

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 715 of 2004

Indore, this the 10th day of *January*, 2005

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

R.K. Shroti, son of late Shri P.S. Shroti,
Aged about 50 years, Chargeman Grade-I,
C/o. Controllerate of Quality Assurance
(Weapons), Gun Carriage Factory Campus,
Jabalpur (M.P.).

.... Applicant

(By Advocate – Shri A. Shroti)

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 Arm-1), Government of
India, Ministry of Defence, DHQ,
New Delhi.
3. Director (Quality Assurance),
Directorate of Quality Assurance (Armts),
Department of Defence Production and
Supplies (DGQA Arm-1), Government of
India, Ministry of Defence, DHQ,
New Delhi – 110 011.
4. Additional Director (Quality Assurance),
Directorate of Quality Assurance (Armts),
Department of Defence Production and
Supplies (DGQA Arm-1), Government of
India, Ministry of Defence, DHQ,
New Delhi – 110 011.
5. Controller, Controllerate of Quality
Assurance (W), GCF Post,
Jabalpur (MP).

.... Respondents

(By Advocate – Shri S.A. Dharmadhikari)



ORDER

By Madan Mohan, Judicial Member –

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

“(1) quash the order dated 23.4.2004 (Annexure A-3) and order dated 24.8.2004 (Annexure A-37),

(2) direct the respondents to produce the entire record pertaining to the posting of the applicant to Avadi before this Hon. Tribunal.”

2. The brief facts of the case are that the applicant is a Chargeman Grade-I posted under respondent No. 4 at Jabalpur. His elder son was selected in Engineering and is currently studying in Jabalpur. On constitution of a new establishment in Avadi (Chennai), vide order dated 23.4.2004 the applicant has been permanently posted at Avadi. This order has been passed under the flexible complement policy of the Central Government but vide order dated 12.8.2004 the same has been amended and in place of flexible complement policy, posting under temporary transfer of posts policy has been made. This order has been passed by the respondent No. 4 having approval of the respondent No. 3. The applicant repeatedly made representations to the respondent No. 5 for supply of the policy as well as other orders but after series of litigation the respondents vide letter dated 17.8.2004 supplied the letter dated 4.3.2003 captioned as delegation of powers for temporary transfer of posts and said that the flexible complement policy was a misnomer and posting under temporary transfer of posts policy has to be read in place of flexible complement policy. The applicant further submitted in his OA that the letter of delegation of temporary transfer of posts was the flexible complement policy under which the above posting order dated 23.4.2004 has been issued. The letter of delegation of temporary transfer of posts talks about the temporary transfer of posts but the impugned order dated 23.4.2004 talks about permanent posting of the employees and that too on constitution of new establishment, in respect of which the letter is silent.



Only five posts can be temporarily transferred and that too in the production establishments and the applicant is working under the inspection establishment. The respondent No. 2 can alone exercise the above powers and the impugned order has been passed by the respondent No. 4 on behalf of the respondent No. 3 who is not the competent authority. The respondent No. 2 has also resolved in JCM III level council held on 17.9.2003 that the above letter cannot be used to transfer the employees. Hence, the impugned order is bad as the same has been passed by an incompetent authority and that too under a letter wherein the impugned posting order could not have been passed. The applicant made representation against it on 3.5.2004. Thereafter in Contempt Petition No. 465/2004, the Hon'ble High Court vide order dated 30.7.2004 directed the respondents to decide the representation dated 3.5.2004 within a period of one month i.e. by 30.7.2004 after giving the applicant opportunity of personal hearing. Similar directions were also issued vide order dated 9.8.2004 in WP No. 4280/2004 by the Hon'ble High Court wherein the representation dated 30.7.2004 was directed to be decided by the respondents with further direction that till the representation is not decided by the respondents the applicant shall not be disturbed from Jabalpur. As the flexible complement policy was supplied to the applicant on 17.8.2004 the applicant made additional representation dated 25.8.2004 stating that the letter of delegation of temporary transfer of posts was not applicable on the applicant and therefore, the posting is bad. Despite the above directions of the Hon'ble High Court the respondent No. 4 on behalf of respondent No. 3 decided the representation of the applicant and no personal hearing was given to the applicant either by respondent No. 3 or by respondent No. 4 and vide impugned order dated 24.8.2004 the representation of the applicant has been rejected. The same was communicated to the applicant on 27.8.2004 and on the same date the applicant was relieved to join at Avadi on or before 9.9.2004. Hence, this Original Application is filed by the applicant.



