

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00467/2018

Dated Tuesday the 10th day of April Two Thousand Eighteen

PRESENT

HON'BLE SMT. B. BHAMATHI, Member (A)

Dr. R. Tamil Sudar,
Principal Medical Officer (SG),
Engine Factory,
Avadi, Chennai 600054.Applicant

By Advocate M/s. R. Prabhakaran

Vs

1.Union of India,
rep by its Chairman /
Director General of Ordnance Board
Ordnance Factory Board,
Ministry of Defence,
No. 10-A, S.K.Bose Road,
Kolkata 700001.
2.The General Manager,
Engine Factory,
Avadi, Chennai 600054.Respondents

By Advocate Mr. J. Vasu

ORAL ORDER

(Pronounced by Hon'ble Smt. B. Bhamathi, Member(A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“1. Call for the records culminated in the impugned notice in ref. no. 13263/2018/Y&E (FY) dated 15.02.2018 issued by the 2nd respondent and quash the same,

2. to consider and grant the prayer of interim stay or status quo ante, instead on granting order of status quo as on date, in OA No. 310/00800/2017.”

2. The applicant has also prayed for the following interim relief:

“stay of the impugned notice in ref. No. 13263/2018/Y&E (FY) dated 15.02.2018 issued by the 2nd respondent, pending disposal of the above OA.”

3. This OA was to be listed 10.04.2018, however, it is not appearing in the cause list in the OA. On mention by CFA, records were called for along with OA 800/2017 on the request of parties, since applicant stated that status quo was granted in the above linked case, while respondents argued that status quo had been vacated, which was vehemently disputed. It is the applicant's case that he had been transferred from Avadi to Jabalpur with an allegedly malafide motive and vindictive attitude. The transfer order was challenged in OA 800/2017 which was filed on 07.06.2017 and after admitting the OA, dasti notice was ordered on 08.06.2017. On receipt of dasti notice, CFR appeared on two subsequent dates of hearing thereafter, but failed to file reply or make any averments, when both adjournments were granted before deciding

prayer for IR. When CFR failed to file reply, on the next date ie on 12.9.2017 the prayer for grant of IR was heard and interim relief of status quo as on date was granted till the next date of hearing. **The interim relief was not of an ex-parte nature since CFR was also present on the date of grant of IR ie., 12.09.2017.** Reply was finally filed, thereafter, **on 25.09.2017** and no other averments made before Tribunal. No stay vacation order was filed. No MA was also filed for modification of the status quo order and hence the status quo continued. The pleadings were completed on **01.11.2017** and written arguments were filed by both applicant and respondent.

4. On 04.12.2017, both counsels were present and at the request of CFR, the case was adjourned to 01.01.2018. However, the court master failed to record that the interim order continued till the next date of hearing. The learned CFR contends today that on 04.12.2017, the status quo order was not extended. The case was heard on 01.01.2018 and after hearing both parties and reserved for orders by DB, consisting of Hon'ble HoD, Late Shri. K. Elango, Judicial Member and the undersigned. However, on account of the sad demise of the then Hon'ble HoD, Late Shri. K. Elango, Judicial Member on 18.01.2018, the orders could not be passed. This fact came to notice during SB sitting of the undersigned on 20.02.2018, on mention when both counsels were present. The case was listed on 21.02.2018 under the caption "For Being Mentioned" and the case was directed to be listed

on 08.03.2018. On 08.03.2018, the Bench directed to list the matter before Division Bench whenever DB is formed, since no DB is available since the demise of Hon'ble HoD, Late Shri. K. Elango, Judicial Member on 18.01.2018. The explanation of the concerned staff was called for not keeping any one concerned informed of the pending passing of orders. In the meantime, when the case was placed before the present HoD (undersigned) for orders regarding constitution of Division Bench, the case was directed to be listed for de-novo hearing before a Division Bench immediately when it is available. Even on 1.1.2018, when the case was heard and reserved for orders, there was no mention of continuation of IR by the court master even as the Board showed IRG (IR granted). The Registry further failed to notice that on this date also the concerned court master failed to mention continuation of IR and only sent file to the Presiding officer for passing orders. Hence, CFR contends that the status quo was never restored by the tribunal after its non extension on 4.12.2017 and hence it is deemed that the stay order stood vacated by court order, by default.

