

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 74 of 2004

Jabalpur, this the 25th day of June, 2004

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

Sohanlal, S/o. Shri Raja Ram Yadav,
aged about 38 years, working as
Veterinary Dresser, Military Farm,
Jabalpur, Resident of H. No. 2352,
New Kanchanpur, Near 3rd Railway Pulia,
Jabalpur (MP).

.... Applicant

(By Advocate - Shri M.B. Saxena)

V e r s u s

1. The Union of India,
through the Secretary,
Ministry of Defence,
New Delhi.
2. The Director, Military Farms,
Central Command, Lucknow-226 002 (UP).
3. The Officer-Incharge,
Military Farms,
Jabalpur (MP).
4. Mr. Bal Krishna Yadav,
son of Shri Ram Chandra, Working
as Veterinary Dresser, Military
Farm, Jabalpur (MP).

.... Respondents

(By Advocate - Official respondents by Shri Gopi Chourasia on
behalf of Shri S.A. Dharmadhikari and Smt.
Geeta Yadav on behalf of Shri B.L. Nag for
respondent No. 4)

O R D E R

By Madan Mohan, Judicial Member -

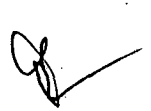
By filing this Original Application the applicant has
claimed the following main reliefs :

"(i) to quash the impugned order dtd. 6.1.04
(Annexure A-1), order dtd. 23.6.03 (Annexure A-2) and
movement order dtd. 17.10.2003 (Annexure A-4),

(ii) to direct respondent No. 1 to 3 to allow
applicant to work at present place in the capacity of
Veterinary Dresser and to pay him regular monthly
salary,

(iii) to direct respondent No. 1 to 3 to declare
respondent No. 4 as surplus staff by treating applicant
as senior to him."

2. The brief facts of the case are that the applicant was initially appointed as Farm Hand as back as on 15.5.1992. In view of the technical experience/qualification of applicant he was given trade of Vetemiary Dresser on 14.8.2000. The seniority list of Group-D post are maintained on all India basis. There are various categories under Group-D post but their cadre remains the same. Meaning thereby that the person working under Group-D post gets similar salary immaterial of the fact as to which category he belongs. For the purpose of reckoning seniority of Group-D post holder, the date of entry into employment is to be taken into consideration. The respondent No. 4 was initially appointed as Farm Hand on 15.1.1996 and his category was changed to Vetemiary Dresser on 11.2.2000. It is noteworth that the present applicant is senior in Group-D post as he was initially appointed on 15.5.1992, whereas respondent No. 4 was initially appointed on 15.1.1996. The change of category is not having any bearing on the seniority of employees under Group-D post. It is admitted that the junior most person is to be declared surplus staff member. At no point of time any provisional seniority list for Vetemiary Dresser was served to the applicant or to other similarly situated person. At no point of time any objections were invited by the respondents before final publication of the seniority list of Vetemiary Dresser. As the applicant, though senior to respondent No. 4 was declared surplus, he made an application to the respondent No. 3 for supplying him seniority list of Vetemiary Dresser (Group-D post) on 14.7.2003. He was informed that the seniority list is not available in the establishment of respondent No. 3. A circular dated 8.3.1999 was issued by respondent No. 2, whereby it has been made clear that only junior most employee under Group-C & D category shall be declared



surplus. It is thus clear that the applicant is senior to respondent No. 4 under Group-D category. The arbitrary exercise of powers and vindictive approach of respondent No. 3 targeted the applicant only for transfer out of Jabalpur and his category also has been changed from Veterinary Dresser to Room Orderly which is not a technical post. The applicant made series of representations to the respondents Nos. 1 to 3 regarding cancellation of order declaring him as surplus but to no avail. The element of malice is established from the fact that respondents instead of considering the representation made by the applicant had issued charge sheet for conducting departmental enquiry against him framing a charge as to why he had made representation to his higher authority. The applicant has the present place joined on 19.7.2002 from Military Farm Missamary, Assam and thus he has not even completed normal tenure of his service at Jabalpur. The father of the applicant is seriously ailing as his left leg has been amputated and he is a disabled person to the extent of 55%. Moreover, the applicant is also not keeping good health. As it was on his own request transfer from Assam to Jabalpur no TA/DA was paid to him. Again the services of the applicant were transferred to Military Farm, Meerut but the same was cancelled on 2.6.2003. The action of the respondents is not in accordance with law and hence this Original Application is filed seeking the aforesaid reliefs.