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

4. It is argued on behalf of the applicant that the order at Annexure A-26 dated 4th March, 2003 only delegates the power of temporary transfer of posts to the Director General of Quality Assurance. But the impugned order dated 23rd April, 2004 by which the applicant has been transferred was not issued by the Director General of Quality Assurance. It is having only the approval of DQA(A). Hence, this letter is not issued by the competent authority having jurisdiction to issue such order. He further argued that by the impugned order dated 23.4.2004 he is ordered to be posted on duty of permanent nature, whereas the DGQA is delegated powers for temporary transfer of posts. Hence, this transfer order is issued in clear violation of the policy framed vide letter dated 4th March, 2003 (Annexure A-26). He further argued that the order dated 4th March, 2003 was applicable only in respect of production unit while the respondents have transferred the applicant who was working in the inspection unit. The applicant further argued that in the order dated 4.3.2003 the DGQA has been given powers for exercising of temporarily increasing the PEs, in addition to being done only once a year. This should be confined to enhancement of PEs not exceeding five in number, and the corresponding changes in these PEs being considered as incidental. While the respondents have transferred by the impugned order dated 23.4.2004 as many as 21 persons. He also argued that the applicant was not given the opportunity of personal hearing by the respondents in spite of the clear directions issued by the Hon'ble High Court and the respondents did not considered the two grounds raised by the applicant in his representations. Hence, the impugned order dated 23.4.2004 and the order dated 24.8.2004 are liable to be quashed and set aside and this OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that vide letter dated 8th June, 2001 the Director General of Quality Assurance has delegated powers in respect of Group-C and Group-D posts to the



Director concerned/Additional DGQA with respect to Group-C selection post. With regard to the contention of the applicant that delegation of powers given to the Director General Quality Assurance is only in respect of temporary transfer of posts and not for postings on duty of permanent nature, it is submitted that the posts have been transferred temporarily to CQA (Ava) from CQA (W) Jabalpur. These posts can be filled up by permanent transfer of individuals and any posting above 89 days is termed as permanent. Since it is envisaged that the applicant's services will be required for more than 180 days he has been transferred on permanent posting, however, the post to which he has been posted, is temporarily attached to CQA (Ava). Thus there has been no violation of the policy as contended by the applicant. He further argued that the inspection wing is linked with production unit. The services of the applicant are indispensable for the reason that he is highly experienced and qualified person, for which he has been assigned a duty which is very important for the new Defence projects. He also argued that it is wrongly interpreted that the total of 5 persons can be transferred, whereas the order lays down enhancement of PE in respect of the 5 establishments and not the number of individuals transferred. In the present case the persons transferred by way of impugned order, are only from 3 establishments as against permissible from 5 establishments as per the policy and as such, there is no bar on number of persons being transferred as it totally depends on the type of workload in the new projects. He further argued that no specific order of the Hon'ble High Court is filed by the applicant about personal hearing and all grounds and contentions of the applicants are duly considered by the respondents while passing the order dated 24.8.2004 (Annexure A-37). Hence, the respondents have not committed any irregularity or illegality in any way in passing the impugned orders. Accordingly, the Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records of the case we find that the letter issued by the Government of India, Ministry of Defence, Department of



