

**Central Administrative Tribunal
Principal Bench**

MA No.138/2016

in

CP No.16/2016

In

OA No.1754/2015

Order reserved on : 29.01.2016

Order pronounced : 08.02.2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Hon'ble Mr. V.N. Gaur, Member (A)

Dr. Sunil Kumar

...applicant

(By Advocate : Shri Rajesh Pathak)

Versus

Union of India & Ors.

...respondents.

(By Advocate : Shri Hanu Bhaskar)

ORDER

Mr. V.N. Gaur, Member (A) :-

The applicant in CP No.16/2016 in OA No.1754/2015 has filed this MA No.138/2016 in CP No.16/2016 with a prayer to stay the operation of the order dated 11.12.2015 issued by the contemnors deputing the applicant on temporary duty to MTC Shimla for the period of 29 days from 11.01.2016 to 08.02.2016.

2. The learned counsel for the applicant stated that this Tribunal had in its order dated 23.07.2015 directed the respondents to keep the applicant posted at CI and JW school SSB, Gwaldam and to consider extending the benefits of judgment of Hon'ble High Court of Calcutta to him in due course. The respondents instead of complying with the order have issued the impugned order sending the applicant to Shimla despite the fact that the post at Shimla is a combatized post and according to the judgments of Hon'ble High Court of Calcutta and this Tribunal, a non-combatized officer cannot be forced to go in a combatized post. This Tribunal vide order dated 13.01.2016 has already issued notice in CP returnable on 29.01.2016. However, the respondents are adamant to circumvent the order of this Tribunal by insisting on his joining at Shimla in the garb of temporary duty. According to learned counsel for applicant, once the applicant has chosen to remain a part of the civilian set-up, foregoing all the perks and privileges associated with a combatized post, he cannot be forced to work on combatized post.

3. Learned counsel for respondents, on the other hand, vehemently opposed the MA filed by the applicant and stated that at no point of time, the respondents have violated the directions of this Tribunal by insisting the applicant to join a combatized post. Rather the respondents have only deputed him for about 29 days to

Shimla to use his specialised knowledge in conducting a First-Aid Course. It cannot be the case of the applicant that conducting a first-aid course at Shimla involves such a degree of risk that only combatized personnel of the SSB should be asked to attend to this assignment.

4. We have heard the learned counsels. The prayer made in this MA is for the stay of the operation of the impugned order dated 11.12.2015 by which the applicant has been temporary deputed to Shimla in connection with the First-Aid Course. Without going into the merits of the charge levelled against the contemnors in CP No.16/2016, we observe that the order challenged in OA No.1754/2015 pertained to his transfer from CI and JW School SSB, Gwaldam (UT) to 39th Bn. Palia (U.P.) which was quashed vide order dated 23.07.2015. By the impugned transfer order the applicant has been sent on temporary duty to Shimla for a period of 29 days in connection with the First-Aid Course. Learned counsel for the applicant has not pointed out a single risk that the applicant would be exposed to if he is deputed to Shimla in connection with first-aid course. As the caption suggests that the First-Aid Course appears to be targeted at the SSB personnel to learn First-Aid techniques to provide assistance to force personnel or civilians in need of such assistance, in emergencies including natural disasters, which at times may prove to be life saving. Such First-

Aid Course which is conducted even in school & colleges cannot be said to be a specialized combat skill which can be imparted only by combatized persons or doctors. In any case, it is also not the case of the applicant that as a civilian medical doctor he could provide training or treatment only to civilian personnel, and only combatized doctors can provide health care to combatized personnel. Even the place of temporary duty, i.e. Shimla has not been claimed by the applicant to be a 'field area', where only combatized personnel can be deployed and civilians will be at risk.

5. By filing this MA, the applicant has successfully avoided the temporary duty at Shimla to impart training from 11.01.2016 as the course is concluding on 08.02.2016. It is further noticed that the Contempt Petition has been filed against the order dated 11.12.2015 which is sought to be stayed through this MA. On 13.01.2016, this Tribunal passed the following order in the C.P. :-

“Heard.

Issue notice to the respondents in CP, returnable on 29.01.2016.

In the meantime, no adverse view may be taken by the respondents against the applicant for his not joining at MTC Shimla in terms of order dated 11.12.2015.”

6. This Tribunal did not stay the order dated 11.12.2015 but directed the respondents not to take any adverse view against the applicant for his not joining at MTC Shimla in terms of that order. Despite that the applicant has moved this MA to stay the operation

of that order when the temporary period of duty itself is coming to an end on 08.02.2016.

7. On hearing the arguments on behalf of the applicant, it is apparent that the applicant is trying to misuse the process of law to avoid performing even those duties which a civilian doctor can legitimately be required to do, by stretching the argument of combatize versus non-combatize post to an extreme. All combatized personnel of an Armed Force of the Union are not required to be commandos and all non-combatants are not confined to desk jobs. The differentiating factor between combatized and non-combatized personnel is that the former is subject to the special legislation specific to that Armed Force, in this case the SSB Act, and the latter are governed by the CCS Rules.

8. We, therefore, do not find any merit in the request for staying the order dated 11.12.2015. Accordingly, the MA is dismissed.

(V.N. Gaur)
Member (A)
'rk'

(A.K. Bhardwaj)
Member (J)