

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1260/2015

Order reserved on 10.5.2016

New Delhi this the 7th day of June, 2016

Hon'ble Smt. Jasmine Ahmed, Member (J):

Tribhuwan Singh Aged 55 years
S/o Lt. Sh. Ganj Bahadur Singh,
Senior Charge Man,
Central Vehicle Depot,
R/o P-3/364-365, Sultan Puri,
New Delhi-110086.

.... Applicant

(Applicant present in person)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
New Delhi.
2. The Director General of Ordnance Services,
Army Ordnance Corps,
Army Headquarters,
New Delhi.
3. The Commandant,
Central Vehicle Depot,
Delhi Cantt., New Delhi-110010. Respondents

(By Advocate: Mr. R.K.Jain)

ORDER

The applicant is challenging the order dated 3.12.2014 by which he has been ordered to go back to Central Ordnance Depot (COD), Jabalpur from where he was transferred to Central Vehicle Depot (CVD), Delhi Cantt. vide order dated 20.11.2014. It is the contention of applicant in person that the order dated 20.11.2014 was issued in compliance of DGOS order dated 16.01.2009 on administrative interests. He also states that Commandant, CVD, Delhi Cantt being a

junior functionary is not eligible to override the order issued from the apex level of the department.

2. The facts of the case as narrated, are that the applicant was removed from service on 29.3.1990. After being removed, the applicant filed OA 1166/1992 before this Tribunal and vide order dated 25.07.1997, the Tribunal set aside the order of removal from service and directed to reinstate the applicant with effect from the date of appellate authority's order i.e 2.5.1991. The applicant resumed duty w.e.f. Feb., 1998 in pursuance of Hon'ble Tribunal's order. The applicant was again dismissed from service w.e.f 19.04.2003. The applicant again preferred OA no. 2468/2003 challenging the order of dismissal from service before this Tribunal. The Tribunal vide order dated 13.07.2004 directed the respondents to reinstate the applicant with all consequential benefits. The applicant was reinstated and was transferred from CVD, Delhi Cantt. to COD, Jabalpur on 8.04.2006. It is the contention of applicant that his transfer was in violation of the departmental regulations (ROI)-C/03/93, dated 28.4.1993. The applicant represented against the transfer order and he was transferred back to CVD, Delhi Cantt by the order of DGOS vide order dated 16.01.2009 transferring him back to CVD, Delhi Cantt. On 16.2.2009, the applicant was placed under suspension and criminal proceedings were also initiated against him. On 9.04.2014, applicant was discharged from the criminal case by the Judicial Magistrate, Class-1, Jabalpur. After a detailed departmental inquiry, the disciplinary authority also dropped all the charges levelled against the applicant vide order dated 17.07.2014. After being discharged from the criminal case and after dropping of charges in the departmental

proceedings, the Commandant, COD, Jabalpur implemented the orders of transfer of the applicant which was issued by DGOS on 16.01.2009 and released him to report to CVD, Delhi Cantt vide order dated 20.11.2014. The order was issued in administrative interest. On 3.12.2014, the applicant reported to Commandant, CVD, Delhi Cantt. in pursuance of transfer order but it is contended by the applicant that he was not allowed to join duty. Instead, by order dated 3.12.2014 he was directed to go back to Jabalpur by a junior functionary like Commandant, CVD, Delhi Cantt., overriding the orders of a superior authority i.e. DGOS. The applicant preferred a detailed representation to DGOS, Army Headquarter requesting to direct Commandant, CVD, Delhi Cantt., to allow the applicant to join duty at Delhi but no reply having been received from DGOS till date has resulted in filing of this OA.

