

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3963/2012
MA No.3369/2012

New Delhi, this the 21st day of September, 2015

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

Shri Sitaram Singh Yadav,
s/o late Sh. Shiv Mangal Singh Yadav,
Lower Division Clerk
In Cariappa Batalion,
Indian Military Academy,
Dehradun. ...Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

1. Union of India through
Secretary,
Ministry of Defence,
North Block, New Delhi.
2. Director General of Military Training(MT-7),
General Staff Branch,
Headquarters Office,
Ministry of Defence,
Defence Headquarters,
New Delhi.
3. Additional Director General of Manpower/MP-4(CIV)
Adjutant General Branch,
Integrated Headquarter of Ministry of Defence,
Sena Bhawan, New Delhi. ...Respondents

(By Advocate: Sh. Satish Kumar)

O R D E R (ORAL)

By Mr. A.K. Bhardwaj, Member (J):

The applicant was appointed as L.D.C. in Indian Military Academy (IMA), Dehradun on 16.08.2001. In the year 2005,

he submitted an application dated 26.07.2005 for his posting to Lucknow, Allahabad or Varansi on compassionate grounds. The said application was forwarded to the Integrated Headquarters, Ministry of Defence (Army), Adjutant General Branch for issuance of his posting order. In acceptance of his request, the applicant was transferred to Headquarter Central Command, Lucknow, vide posting order dated 23.11.2005. Subsequently, the applicant submitted a representation dated 31.07.2006 to the Directorate General of Manpower & Personal Service (MP-4(Civ)(B), Army Headquarters for his reversion back to IMA, Dehradun. In acceptance of his request, the respondents issued posting order dated 29.09.2006 (Annexure-II to the reply) transferring him to IMA Dehradun. On his transfer back to IMA, Dehradun, the applicant reported for duty on 13.04.2007 and his seniority at the Academy was counted with effect from the date of joining i.e. 13.04.2007. Thus, the applicant filed the present OA praying therein –

“That this Hon’ble Tribunal may be graciously pleased to allow this application and quash the impugned order:-

(i) *That this Hon’ble Tribunal may be further pleased to direct the respondents to consider the case of the applicant and decide the seniority in accordance with the circular dated 17.09.1983 on the basis of which the applicant was initially transferred and posted from Dehradun to Lucknow.*

(ii) *That this Tribunal may be further pleased to direct the respondents to give all consequential relief.”*

2. Ms. Meenu Mainee, learned counsel for the applicant submitted -

(i) Once at the time of applicant's transfer to Headquarter Central Command, Lucknow he had given an undertaking that he would seek reversion back to IMA Dehradun within two years, and within such time alone he made a representation for his reversion back, the respondents ought to have restored his seniority and should not have given him a depressed seniority as his transfer to IMA Dehradun was reversion in terms of his undertaking.

(ii) For a period of two years from the date of his transfer to Headquarter Central Command, Lucknow, the applicant retained a lien on the post held by him in Dehradun. Thus, on his transfer back to the Academy, there could be no loss of his seniority.

3. On the other hand, learned counsel for the respondents submitted that initially there was a provision for retention of lien for two years but subsequently the rules were amended and the concept of substantive appointment was replaced with appointment on regular basis, and the provision of lien was done away. To buttress his plea, the learned counsel relied

upon the Circular dated 13.02.2008 (Annexure A-3), which reads thus:-

"As per instructions contained in Min of Def letter No.25(15)/67/D(Appts) dated 06 Nov 67, as also in MHA OM No 60/37/63-Est(A) dated 14 Jul 67, the lien of a permanent Government servant on his transfer to other Department/Office is to be retained for a period of two years. They may, if so desire, seek reversion to their parent Department/Office within that period.

2. *Consequent upon issue of instructions relating to delinking of confirmation from the availability of permanent vacancy with effect from 01 Apr 88, provisions of FR 9(13), FR-12 and FR-13 have been amended by the DOP&T vide their Notification No.28020/1/96-Estt(C) dated 09 Feb 98 and the term 'substantive appointment' has been replaced with 'appointment on regular basis'.*

3. *As a result of the above amendment, a doubt was raised with the DOP&T as to whether the benefits available under the instructions indicated in Para 1 above are still available or not. The matter has been examined by the DOP&T and the opinion given is reproduced as under:-*

"FR 9(13) stipulates that lien means the title of a Government servant to hold on regular basis either immediately or on the termination of a periods of absence, a post including a tenure post to which he has been appointed on regular basis and on which he is not on probation. As on transfer of a Government servant to another post/organization he is not required to be kept on probation, he requires lien on the new post from the date of his transfer. His lien in the previous organization stands terminated automatically and he has no option for reversion to the earlier organization. The instructions of 1967 of the Ministry of Defence have now become obsolete in view of the changed concept of lien."