5. In the meantime, the applicant has filed the present OA 467/2018 on 05.04.2018 (pressing for admission) challenging the order dated 15.02.2018 by which he has been permitted to retain the quarters upto 22.05.2018 on the condition of remitting an advance amount of damage charges working out to Rs. 1,75,000/- for the period of four months from 23.01.2018 to 22.05.2018 at the rate of Rs. 43,750/- per

month and in case of failure, necessary action shall be initiated against the applicant for the period beyond 22.01.2018. It is evident that this order could have been passed, only on the interpretation that the stay order stood vacated, which is the respondents' contention today.

6. In the view of the Tribunal, there was an error regarding non mention of IR on 4.12.2017 and 1.1.2018 in the order sheet, which went unnoticed by Registry. There was no conscious decision on the part of the Tribunal to vacate IR, which could have happened only if CFR prayed for stay vacation or its modification. He did neither and hence CFR cannot attribute an order to the tribunal, which it never passed. Hence, interim relief by way of maintaining status quo continued undisturbed then and now when the case stands listed for de novo hearing in the pending OA 800 of 2017. The respondents cannot take advantage of the error, not file appropriate MA and still contend that there is no violation of the status quo order by passing the impugned order in OA 467 of 2018. He further contends, today that someone has already joined in the applicant's place in the month of June 2017, even before filing of OA 800 2017. If that is so, learned counsel for the respondents should have brought this fact to the notice of this Tribunal by filing reply on receipt of dasti notice. Instead, he appeared but failed to file reply stating that someone else has joined. Had that been stated, the Tribunal would have factored in the said submission while granting status quo on 12.9. 2017. Not only were any such submission made, in time, but even MA was not filed to obtain decision of this Tribunal to

vacate/modify the interim relief on the ground that someone else has already joined. Without doing so the respondents have suo moto held that applicant is liable to go, as if Court has dismissed OA 800 of 2017, which is still pending adjudication, and hence also held that he cannot be allowed to retain quarters beyond the period by passing the impugned order challenged in OA 467 of 2018. To the specific query of the Tribunal CFR admits that he failed to file reply after receipt of dasti notice, nor did he make any submission that someone else has joined anytime before IR was heard nor did he file MA for vacation of stay or modification of stay order, anytime , thereafter. Therefore there is no legal force in the submission of the learned CFR that status quo did not exist and interim relief continues in OA 800/2017. In fact, it is evident, that even when the order of status quo was passed on 12.9.2017, the violation subsisted but for reasons best known was not pointed out to the Tribunal, during hearing on IR or immediately after grant of IR. Also there was no decision of this Tribunal to vacate the interim relief. The applicant enjoying the protection of the status quo order, also found nothing adverse to him to state before the Tribunal about the fact that someone else has joined in his place. All the above observations are based on the daily order sheets in OA 800 of 2017.

7. Under these circumstances, the main relief and the interim relief prayed in the present OA filed by the applicant has to be considered. Evidently, the cause of action in the present OA is inextricably linked to

the cause of action and status quo order in OA 800 of 2017, which is existing since 12.9.2017. Hence, the Tribunal holds that the impugned order in OA 467 of 2018 is passed in violation of that status quo order in OA 800 of 2017.

8. In view of the above, the present OA 467/2018 is not maintainable since the present cause of action is directly linked to the cause of action in OA 800/2017 and it is only by virtue of the misinterpretation on the part of respondents, which suited them, that the impugned order dt. 15.02.2018 in this OA is passed in violation of the status quo order of this Tribunal dt. 12.09.2017.

9. Learned counsel for the applicant seeks for withdrawal of this OA with liberty to file an MA for direction in OA 800/2017. The same is allowed and he is permitted to withdraw this OA and liberty is granted to file an appropriate MA for direction in OA 800/2017. Necessary endorsement to this effect has been made in the OA records.

10. Accordingly, OA 467/2018 is dismissed as withdrawn.

11. A copy of this order may also be placed in OA 800/2017 which may be listed on 16.04.2018. Registrar is directed to go through this order carefully and take follow up administrative action in file.

(B. Bhamathi)
Member(A)
10.04.2018

SKSI