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

4. It is argued on behalf of the applicant that apparently the applicant was initially posted earlier than that of the respondent No. 4. Hence he was senior to the respondent




No. 4. Though the respondent No. 4 was given the trade of Veterinary Dresser on 11.2.2000, i.e. earlier to the applicant on 14.8.2000, it has no effect on the seniority of the applicant because there is no such provision in this trade as the post of Farm Hand and the trade of Veterinary Dresser are similar post. The applicant had come to Jabalpur from Assam on his request and he was also not entitled for TA/DA. His father is seriously ailing and he himself is not keeping good health. The applicant has also not even completed his normal tenure of service at Jabalpur. He is senior to respondent No. 4, hence in accordance to rules the junior should be declared surplus. The learned counsel for the applicant has further drawn our attention towards the letter dated 8th March, 1999 (Annexure A-8).

5. In reply the learned counsel for the respondents argued that the aforesaid orders have already been challenged by the applicant in earlier OA No. 758/2003, wherein the Tribunal has held that it is an administrative matter and the same can not be interfered with, but at the same time directed to consider the grievance of the applicant on medical ground. The respondents have rightly considered the grievance of the applicant in accordance with the instructions on the subject and the same has been rejected vide a detailed speaking order dated 6.1.2004 rejecting the claim of the applicant. Hence no interference is called for. The argument advanced on behalf of the applicant that the applicant is senior to the respondent No. 4 is not tenable because the procedure for declaring surplus is on the basis of present category of the worker as well as seniority of a worker in the particular category is also counted from the date of his present appointment, promotion and change of category and not from the date of his initial appointment.



Hence the seniority of the applicant in the category of Veterinary dresser has been taken into account from the date his category was changed i.e. 14.8.2000 and he being junior to respondent No. 4 has been declared surplus by the respondents as per existing rules. Thus the applicant has rightly been declared as surplus and the impugned orders does not suffer from any infirmity. Moreover, the applicant having been declared as surplus was requested to give his choice place but the applicant did not give any preference and as such he has been posted out of Jabalpur. The applicant was transferred from Assam to Jabalpur on compassionate ground.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that as per letter dated 8th March, 1999 (Annexure A-8) issued by the Army Headquarters, regarding posting/transfer of Group-C and D staff rendered surplus, it is provided that the posting/transfer policy of Group-C and D staff rendered surplus in a Military Farm Units on account of reduction of establishment, but are not surplus on All India Basis was discussed in Army HQ JCM council meeting and it has been decided that whenever Group-C and D staff became surplus to the requirement of a particular MF unit, but not surplus on All India basis, the junior most individual of the unit belonging to the category will be posted out. An individual who has been posted on the above ground will not be moved out from the new unit for a period of two years if declared surplus there. In such a situation, the next junior who has completed two years in the unit will be posted out. The applicant has mentioned in para 4.4. of the Original Application that he had made series of representations to the respondents Nos. 1 to 3 regarding cancellation of order declaring him as surplus but of no avail.



7. Having regard to the facts and circumstances of the case, we deem it appropriate to direct the applicant to submit a fresh detailed representation to the respondents within a period of two weeks from the date of receipt of a copy of this order and in case the applicant complies with the above direction, the respondents are directed to consider such representation of the applicant in accordance with their own letter No. A/60429/Q/MF-1, dated 8th March, 1999 (Annexure A-8) and take a decision by passing a speaking, detailed and reasoned order within a period of two months from the date of receipt of the representation of the applicant. We do so accordingly.

8. In the result, the Original Application is disposed of in the aforesaid terms. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्जित:-

- (1) राबिब, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) वॉयप्रास, एड.ए.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार - 5/7/04

MD Saxena
SA Sharma
B. N. Nay

Seel
5/7/04