

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 16/2018

Dated:- 05.01.2018.

Coram: Hon'ble Shri. Arvind J. Rohee, Member (J).
Hon'ble Shri. R. Vijaykumar, Member (A).

Shri Ashok Sakharam Dhumal,
 R/at Dhanasampada Apartments,
 Utham Nagar, Taluka – Haveli
 District, Pune 411 023.
 Employee of National Defence Academy
 Khadakwasla, Pune 411 023.
 ... *Applicant*
(By Advocate Shri Pramod Kathane)

Versus

1. Union of India
 Through the Secretary Defence
 South Block, New Delhi 110 011.
2. Headquarters, Integrated Defence
 Staff, Ministry of Defence,
 Department of Personnel Kashmir
 House, Rajaji Marg,
 New Delhi 110 011.
3. The Commandant,
 National Defence Academy,
 Khadakwasla, Pune 411 023.
4. The Colonel,
 Office of Brigadier Administration
 National Defence Academy,
 Khadakwasla, Pune 411 023.
5. The Lt. Colonel, Security Officer,
 Office of Brigadier Administration
 National Defence Academy,
 Khadakwasla, Pune 411 023. ... *Respondents*

ORDER (Oral)
Per : Shri A.J. Rohee, Member (J)

Today when the matter is called out

for admission, heard Shri Pramod Kathane, learned Advocate for the Applicant. We have carefully perused the case record.

2. In this OA the applicant has grievance regarding the impugned Inter-Posting order dated 10.06.2017 (Annexure A-2) issued by Security Section (Administration Branch) of the National Defence Academy (for short NDA) by which he is spared from Security Section where he was working as Security Guard/Watchmen to another Unit as a Groom to take care of Horses and Stables. In this OA, the following reliefs are sought;

“8.a) This Hon'ble Tribunal be pleased to quash and set aside impugned letter dated 30.05.2014 issued by the Respondent No.4 being contrary to office Memorandum being GI, Dept. of Per. & Trg., OM No.AB-14017-6-2009-Eatt (RR), dated 30.04.2010 issued by the Respondent No.1.

8.b) This Hon'ble Tribunal be pleased to quash and set aside impugned order of transfer dated 10.06.2017 passed by the Respondent No.5, in contravention of office Memorandum being GI, Dept. of Per. & Trg., OM No.AB-14017-6-2009-Eatt (RR), dated 30.04.2010 issued by the Respondent No.1,

8.c) This Hon'ble Tribunal be pleased to quash and set aside impugned speaking order dated 07.12.2017 passed by the Respondent No.3 being contrary to Office Memorandum being GI, Dept. of Per. & Trg., OM No.AB-14017-6-2009-Eatt (RR), dated 30.04.2010 issued by the Respondent No.1.

8.d) That this Hon'ble Tribunal be pleased to

hold that the post of Chowkidar occupied by the applicant and the transferred post of Groom are independent post having different nature of duties.

8.e) This Hon'ble Tribunal may be pleased to quash and set aside all the directions and communications issued by the Respondent No.3 to 5 pursuant to the impugned order dated 07.12.2017 passed by the Respondent No.3.

8.f) That pending the hearing and final disposal of the present Original Application the Hon'ble Tribunal may be pleased to stay the effect, operation and implementation of the impugned order dated 07.12.2017 passed by the Respondent No.3 and impugned order of transfer dated 10.06.2017 passed by the Respondent No.5.

8.g) That pending the hearing and final disposal of the present Original Application, Hon'ble Tribunal may be pleased to direct the Respondent Nos.3 to 5 to allow the applicant to resume on his original post of Chowkidar.

8.h) That the Hon'ble Tribunal be pleased to hold action of Respondent No.3 to 5 of not allowing the applicant to work in the old post illegal and direct the respondent to pay the salary for the such period when the applicant was restrained from resume their service of old department.

8.i) Ad-interim reliefs in terms of prayers clause 'f' and 'g' above.

8.j) Any other further order in the facts and circumstances of the present case be granted in favour of the applicant."

3. This is second stage litigation. The Applicant has initially challenged the impugned inter-posting order in the previous OA No. 624/2017. The said OA stands disposed of vide order dated 25.10.2017 by this

Tribunal with a direction to the Respondent No.3 to consider and pass a reasoned and speaking order on the pending representations of the applicant in accordance with law, within a period of six weeks from the date of receipt of certified copy of the order.

4. In pursuance of the aforesaid direction, the Respondent No.3 passed a detailed and reasoned order dated 07.12.2017 (Annexure A-3/A-17) which is also challenged in this OA along with the initial order dated 10.06.2017.

5. According to applicant, the respondents were not competent to change the nature of his duty and to post him to a altogether different unit as Groom which is not permissible in law.

6. The record shows that the respondents have taken a decision dated 30.05.2014 (Annexure A-1) by which Charter of Duties of Multi Tasking Staff was issued and it is directed that all the duties of erst-while Group 'D' employees (now Group 'C') which were being done tradewise separately have been merged under the category of "Multi

Tasking Staff - Office & Training". It is also provided therein that all the duties are applicable to Multi Tasking Staff irrespective of the categorization and sections they have been working in NDA till date. This decision is also challenged in this OA.

