

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

JABALPUR

M.A.No.1596/2003 in  
Original Application No.758/2003

Jabalpur, this the 4<sup>th</sup> day of December, 2003

Hon'ble Shri G. Shanthappa, Judicial Member

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

... Applicant

(By Advocate: Sh. P. Singh)

versus

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  
s/o Shri Ram Chandra  
working as Veterinary Dresser  
Military Farm  
Jabalpur (MP). .... Respondents

(By Advocate: Sh. S.A.Dharmadhikari)

O R D E R

The above application is filed by the  
applicant seeking the following reliefs:

- (i) to quash the impugned order dated 16.06.2003 (Annex. A-1) and 23.6.2003 (Annexure A-2) in as much as it relates with applicant, consequential relief of quashing of movement order may also be granted.
- (ii) to quash the charge-sheet dated 26.9.2003 (Annexure A-11) as no charges of misconduct *prima-facie* made out against applicant as he represented only because of stark indolence of respondent No.1 to 3.
- (iii) to direct respondent No.1 to 3 to produce All India Basis Seniority list of applicant as also appointment orders of applicant *vis-a-vis* respondent No.4 for kind perusal of Hon'ble Tribunal.

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(iv) to direct respondent No.1 to 3 to allow present applicant to work at present place and draw regular monthly salary from present place.

(v) to grant any other relief as may be deemed fit."

2. After hearing the case on 27.11.2003, the case was reserved for Judgement; however, while dictating the order in the chamber, it was found that the second relief is to be decided by the Division Bench, the case was ordered to be listed for being spoken to on 28.11.2003. On 28.11.2003 the learned counsel for the applicant has filed MA No.1595/2003 seeking permission to withdraw the relief No.(ii), which pertains to quashing of the chargesheet dated 26.9.2003. Since the case was already heard on both sides, the case was reserved for orders. Accordingly, the said OA is restricted to only for the reliefs (i), (iii) and (iv).

3. The case of the applicant is that the applicant was appointed as Farm Hand under Respondent No.1 in the month of May, 1992. The Respondent No.4 was initially appointed as Farm Hand on 27.12.1995. Consequently, on 25.1.1996, Respondent No.4 had joined his duties. According to the applicant, the applicant is senior to Respondent No.4. In the year 2000, Respondent No.4 was granted promotion to the post of Veterinary Dresser. The comparative analysis of applicant vis-a-vis respondent No.4 crystallises that Respondent No.4 is considerably junior to the applicant in service. All India wise seniority of Veterinary Dresser is maintained by

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Respondents No.1 to 3. The applicant had approached the official respondents for supply of seniority list of the Veterinary Dresser, vide memo. dated 14.7.2003 it has been informed to the applicant that seniority list is not available in the office. The respondents have declared the applicant as surplus employee by ignoring his seniority and by retaining respondent No.4 at present place even when he is considerably junior to the applicant is illegal, improper and against all canons of justice. The applicant has submitted his representations dated 26.6.2003, 21.7.03 and 23.8.2003.

4. The applicant has submitted that he is not keeping good health and even his father is a handicapped person as his left leg has been amputated. There is no matured male member in the family of the applicant, the applicant is to look after his old ailing father. On medical ground alone, the transfer order of applicant from Military Farm, Jabalpur to Military Farm, Meerut has to be cancelled.

5. Now, on the basis of malafide intention, Respondent No.4 has been transferred to the place where the applicant has been working. The mode adopted by Respondent Nos. 1 to 3 is very strange as they have not adverted to the various representations filed by the applicant and at the same time they have forcefully pasted movement order at his house without forwarding any advances towards T.A. and D.A. in favour of applicant. Instead of deciding the

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representations made by the applicant, even though he has produced the medical certificates along with his representations, Respondent No.3 was prompt enough to issue a charge-sheet to the applicant thereby charging him why he is making repeated representations particularly when one of his representation is already forwarded to superior authority. The applicant has also produced the charge-sheet dated 26.9.2003 and movement order in this OA. It is stated by the applicant that since the applicant is a senior to Respondent No.4, the official respondents have treated the applicant as surplus without considering the seniority list and he has been transferred. Hence, the action of the official respondents is illegal and OA is liable to be allowed.

6. On the other hand, the respondents have filed their reply and stated that the applicant was initially appointed as Farm Hand (Group 'D' post) w.e.f. 15th May, 1992 and his category has been changed as Veterinary Dresser w.e.f. 14.8.2000. On the other hand, Respondent No.4 was initially appointed as Farm Hand (Group 'D' post) w.e.f. 15.1.1996 and his category was changed as Veterinary Dresser w.e.f. 11.2.2000. Thus, according to the respondents, the applicant is junior to Respondent No.4. The respondents have also produced the posting order which pertains to Group 'C' and 'D' staff rendered surplus vide Annexure R-2 in which it has been mentioned that the juniormost individual of the unit belonging to the category will be posted out. It is also mentioned in Annexure R-2 that 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.

7. The respondents have also produced the seniority list of Veterinary Dresser: Military Farm, Habalpur which is enclosed to Annexure R-2 in which the applicant is at Sl. No.4 and Respondent No.4 is at Sl. No.3. The respondents have pointed out that Respondent No.4 was appointed in Govt. service on 15.1.1996 and the applicant was appointed on 15.5.1992. It is also pointed out that the date of appointment to the grade or date from which the seniority in the grade counts, accordingly, as per column 7 of the aforesaid seniority list, the date of appointment to the grade pertaining to Respondent No.4 is 11.2.2000 and pertaining to the applicant is 14.8.2000. It is pertinent to mention here that after close perusal of the aforesaid dates, it is apparent that the applicant is junior to Respondent No.4 hence the applicant has been declared as surplus. Accordingly, he has been transferred. Since the applicant has refused to receive the orders, the orders have been pasted on the residence of the applicant and necessary endorsement is at Annexure R-3 which shows that they have pasted on 24.6.2003. According to the respondents, there is no illegality or irregularities while issuing the orders as the applicant is junior, he was declared as surplus.

8. After hearing the Advocate for the applicant and Advocate for the respondents, and on perusal of the pleadings and documents on record, I dispose of this OA finally. The case of the applicant is that without issuing the notice, and without giving an opportunity, the respondents have declared the applicant as surplus employee which is illegal and also without considering the case of the

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applicant on medical grounds, the applicant has been transferred only to favour Respondent No.4. The respondents did not supply the relevant all-India seniority list. The respondents have clearly admitted the date of appointment of the applicant and the Respondent No.4 in para 3 of their reply and the representations at Annexure A5 to A8 are not considered. Though the applicant did not violate any orders, they have issued the charge-sheet which is punitive in nature. In my considered view, mere approaching the higher authorities seeking the redressal of grievance, it does not mean that the applicant has violated the orders of their higher authority. Hence the movement order issued is illegal. At no point of time has refused to receive the movement order. Hence, the action of the respondents is illegal, the relief as prayed for is to be granted.

9. The main question involved in this OA is whether the declaration of the applicant as surplus employee of Veterinary Dressers who are juniors in the unit is proper or not? According to Annexure R-2, produced by the respondents (enclosed the seniority list in the unit) which shows that Respondent No.4 is senior to the applicant. Accordingly, the applicant has been treated as junior and declared surplus and posted out of Military Farm, Jabalpur.

10. Since the matter is an administrative matter, the grievance of the applicant can be considered on medical grounds. As the respondents have not considered the case of the applicant on medical grounds, though he has produced medical certificates along with his representations, the respondents shall



