

(6)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.231/2003

This the 11th day of November, 2003

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

C.N.Chatterjee T.No.3291.
Trade TCS (Tin & Copper Smith) HS-I.
R/O 39-D, Patel Puri.
Kankar Khera, Meerut.
serving in 510 Army Base Workshop.
Meerut Cantt.

... Applicant

(By Shri V.P.S.Tyagi, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Director General Electrical,
Mechanical Engineers,
Army Hars., DHQ PO, New Delhi.
3. Commandant
510 Army Base Workshop,
Meerut Cantt.

... Respondents

(By Shri K.R.Sachdeva, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :

Applicant was initially appointed as Tin and Copper Smith (TCS) in May, 1979. He passed the trade test for promotion to TCS HS-II in October, 1984 and his pay was fixed in scale Rs.330-480 and thereupon pursuant to pay revision in RPR-1986 in the analogous pay scale of Rs.1200-1800. On 1.6.1988 he was posted under respondent No.3 on mutual transfer basis. His pay was fixed in pay scale Rs.1200-1800. Vide Annexure A-2 dated 10.4.1991 applicant's pay as on 1.10.1990 was Rs.1350/-. Applicant is aggrieved that his pay has been arbitrarily reduced to

his disadvantage from the month of December, 2002 vide Annexure A-1 dated 23.11.2002 which has the effect of reverting him to the post of TCS HS-II TCS (SK), i.e., from highly skilled trade to the skilled trade after a lapse of more than 14 years without any disciplinary proceedings against him and in violation of the principles of natural justice. The learned counsel of applicant contended that such a drastic and arbitrary action has been taken by respondents against applicant without issuing any show cause notice. He further stated that while applicant had been transferred on compassionate grounds in place of Shri Bashir Ahmed Bhat on mutual basis, both the applicant and Shri Bashir Ahmed Bhat were working as TCS HS-II. While applicant's seniority in the new unit could have been fixed taking into account the date of reporting to duty in that unit, placement in a lower grade or reduction in his pay could not have been resorted to by respondents. As such, applicant has sought quashing and setting aside or Annexure A-1 with consequential benefits.

2. The learned counsel of respondents stated that as per Government orders applications for mutual posting in respect of serving HS-II personnel could not have been entertained. Transfer of applicant could have been made as skilled reckoning seniority from the date of his reporting to the other unit. The learned counsel stated that applicant had given his acceptance for skilled grade vide Annexure R-1A dated 28.4.1988. The learned counsel stated that applicant continued to remain in the superior grade of Rs.1200-1800 due to a clerical mistake which

could be corrected by respondents without issuing a show cause notice to applicant.

3. The learned counsel particularly referred to paragraph 9 of the relevant transfer orders Annexure R-1 dated 5.4.1988 by which applicant and Shri Bashir Ahmed Bhat were mutually transferred. It states as follows :

"9. The individuals will be informed that they will reckon their seniority from the date of reporting for duty in units/establishments as per instructions contained in the Ministry of Defence letter No.26(6)/67/D(Adpts) dated 29 Jun 73 (reproduced in CPR0 73/73)."

The learned counsel stated that applicant's pay had been fixed by the authorities vide Annexure R-2 dated 23.12.2002 correctly.

4. Paragraph 9 of Annexure R-1 states that the seniority of the individuals concerned would be reckoned from the date of their reporting for duty. Admittedly, both the applicant and Shri Bashir Ahmed Bhat who were mutually transferred were TCS HS-II and working in the same grade, i.e., Rs.1200-1800 at the time of their transfer. Annexure R-1 does not state that applicant's transfer is made on the lower post of TCS (SK). Under these orders, while applicant had to be transferred in the same post and grade of TCS HS-II, his seniority alone could be related to the date of his joining in the new unit, i.e., he could be placed at the bottom of seniority of the persons working in the unit in the grade of TCS HS-II. Admittedly, respondents have also not issued any



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show cause notice to applicant before reverting him from the post of TCS HS-II to TCS (SK) and placement in the lower scale. Such action has been taken by respondents after a gap of several orders. In our view, Annexure A-1 dated 23.11.2002 is not in the nature of a show cause notice. It is a post-decisional communication bringing the applicant's pay substantially down on re-fixation after a gap of several years. Such an action is certainly arbitrary and could not have been taken by the authorities without issuing a show cause notice and further that Annexure R-1 dated 5.4.1988 does not envisage lowering of the grade of applicant. It could have affected his seniority only.

5. In the facts and circumstances of the case, Annexure A-1 is ^hquashed and set aside with all consequential benefits, such as restoration of applicant's pay in the scale which he was in receipt in November, 2002 in the TCS HS-II grade and also that any recovery if made from applicant should be refunded to him.

6. The OA is allowed as above. No costs.

S. Raju
11-11-03

(Shanker Raju)
Member (J)

V.K. Majotra

(V. K. Majotra)
Vice-Chairman (A)

/as/