7. It is not disputed that the applicant was regularly appointed as Chowkidar on 27.06.1996 and since then he was working on the said post till he is shifted by the impugned order to another unit of NDA. For the purposes of his submission that it is not permissible to change the nature of duty of the applicant, the learned Advocate for the applicant placed reliance on Model Recruitment Rules for Group 'C' posts in PB-1, with Grade Pay of Rs.1800 (pre-revised Group 'D' post) published vide DOPT's OM No.AB-14017/6/2009-Estt. (RR), dated 30.04.2010. He particularly referred the provisions of Annexure A-II thereof which prescribes Designation and Indicative List of Duties under which for erst-while Group 'D' post of Peon, Daftary, Jamadar, Junior Gestetner Operator, Farash, Chowkidar,

Safaiwala, Mali, etc. a new designation as Multi-Tasking Staff is suggested. Their specific duties are also prescribed in clause 'a' to 'p'. On its basis it is submitted by learned Advocate for the applicant that Multi-Tasking Staff cannot be assigned with the duty of Groom to take care of horses and maintenance of stables. However, in this respect clause 'p' specifically states that beside the specific duty ear-marked at clause 'a' to 'o' any other work assigned by the superior authority is also covered. It is thus obvious that under this residuary clause, the MTS were allocated the duty as Groom to take care of Horses and the stables in the premises of NDA.

8. The record further shows that on recommendations of 6th Pay Commission the Government of India, Ministry of Defence issued Circular No.15743/ Rrs/ MTA/ IDS/ PERS/1497/SO(H) / (GS.II) /2010 dated 5.01.2011 under the caption 'Merger of Posts/Scales as per 6th CPC and change in nomenclature of erstwhile Group 'D' staff in Establishments under HQ, Integrated Defence Staff'. In

Table 1 thereof, existing name of the posts and Pay Scale as per Vth CPC are mentioned in which Chowkidars are incorporated at sr.no.

(iv) whereas Grooms at sr.no.(ix), besides various other categories. The revised nomenclature of those posts is stated to be MTS - Office & Training, in PB-1 (Rs.5200-20200) + GP 1800.

9. It is thus obvious from the above discussion that since Chowkidar and Groom are designated as MTS, their duties are inter-changeable and it cannot be said that it is not permissible under law to do so by the respondents. The record further shows that the applicant had joined the new assignment/replacement and the speaking order dated 07.12.2017 elaborately discussed the matter in accordance with law and it is also stated that since the main grievance of the applicant and other similarly situated MTS is that they have not been given any training to take care of horses and up-keeping of stables and hence they are unable to work on the said post. However, it is stated in order dated 07.12.2017 that in the last week of December, 2017 a week's

training was given to all MTS to meet the need. The applicant has not denied this fact in the OA.

10. While rejecting the representation and passing the speaking order in para 10 & 11 it has been stated as under:

“..10. Having enjoyed the pay and perks of the revised nomenclature of the post/Pay Band as applicable to Multi Tasking Staff – Office & Training (MTS – O & T) by way of merger of various duties and the upgraded Grade Pay, refusal to perform any of the duties merged into MTS – O & T, at such a belated stage is not only an afterthought but would also vitiate the maxim of equity and fair play and also amount to infringement of bonafide orders. Hence, the above named Multi Tasking Staff – Office & Training (MTS – O & T) are directed to perform all the duties assigned by the competent authority relating to "Office & Training" as the appointment itself suggests that the duties of 'grooming of horses' being essential part of Equitation Training, refusal of the same shall amount to disobedience of bonafide order/direction given by a superior. As regards the issue of being untrained, the same is being addressed by way of one week cadre w.e.f. 12 Dec 2017 to 18 Dec 2017 to be in the form of OJT (on the job training) along with the other MTS – O & T already performing the duties at the Equitation Training Team. Consequences, of any refusal to attend the above cadre by the above named persons shall be at their peril.

11. Further the claim that the applicants have been transferred/posted to a new unit is a figment of imagination, since the applicants were recruited in NDA and not to a particular branch, inter movement from one branch/office/team to other branch/office is within the premises of NDA and a routine

administrative requirement that cannot to be construed as posting to a New Unit."

11. From the above discussion, it is obvious that no legitimate grounds are raised or made out by the applicant so as to take a different view. There is no material on record to show that the speaking order passed by the Respondent No.3 is in any manner illegal, improper or incorrect which is liable to be judicially reviewed. As such, we are of the considered view that the OA is not maintainable.

12. From the above discussion, the OA cannot be entertained and consequently there is no question of granting any interim relief staying the operation of the Transfer Order and the speaking order as claimed by the applicant. The OA, therefore, stands dismissed in *limine*.

13. Registry is directed to forward certified copy of this order to both the parties, at the earliest.

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

dm.