a prerogative right of the respondents and the applicant cannot compel the respondents to transfer him on a particular station of his choice. The question of promissory estoppel does not arise in this case. Hence, this Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, I find that the applicant was transferred by the respondent No. 3 i.e. the General Manager, OFK, Katni to the office of General Manager, SAF, Kanpur, vide order dated 20.12.2003 (Annexure A-2). But the respondent No. 4 vide his letter dated 23.12.2003 (Annexure A-3) did not accept the joining of the applicant in his office on the ground that offer of transfer of the applicant was accepted by the Kanpur Factory on the post of Machinist (Semi Skilled),



whereas the applicant became Machinist (HS). When the applicant came to know that his ACP promotion as Machinist (HS) is the impediment, he submitted an application to the General Manager, Ordnance Factory, Katni on 24.12.2003 (Annexure A-4) and also filed OA No. 406/2004 and the Tribunal vide order dated 12th May, 2004, directed the respondents to consider and decide the representation of the applicant dated 29.4.2004. This representation of the applicant was rejected by the respondents vide order dated 15.9.2004 (Annexure A-1) mentioning the fact that the earlier record of the applicant while he was serving in SAF, Kanpur before his present transfer was not clear. He faced departmental enquiry proceedings at Kanpur though this fact is not mentioned by the respondent No. 4 in his order dated 23.12.2003 (Annexure A-3). This fact is not controverted by the applicant by filing any rejoinder. The argument advanced on behalf of the respondents that the transfer is the prerogative of the respondents and the applicant has joined the services to serve through out the country and cannot compel the respondents for any particular place of his choice and the principles of promissory estoppel in this case does not arise, seems to be legally tenable and correct.

7. Considering all the facts and circumstances of the case, I am of the opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.



(Madan Mohan)
Judicial Member

“SA”