Director concerned/Additional DGQA with respect to Group-C selection post. With regard to the contention of the applicant that delegation of powers given to the Director General Quality Assurance is only in respect of temporary transfer of posts and not for postings on duty of permanent nature, it is submitted that the posts have been transferred temporarily to CQA (Ava) from CQA (W) Jabalpur. These posts can be filled up by permanent transfer of individuals and any posting above 89 days is termed as permanent. Since it is envisaged that the applicant's services will be required for more than 180 days he has been transferred on permanent posting, however, the post to which he has been posted, is temporarily attached to CQA (Ava). Thus there has been no violation of the policy as contended by the applicant. He further argued that the inspection wing is linked with production unit. The services of the applicant are indispensable for the reason that he is highly experienced and qualified person, for which he has been assigned a duty which is very important for the new Defence projects. He also argued that it is wrongly interpreted that the total of 5 persons can be transferred, whereas the order lays down enhancement of PE in respect of the 5 establishments and not the number of individuals transferred. In the present case the persons transferred by way of impugned order, are only from 3 establishments as against permissible from 5 establishments as per the policy and as such, there is no bar on number of persons being transferred as it totally depends on the type of workload in the new projects. He further argued that no specific order of the Hon'ble High Court is filed by the applicant about personal hearing and all grounds and contentions of the applicants are duly considered by the respondents while passing the order dated 24.8.2004 (Annexure A-37). Hence, the respondents have not committed any irregularity or illegality in any way in passing the impugned orders. Accordingly, the Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records of the case we find that the letter issued by the Government of India, Ministry of Defence, Department of




Defence Production & Supplies, dated 4th March, 2003 (Annexure A-26) is addressed to the Director General Quality Assurance, Ministry of Defence, New Delhi. In this letter mainly four conditions are mentioned about the transfers. Firstly this letter only delegates powers to the Director General of Quality Assurance for temporary transfer of posts. In this letter the Director of Quality Assurance or the Additional Director of Quality Assurance is nowhere empowered to pass such order of transfer. In this regard the learned counsel for the respondents has drawn our attention towards Annexure R-1 which is not applicable on this point as this letter dated 8th June, 2001 (Annexure R-1) is about delegation of powers of appointing/disciplinary authority under CCS (CC&A) Rules, 1965. This authorization letter cannot be accepted regarding the said transfer of the applicant at all. Secondly, we find that by the impugned order dated 23.4.2004 the applicant is ordered to be posted on duty of permanent nature, whereas the DGQA is delegated powers for temporary transfer of posts vide letter dated 4th March, 2003. The argument advanced on behalf of the respondents against the second condition is not at all tenable. The letter dated 4th March, 2003 specifically and clearly mentions that transfers of the posts shall be temporary. In this letter nowhere it is provided about the transfer of the posts on permanent basis. Thirdly, the learned counsel for the respondents could not make a clear distinction between the production unit and inspection unit. The applicant was transferred on the basis of the letter dated 4.3.2003 which were applicable only in the case of production unit as per paragraph 1(e) of the said order, whereas the respondents have transferred the applicant who was working in the inspection unit which is in clear violation of the letter dated 4th March, 2003. Regarding the fourth ground, as mentioned in the order dated 4th March, 2003 it clearly stipulates that the exercise of temporarily increasing the PEs should be confined to enhancement of PEs not exceeding five in number, whereas the respondents have transferred by the impugned order dated 23.4.2004 (Annexure A-3) as many as 21 persons. We have perused the order dated 24.8.2004 (Annexure A-37) and



find that the grounds taken by the applicant in his representation were not properly considered by the respondents.

7. After considering all the facts and circumstances of the case we are of the considered view that the impugned order dated 23.4.2004 (Annexure A-3) is issued in clear violation of the order dated 4th March, 2003 (Annexure A-26) issued by the Government of India, Ministry of Defence, Department of Defence Production & Supplies, New Delhi. The other impugned order passed by the respondents dated 24th August, 2004 (Annexure A-37) rejecting the representation of the applicant is also not in accordance with the rules. Therefore, both these orders dated 23.4.2004 (Annexure A-3) and 24th August, 2004 (Annexure A-37) are quashed and set aside. The Original Application stands allowed accordingly. No costs.


(Madan Mohan)
Judicial Member

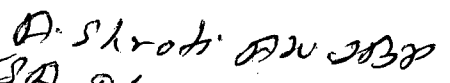

(M.P. Singh)
Vice Chairman

“SA”

पृष्ठंकन सं ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अग्रे भेजल:-

- (1) सचिव, उच्च न्यायालय तार एम्.एस.एन. जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) वंशपाल, को.प्र.अ., जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार


D. Shroth
SA. Dharmadhikari
SA. Dharmadhikari

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on 20.1.05
68