

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1485/2003

Thursday, this the 18th day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)

MES 310605 Lakshman Singh AE/E/M
CDS (I) Meerut
Presently at

(By Advocate: Shri V.K. Shali)

... Applicant

Versus

1. Union of India : Through
Director General Personnel,
Military Engineering Service,
Engineer in Chief Branch,
Army Headquarters, DHQ PO
New Delhi - 110 011
2. Col. P.K. Nathani,
Commander, Works Engineer,
Meerut, 29-J, The Mall,
Meerut Cantt

(By Advocate : Shri R.N. Singh)

... Respondents

O R D E R (ORAL)

BY HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J) :

The applicant has filed this application under Section 19 of the Administrative Tribunals Act for quashing the order of posting/transfer dated 10.5.2003 issued by respondent No.2 which, he alleges, is contrary to the posting and transfer order issued by respondent No.1. He has also prayed for quashing the letter dated 24.5.2003 issued by respondent No.2, directing the applicant to report for duty in the Office of Commander Works Engineer (CWE), Meerut, failing which, it is stated that disciplinary action will be taken against him.

2. I have heard Shri V.K. Shali, learned senior learned senior counsel for applicant and Shri R.N. Singh,

learned counsel for respondents and perused the relevant documents on record.

3. The brief relevant facts of the case are that respondent No.1 i.e. Director General Personnel, Military Engineering Service (MES), Army Headquarters, New Delhi, has issued letter dated 21.3.2003 in which the applicant's name appears in paragraph 1. By this letter, he has been transferred from CE AF Halwara to CWE Meerut Cantt, ^{As} CDS (I).

4. During the hearing, the learned senior counsel for applicant has submitted that in the aforesaid transfer order it has been wrongly mentioned ^{that is:-} the place of transfer as CWE, Jalandhar which should read as CWE Meerut. According to the learned senior counsel for applicant, in pursuance of the transfer order issued by respondent No.1, the applicant had submitted his arrival report to Officer Incharge CDS (I) Meerut on 9.5.2003 and had also submitted his personal pay certificate on the next day i.e. 10.5.2003. The learned senior counsel for applicant has submitted that the applicant has also reported to CWE Office/respondent No.2 who by his letter dated 10.5.2003 has stated that his case has been referred to higher authorities and hence, he would report for duty in that office till the decision is received from the higher authorities. One of the main contentions of the learned senior counsel for applicant is that respondent No.2 has acted in a malafide manner and has also acted contrary to the MES, Army Headquarters' transfer order dated 21.3.2003. He has contended that the applicant has very much complied

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with his transfer order and has reported to the Officer Incharge, CDS (I) as per Arrival Report dated 9.5.2003. Even after so reporting to O I/C CDS(I), Meerut Cantt on 9.5.2003, the respondents have illegally and in a malafide manner denied the applicant his pay and allowances for the subsequent period. He has submitted that respondent No.2 has taken a biased, malafide and illegal attitude towards the applicant by issuing the aforesaid impugned letters on 10.5.2003 and 24.5.2003 transferring and posting him to a place which was different from what has been ordered by the competent authority i.e. respondent No.1. He has also submitted that the malafide action of respondent No.2 is evident from the letter issued by him on 25.4.2003 in which he has stated that if the applicant does not report for duty or submit the documents called for by him he was liable for disciplinary action. In the circumstances of the case, learned senior counsel has submitted that the impugned letters issued by respondent No.2 which are contrary to the transfer/posting order dated 21.3.2003 issued by respondent No.1 should be quashed and set aside. He has also prayed that respondent No.2 should be directed to clear the pay and allowances of the applicant since his joining duty ^{from} May 2003.

5. The above submissions have been controverted by the learned counsel for respondents. Shri R.N. Singh, learned counsel has taken a preliminary objection that the OA is not maintainable in as much as the applicant has been posted from Halwara, Punjab, to Meerut, U.P. and therefore, any grievance he may have does not fall within the territorial jurisdiction of the Principal Bench but

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that of the Allahabad Bench of the Tribunal. On the merits of the case i.e. regarding transfer and movement orders issued by the respondents, learned counsel has vehemently submitted that no illegality has been committed. He has submitted that as per the orders issued by respondents dated 15.1.1990 on the subject of Store Management in MES, the administrative and technical control of the establishment of Central Divisional Stock (CDS) was with CWE. In the circumstances, he has submitted that as per the transfer order issued by respondent No.1 dated 21.3.2003, the applicant was to report to CWE Meerut who is the controlling authority. When this matter was disputed by the applicant, respondent No.2 who is the Commander Works Engineers in the Office of the CWE has stated in his letter dated 10.5.2003 that the matter would be referred to higher authorities and till the decision is received from them, applicant should report to that Office for duty, which he did not do. Learned ~~senior~~^{R2} counsel for ~~respondents~~^{respondents R2} has referred to a number of annexures in the counter affidavit to show that applicant had been informed time and again to report in the Office of the CWE and also submit pay bills and other documents duly signed, in accordance with relevant rules and procedure. He has also referred to the annexures to the counter affidavit (pages 65 - 68 of the paper book) to show that necessary clarification had been obtained from the higher authorities that the applicant shall be posted to CDS Meerut under CWE Meerut and he shall function under the command and control of CWE. These decisions of the higher authorities have also been communicated to the applicant. Learned counsel for respondents has, therefore, submitted that when the applicant has refused to obey the

