

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1794 OF 2018

Ashok S. Dhumal	...Petitioner
Versus	
Union of India and ors.	...Respondents

WITH

WRIT PETITION NO. 1795 OF 2018

Popat J. Yadav	...Petitioner
Versus	
Union of India and ors.	...Respondents

WITH

WRIT PETITION NO. 1796 OF 2018

Shekhar K. Pawar	...Petitioner
Versus	
Union of India and ors.	...Respondents

WITH

WRIT PETITION NO. 1797 OF 2018

Narayan B. Vinode	...Petitioner
Versus	
Union of India and ors.	...Respondents

Mr. Pramod G. Kathane a/w. Mr. Manoj G. Sawardekar for the Petitioners.

Mr. Rui Rodriques a/w. Mr. Y. S. Bhate i/b Mr. P.J. Khosla for Respondent Nos.1 to 5/UOI.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. & M. S. SONAK, J.

DATE : 18th APRIL 2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

2] Learned counsel for the parties agree that all these petitions can be disposed of by common judgment and order, since, they involve substantially common issue of fact as well as law. Accordingly, it is only appropriate that all these petitions are disposed of by common judgment and order.

3] Rule in each of the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] In all these petitions, the petitioners challenge the judgment and order dated 5th January 2018 made by the Central Administrative Tribunal (CAT), Mumbai in O.As instituted by the petitioners questioning their transfer from the post of Security Guard/Watchmen (Chowkidar) to the position of Groom (to take care of Horses and Stables) at National Defence Academy (NDA), Khadakwasla, Pune.

5] Mr. Pramod Kathane, learned counsel for the petitioners, submits that the petitioners were appointed as Chowkidars and therefore, it is impermissible to transfer the petitioners to any other posts. He submits that some mala fides are involved in the transfers of the petitioners and the petitioners are transferred on account of certain complaints that they made in relation to some Sandal wood treed in the NDA complex. He points out that in all, there are about 48 Chowkidars and it is only the petitioners who have been picked out for discriminatory treatment. He submits that the seniority list has been completely ignored. He submits that one of the petitioner has high educational qualifications and this aspect has been completely ignored by the respondents in posting this petitioner as a Groom. He further points out that one of the petitioner has undergone knee replacement surgery and therefore, it will be extremely difficult for him to discharge as a Groom. He points out that the CAT, without considering all these aspects, has dismissed the O.As. instituted by the petitioners, questioning their transfer. For all these reasons, Mr. Pramod Kathane submits that the impugned judgments and orders be set aside and the petitioners be

ordered to be retained as Chowkidars.

6] Mr. Rui Rodrigues, learned counsel for the respondent - UOI, points out that there are no mala fides involved in the transfer and in any case, no mala fides have been established. He points out that this is a transfer within the establishment itself, that is within the NDA complex at Khadakwasla. The terms and conditions subject to which the petitioners came to be appointed contemplate such internal transfers. He points out that there are several employees with high qualification, who, are discharging duties, are not strictly speaking commensurate with their qualification. He points out that the petitioner in Writ Petition No.1797 of 2018 was operated in the year 2014 and therefore, the plea based upon his medical condition cannot be entertained at this stage.

7] Mr. Rui Rodrigues points out that discipline is very important at the NDA and since, the petitioners, without there being any interim protection, have refused to joint the post of Groom since December 2017, the respondents are contemplating disciplinary proceedings. Mr. Rodrigues

submits that there is no jurisdictional error in the view taken by the CAT and therefore, this court, may not interfere with the impugned judgments and orders made by the CAT.

8] The rival contentions now fall for our determination.

9] At the outset, we must say that the scope of judicial review in matters of transfer, particularly, internal transfer from one post to the other within the same establishment, is extremely limited. This is more so, in case of establishment relating to defence like NDA with which are concerned. It is not for this court to ordinarily interfere in such matters unless, any breach of statute is pointed out or if mala fides are established.

10] In the present case, there is no breach of any statute or statutory rules pointed out. Though, some allegation of mala fides have been made, the same, have not been made good by the petitioners. The contention that since the petitioners were appointed as Chowkidars, therefore, they cannot be appointed to any other posts is quite

misconceived. The conditions of service of the petitioners contemplate such interplay depending upon exigencies of service. Since the petitioners were appointed as a Multi tasking staff, it is only obvious that the petitioners can be posted at different places and different positions in the NDA for purposes of effective multi tasking.

11] The CAT has examined all the contentions of the petitioners in great details and there is neither any jurisdictional error nor any perversity of approach so as to warrant interference with the view taken by the CAT.

12] On the aspect of one of the petitioner having higher qualification, all that we can say is that such are the facts of life and necessities of the times. In any case, the petitioner, with such high qualifications, has been serving as a Chowkidar and apparently, has no grievance regards the same. There is no legal ground to complain about discharging duties as a Groom, which is an important duty taking into consideration the importance of horses and stables to a defence establishment like the NDA. Mr.Rodrigues points out that there are several Class - D

employees with higher educational qualifications and if any exception is made in one case, the same might result in several complications in the cadre.

13] Insofar as the petitioner in Writ Petition No. 1797 of 2018 is concerned, though, this petitioner was operated some time in the year 2014, there is on record, a certificate dated 2nd August 2017 issued by the CGO, Establishment Officer of NDA, in which, it is stated as follows:

"2. Since the individual is suffering from AVN Hip and his job involves multi tasking work (list of posts which have been merged into MTS - O & T attached), it is considered necessary to get the individual medically examined for specialized medical opinion at your hospitals and report on his suitability (or otherwise) for further retention in service be rendered at an early date."

14] Accordingly, before the petitioner in Writ Petition No. 1797 of 2018 is required to discharge his duties as a Groom, it will be only appropriate that he is medically examined and the report is obtained for his suitability or otherwise for discharge of duties as a Groom.

15] It appears to us that the petitioners preferred O.As. and these petitions based upon mistaken advise with

regard to their rights and responsibilities. Possibly, reeling under the same advise, they have not reported their duties as a Groom. Although, such non reporting is not at all justified, we are of the opinion that if the petitioners now report for duties within 10 days from today, then the respondents will not only permit them to report for duties, but also not initiate any disciplinary action against them. Mr. Rodrigues, with his customary fairness, stated that if the petitioners indeed report for duties within 10 days, he will advise the respondents not to initiate any disciplinary proceedings against the petitioners.

16] Mr. Kathane, learned counsel for the petitioners, on basis of instructions from the petitioners, at least some of whom are present in the court, makes a statement that the petitioners, will report for duties within 10 days from today. He however, submits that some directions be issued in Writ Petition No. 1797 of 2018, since, the petitioner in the said petition may find it extremely difficulty to discharge the duties as a Groom on account of his medical condition.

17] Accordingly, we dispose of these petitions with the following order:

(a) The challenge to the transfer orders is dismissed and consequently, the impugned judgments and orders made by the CAT are not interfered with;

(b) In case, all the petitioners report for duties within 10 days from today, then, the petitioners, be permitted to resume duties and no disciplinary proceedings be initiated against them;

(c) If and upon the petitioner, i.e., Shri. N.B. Vinode in Writ Petition No. 1797 of 2018 reporting for duties within 10 days from today, the respondents will arrange to have him medically examined for determining his suitability or otherwise for discharging duties as a Groom. If, this petitioner is found unfit for discharging duties as a Groom, the respondents to assign this petitioner any other suitable duties;

(d) Rule, in all the petitions, is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)