

U.D

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

MA No.21/2019 & 22/2019
IN
ORIGINAL APPLICATION No.441/2013.

Date of Decision: 05.04.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri Anandrao Shamrao Sahare
 Age 54 years, Working as ACFA(Fys)
 R/at 3/5 E-Type Quarters
 Ordnance Factory Estate, Ordnance
 Factory, Bhusawal 455 203. ... *Applicant*

(By Advocate Shri S.P. Munghate)

VERSUS

1. The Union of India,
 Through the Secretary,
 Ministry of Defence, North Block,
 New Delhi – 110 001.
2. Controller General of Defence Accounts,
 Ulan Batar, Palam, Delhi Cantt.110 010.
3. Principal Controller of Accounts (Fys)
 10 A, S.K. Bose Road, Kolkata 700 001.
4. Controller of Finance & Accounts (Fys)
 Accounts Office, Ordnance Factory,
 Ambhajari, Nagpur – 440 021.
5. Bharat Bhushan Sherma,
 The General Manager,
 Ordnance Factory, Bhusawal 425 203.
6. The Chairman
 Ordnance Factory Board,
 10-A, S.K. Bose Road, Kolkata 700 001. ... *Respondents*

(By Advocate Shri V.S. Masurkar)

ORDER (Oral)
Per : R.N. Singh, Member (J)

Heard the learned counsels for the parties.

2. MA No.21/2019: By the present MA, the applicant is seeking recall of the order dated 15.10.2018 in the aforesaid OA by which the said OA was dismissed in default and for non-prosecution as there was no representation on behalf of the applicant even on revised call on 15.10.2018 and also on the previous date of hearing. Learned counsel for the applicant on the basis of averments made in the MA, submits that the applicant was being represented through Counsel and the applicant has been posted at Kamptee near Nagpur and the applicant was under the impression that the matter will be attended by his learned counsel. However, the learned counsel was under treatment and therefore he could not appear in the matter.

3. MA No.22/2019: By the present MA, the applicant is seeking condonation of delay of 33 days in filing of the aforesaid MA No.21/2019. The grounds taken for condonation of delay is that the applicant

could get the certified copy of the order dated 15.10.2018 only on 17.12.2018 and thereafter the MA was filed on 19.12.2018. Learned counsel for the applicant further submits that he had undergone eye surgery and had been under treatment, therefore, he could not take steps for filing of the MA for restoration of the OA within the period of limitation.

4. We have heard the learned counsels for the parties. The learned counsel for the respondents has submitted that MAs should be allowed only if the learned counsel for the applicant is ready to argue the OA as well, since the matter is old and on various occasions, it has been adjourned or dismissed for the reasons attributable to the applicant. The learned counsel is ready to argue the OA as well.

5. In view of the facts and circumstances as noted herein above, ***the MAs are allowed.*** The OA is restored to its original position.

6. **OA No.441/2013:** With the consent of the parties, the OA is taken up for final hearing.

7. Heard the learned counsels for the

parties.

8. The applicant a Group 'A' officer belonging to Indian Defence Accounts Service (IDAS) has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 25.07.2013 (Annex.A-1) by which he has been transferred from AOOF, Bhusawal to CDA (Funds), Meerut. Precisely, the facts of the present OA as contended by the learned counsel for the applicant are that the applicant while working at Bhusawal had raised various issues of corruption against many officers/officials and in view of his such complaints, the concerned officials have ensured issuance of the aforesaid impugned order dated 25.07.2013. It is further contended on behalf of the Applicant that aggrieved of the aforesaid impugned transfer order, the applicant has made a representation dated 26.07.2013 (Annex.A-14) to Respondent No.2 i.e. Controller General of Defence Accounts (CGDA). However, pending consideration of his such representation, the applicant has been

relieved from AOOF, Bhusawal vide order dated 29.07.2013 and the applicant has challenged such order also by way of amendment in the OA subsequently.

9. Learned counsel for the applicant under instructions from the applicant, who is present in Court, further contends that during the pendency of the OA, the applicant has raised his grievances before various authorities i.e. Director, CBI, Chairman OFB and also before the SC Commission. He further contends that in view of the indulgence of the SC Commission, the respondents have subsequently posted the applicant vide order of October 2015 at Pay and Accounts Office, Kamptee near Nagpur, Maharashtra. The learned counsel for the Applicant under instructions further submits that the applicant is satisfied with his present posting at Kamptee, Nagpur as it is his native place. For challenging the aforesaid impugned transfer and relieving orders i.e. 25.07.2013 and 29.07.2013 respectively, the applicant has taken various grounds vis-a-vis the impugned orders are illegal, void ab initio, result

of *mala fide*, more particularly attributable to Mr. Bharat Bhushan Sharma, Respondent No.5 in the present OA. Learned counsel for the applicant further submits that the impugned orders are in violation of provisions of Article 14 & 16 and 309 of the Constitution.

10. In response to the notice from this Tribunal, the respondents have filed their reply and the Respondent No.5 i.e. Shri Bharat Bhushan Sharma has filed a separate reply as well. The Respondents have denied and disputed all the allegations and grounds taken by the applicant in the present OA. Learned counsel for the respondents, Mr. Masurkar, submits that the applicant is a Group 'A' officer and is having All India Transfer Liability. He has been transferred by the competent authority and the Respondent No.5 even does not belong to his service and has no role in his transfer, however, has been impleaded just to harass him.

11. Be that as it may, The Applicant is at present satisfied with his present place of posting at Kamptee, Nagpur. However, the

grievance^s of the applicant is that the impugned orders have been passed in violation of the provisions of Constitution and being result of *mala fide*, however has not been looked in to by the competent authority i.e. Respondent No.2 in spite of his representation dated 26.07.2013 (Annex.A-14) in spite of lapse of more than five years. Learned counsel for the applicant under instructions from his client, who is present in Court, further submits that in his various complaints before the Respondent No.2, the applicant has raised a specific issue of corruption against the Respondent No.5, namely, Shri Bharat Bhushan Sharma and various other persons and he has also brought to the notice of the Respondent No.2 that the impugned transfer and relieving orders are the result of *mala fide* attributable to such persons. However, the same has not been got investigated and considered by the competent authority i.e. Respondent No.2.

12. From the facts as noted above, it is evident that the representation of the applicant regarding illegality of the

impugned and relieving orders alleged to be the result of *mala fide* and violation of relevant provisions of the Constitution and rule, have not been disposed of by Respondent No.2 till date. In the aforesaid facts and circumstances of the OA, we are of the considered view that the OA can be disposed of with direction to the Respondent No.2 to consider the pending representation dated 26.07.2013 of the applicant taking into account all relevant facts by passing a reasoned and speaking order in a time bound manner.

13. In view of the above, the OA is disposed of with direction to Respondent No.2 to consider the aforesaid pending representation of applicant dated 26.07.2013 and dispose of the same by passing a reasoned and speaking order within ten weeks of receipt of a certified copy of this order.

14. In the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)