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orders of respondent No. 2 to report for duty in CME, Meerut Cantt, and has also refused to sign the necessary pay bills in accordance with the request made to him, then he is not entitled to any of the reliefs prayed for.

6. In the rejoinder, the applicant has submitted that the Principal Bench of the Tribunal has jurisdiction to deal with this case as the transfer order has been issued from the Office of respondent No. 1. Shri Shali, learned senior counsel has also been heard in reply to the submissions made by the learned counsel for respondents. He has reiterated his arguments and has submitted that respondent No.2 has tried to over reach the Army Headquarters' transfer order dated 21.3.2003 by asking the applicant to report to him whereas he had duly reported and joined in the Office of CDS (1), Meerut Cantt, on 9.5.2003.

7. The preliminary objection raised by the learned counsel for respondents regarding the territorial jurisdiction of the Principal Bench of the Tribunal to entertain this OA is rejected. The relevant facts in this case show that the transfer order dated 21.3.2003 has been issued by the MES, Army Headquarters, New Delhi, to CME, Meerut Cantt, which is the subject matter in issue in the present OA. Having regard to the provisions of Rule 6 (ii) of the Central Administrative Tribunals (Procedure) Rules, 1987, part of the action has, therefore, arisen in Delhi. In the circumstances, it cannot be held that the OA is not maintainable in the Principal Bench of the Tribunal as contended by Shri R.N. Singh, learned counsel for respondents and this contention fails.

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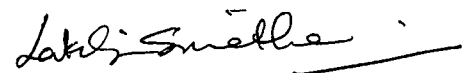
8. In view of the above, the case has been considered on merit. The Army Headquarters' letter dated 15.1.1990 regarding Store Management in MES shows that the administrative and technical control of establishment of CDS will rest with CWE. In the transfer order dated 21.3.2003 annexed by the applicant himself, as submitted by the learned senior counsel for applicant, the only mistake was regarding the place of posting i.e. CWE Jalandhar which, he has stated, was wrongly mentioned for CWE Meerut below which it has been mentioned as AS cds(i). If these orders are, therefore, read together it would substantiate the contentions of the respondents that the applicant was to report to CWE and not directly to CDS (I), Meerut. He has also been asked to do so by letters issued by the Commander Works Engineers/respondent No.2 dated 10.5.2003 and 24.5.2003. The various clarifications received from the Army Headquarters, New Delhi, which have been annexed to the counter affidavit filed by the respondents also clearly show that the applicant has to be posted to CDS, Meerut, under CWE, Meerut and he is to function under the command and control of CEW Meerut. These clarifications issued by the higher authorities have also been communicated to the applicant wherein it has been clearly stated that the applicant should be posted to CSD Meerut under CWE Meerut. Therefore, in the circumstances of the case, it cannot be held that respondent No.2 has, in any way, over reached the orders of Army Headquarters, New Delhi in the transfer order issued by them on 21.3.2003 in any of the letters subsequently issued to the applicant. It is also relevant to note that the applicant has also not agreed to submit the necessary pay bill and other documents

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that were called for by the concerned Office i.e. CWE, whereas he has submitted the same to CDS (I) instead. In the circumstances of the case, the allegations made by the applicant that respondent No. 2 has acted in a malafide and biased manner has not been established, ~~and~~ ^{But} these allegations are baseless as respondent No.2 has acted only in accordance with the relevant circular and instructions issued by the higher authorities.

9. On the other hand, the action on the part of the applicant, even after getting the clarifications from higher authorities that he has been posted to CDS (I) Meerut, under the command and control of CWE Meerut shows that he has not cared to obey the transfer order in the manner it should have been done. Such action on the part of the applicant cannot, therefore, be supported or termed as legal or justified to allow any of the reliefs prayed for by him in the OA. It is also relevant to mention that inspite of the applicant being called to submit the relevant documents with regard to his pay bills, he has not complied ~~with~~ ^{the} same, which again is not justified in the circumstances of the case.

10. In the result for the reasons given above, as there is no merit in the OA, the same is dismissed. No costs.



(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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