3. Applicant states that order dated 3.12.2014 is beyond jurisdiction as it has been issued by a lower authority. He states that after being cleared from all the criminal charges against him as well as disciplinary proceedings, the applicant was transferred to CVD, Delhi Cantt., vide movement order dated 20.11.2014 which was in pursuance of DGOS order dated 16.01.2009. He states that DGOS is the apex authority of the department and the order dated 16.01.2009 could not be implemented, as the applicant was placed under suspension. He also states that as the order dated 16.01.2009 was never cancelled so the order remained current, hence it is beyond the domain of junior functionary like Commandant CVD, Delhi Cantt to override the order of DGOS dated 16.01.2009, the order dated 3.12.2014 is illegal and without any authority. He also states that the

applicant was transferred from Jabalpur to CVD, Delhi Cantt. on administrative ground, hence there was no reason for the Commandant, CVD, Delhi Cantt. not to allow the applicant to join in pursuance of order of DGOS issued in administrative interest. Hence, the order dated 3.12.2014 is bad in law and beyond jurisdiction and liable to be quashed and set aside.

4. Counsel for the respondents states that the applicant was reinstated into service by CVD Delhi vide part-II order No.24/98 dated 18.02.1998. However, as per ROI C/03/93 an employee who is awarded major penalty of compulsory retirement from service or dismissal from service, if reinstated into service, will not be posted back to the same unit. As such the applicant was posted out to COD, Jabalpur on administrative ground. The COD, Jabalpur, vide movement order C/No 9489/0/Esstt/NI/Vol-50 dated 20.11.2014 directed the applicant to report at CVD, Delhi Cantt. as per IHQ of MOD (Army) posting order No.A/24004/LC/OS-8C (i) dated 16.01.2009 but CVD, Delhi Cantt. vide no. 3009/145/GF/TS/Esstt-Ind dated 3.12.2014 intimated that the applicant has been posted to their unit without any consultation by COD Jabalpur at AOC records and IHQ of Mod (Army). IHQ of MoD (Army) vide signal No.A/23003/CC/OS-8C (i) dated 10.12.2014 clarified that the transfer of chargeman in AOC is centrally controlled category and OIC records is cadre controlling authority, hence directed COD Jabalpur to cancel the movement order and advised the applicant to report back/apply for posting which can be forwarded to AOC records (HQ) of MoD (Army). Counsel for respondents states that the applicant was directed/advised to report back to COD Jabalpur in order to sort out his grievances but despite

clear directions issued to the applicant he has not reported for duty at COD Jabalpur. He also states that the applicant is claiming pay and allowances for the period w.e.f. 17.10.2014 to till date without reporting back to COD Jabalpur and as per the principle of no work and no pay, the applicant is not entitled for any pay. He states that nothing has been done illegal by the respondents and they have only followed ROI-C/03/93, according to which, if any individual is awarded any major penalty, he cannot be posted at the same station. Hence he was posted out to COD, Jabalpur on administrative grounds. He also states that the applicant has approached this Tribunal without exhausting remedies available to him under Rule 23, 27, 29 & 29A of CCS (CCA) Rules, 1965, i.e. appellate authority (DGOS), revisionary authority (VCOAS) and review petition addressed to Hon'ble President of India. He also states that the applicant's grievance will be considered after he reports back to Jabalpur.

5. Having heard the rival contentions of the parties and going through the entire record, it is clearly reflected and revealed that the case of the applicant is a chequered history of harassment time and again as the applicant has been put to removal from service on 29.03.1990 but vide order of the Tribunal dated 25.07.1997, the removal order was set aside. Again the applicant was dismissed from service on 19.04.2003 and again by the order of the Tribunal dated 13.07.2004, he was directed to be reinstated in service with all consequential benefits. Accordingly he was reinstated and was transferred from CVD, Delhi Cantt. to COD, Jabalpur on 8.04.2006. The applicant represented against the transfer order and he was transferred back to CVD, Delhi Cantt. by order of DGOS vide order