4. *In view of the above clarification, it is evident that the employees, once declared surplus/transferred to new office, cannot be repatriated to his previous office, after he joins his new office.*

5. *It is requested that the above clarification may please be disseminated for the information of all concerned.*

6. *Formal amendment in Army Order 22/2001 on the above lines will be issued in due course.”*

4. The further submission put forth by the learned counsel is that on his transfer back to IMA Dehradun on his request, the applicant was bound to come at the bottom of seniority and was not entitled to protection for past service rendered by him. In this regard, he relied upon the Policy evolved by the Adjutant General Branch issued vide No.15984/Nov/1/2005/MP-4(Civ)(b) dated 23.11.2005 (Annexure-I), which reads thus:-

“1. *The individuals mentioned in Appendix ‘A’ to this letter are transferred on permanent duty to Units/Estt shown against their names. No TA/DA will be admissible to the individuals concerned and they shall consequently travel at their own expense. The journey period in connection with the posting will be covered by grant of Earned Leave/Half Pay Leave, if due or Extra Ordinary Leave, if there is no such leave due to his/her credit.*

2. *The individual will be dispatched to his new unit only after the receipt of confirmation regarding availability of vacancy from the receiving unit. The receiving unit will advise availability of vacancy to the unit concerned immediately on receipt of the posting order and*

will not await a formal communication from them.

3. *The individual will be relieved of his duty immediately on receipt of confirmation regarding availability of vacancy from the receiving unit. The move of the individual will not be withheld till the arrival of the replacement. The resultant vacancy will be reported to this HQ in accordance with AO 22/2001.*

4. *The individual will be intimated that they will reckon their seniority from the date of reporting for duty in the new Unit Estt as per revised instructions contained in Raksha Mantrayalaya letter No.28(6)(6)/D(Appts.) dated 29 Jun 73 (reproduced in CPRO 73/ 73).*

5. *Those individual who have been transferred against equivalent/lower trade or scale of pay will be required to submit a willingness certificate in duplicate accepting the same. One copy should be placed in the Service Book and other be invariably forwarded to this HQ. In case of refusal the unwillingness certificate may be sent to this HQ for cancellation of posting order. The service book of the individual should invariably be updated before transferring the same to the new unit.*

6. *The pay of the individual will be fixed in accordance with the following provisions of CPRO 82/80:*

(a) *In case where posting/transfer involves no change in trade/grade, the service rendered prior to such posting/transfer will be treated as continuous and the individuals may be allowed to draw the last pay drawn. The date of increment will remain unaltered.*

(b) *In case where posting/transfer involves change in trade/grade, the service rendered in the previous post will be treated as continuous. In such case the pay of the individual will be fixed in the new pay scale at the stage equal to the pay drawn in the old pay scales or if there is no such stage, at the stage next below that pay, the difference being*

treated as personal pay to be absorbed in the next increment. The service rendered on the pay last drawn in the old pay scale will count towards the next increment in the new pay scale.

- (c) In case where posting/transfer involves reduction in the grade/trade the pay of the individual will be fixed by giving the benefit of completed years of service rendered in the previous post.*
- (d) When the appointment is made to a new post and the maximum pay in the time scale of that post is less than his quasi permanent/substantive pay in respect of the old post, the individual will draw that maximum as initial pay.*

7. A Completion report will be forwarded to the dispatching unit within a month of the issue of this letter.”

5. In examination of the claim of the applicant regarding fixation of his seniority at IMA, Dehradun, the respondents could loss sight of material facts i.e. they remain oblivious of the undertaking dated 26.07.2005 and the complete text of the representation dated 31.07.2006. When at the time of his transfer to Headquarter Central Command, Lucknow he could seek his reversion back to IMA, Dehradun within two years, and he made the representation dated 31.07.2006 to the Directorate General of Manpower & Personal Service (MP-4(Civ)(B), the plea put forth by him was not for fresh transfer but for reversion back only. The representation reads thus:

“1. With due respect and humble submission, I beg to state the following few lines for your

kind consideration and favourable action please.

2. I was enrolled in IMA as a Lower Division Clerk (L.D.C.) on 16 Aug 2001, since then I am serving honestly up to the satisfaction of my superiors. On my request I was posted to Lucknow (HQ Central Comd) on compassionate ground wef 01 Jul 2006.

3. Since I arrived at Lucknow my family is not feeling well as the Climate of Lucknow is very hot. Hence my all the family members are continue ill since arrival at Lucknow Medical Certificate given by Doctor is enclosed herewith for your kind perusal please.

4. You are requested to please consider my case sympathetically for reverting me back to IMA, Dehradun. I shall always remain thankful to for this act upon kindness.”

6. In view of the aforementioned, we dispose of the OA with a direction to the respondents to re-examine the claim of the applicant for fixation of his seniority in the wake of the text of the representation and undertaking given by him, as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order and pass a reasoned and speaking order. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/Ahuja/