dated 16.01.2009. He was again placed under suspension on 16.02.2009 and criminal proceeding was initiated against him which also culminated in his discharge on 09.04.2014 by the order passed by Judicial Magistrate Class-1, Jabalpur. Even the disciplinary proceedings was dropped against him vide order dated 17.07.2014 which shows that somehow or other the applicant has been put to harassment since 1990 and every time the harassment was turned out to be illegal and he came out successfully by the orders of Courts of Law even by the Hon'ble High Court of Delhi. After that the applicant was released vide order dated 20.11.2014 for reporting to CVD, Delhi Cantt. and the order was issued in administrative interest but while the applicant reported for joining to Commandant, CVD, Delhi Cantt. in pursuance of the above order, he was not allowed to join duty and has been directed to go back to Jabalpur by Commandant, CVD, Delhi Cantt.

6. Heard the rival contentions of the counsels for the parties, perused the pleadings on record.

7. Counsel for respondents argued that the order of the Commandant, CVD, Delhi Cantt. dated 3.12.2014 cannot be termed as illegal as he has been ordered to go back to Jabalpur so that his representation can be sorted out and the applicant he has come before this Tribunal without exhausting remedy available to the applicant. He stated that the grievances of the applicant can be sorted out/redressed only after he reports back to Jabalpur. At page 2 of the counter reply filed by the respondents, they have stated that "however as per ROI C/03/93, an employee who is awarded major penalty of 'compulsory retirement from service' dismissal from service' if reinstated into

service will not be posted back to the same unit and accordingly the applicant was posted out to Jabalpur vide letter dated 22.03.2006. The applicant pointed out that the transfers order dated 08.04.2006 was in violation of departmental regulations (ROI)-C/03/93 dated 28.04.93. The applicant represented and his plea was accepted by DGOS and vide order dated 16.01.2009, he was transferred back to CVD, Delhi Cantt. on administrative grounds. But the applicant was again put to harassment and placed under suspension. An FIR was lodged against him and simultaneously departmental and criminal proceedings were initiated against him but ultimately both the proceedings, criminal as well as departmental, culminated in favour of the applicant and vide order dated 17.07.2014 all the charges levelled against him were dropped by the disciplinary authority. The applicant after being discharged from all the charges against him in the disciplinary proceedings by the disciplinary authority approached the Commandant, COD, Jabalpur vide his representation dated 30.09.2014 for revocation of his suspension and implementation of posting order passed on 16.01.2009. Accordingly, the applicant was released vide order dated 20.11.2014 to report to CVD Delhi Cantt. and the order was issued in public interest. The entire chronology of events clearly reveals that the applicant has unnecessarily been harassed by the respondents, as every time he has come out clean from all the allegations made against him. Even if I go by the analogy of the respondents that if an employee is dismissed or removed from service then after his reinstatement he cannot be posted back to that place and should be posted out from that place, then as the applicant after reinstatement was posted back to Delhi from Jabalpur, he is entitled to be posted to Delhi on the same analogy. The applicant

has also stated categorically that the transfer order 3.12.2014 is passed by a much lower authority than DGOS. As the transfer order dated 16.01.2009 was passed by DGOS transferring back the applicant to CVD, Delhi Cantt on administrative ground, an officer holding rank of Commandant cannot override the order of much superior authority i.e. DGOS. As regards the plea of the respondents that the applicant has not exhausted his departmental remedy before coming to this Court, it is seen that the applicant has preferred detailed representation to DGOS, Army Headquarter requesting to permit the applicant to join duty at Delhi. But the representation has not been decided by the respondents.

8. After going through the chequered history of the case, the respondents are directed to take a decision on the pending representation of the applicant 9.12.2014 within six weeks from the date of receipt a certified copy of this order taking into consideration the harassment already undergone by the applicant and the applicant has every time come out clean and also keeping in mind the regulation ROI-C/03/93 dated 28.4.1993.

9. In view of the above, transfer order dated 3.12.2014 is quashed and set aside. OA is disposed of in the above terms, not commenting on the merit of the case.

**(Jasmine Ahmed)
Member (J)**

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