

National Commission for Scheduled Tribes

Proceedings of the hearing held in the NCST on 20.01.2010 at 11.30 A.M. to discuss the case of Smt. Rameswari Devi, w/o Shri Santosh Kumar, UDC, Agra Cantt., Agra regarding harassment in transfer.

The following were present:

NCST

1. Shri Tsering Samphel, Hon'ble Member (in Chair)
2. Shri Aditya Mishra, Joint Secretary
3. Shri R.C. Durga, Director
4. Smt. K.D. Bhansor, Deputy Director
5. Shri N. Balasubramanian, Research Officer
6. Shri H.R. Meena, Sr. Investigator

Officers of DGMS (Army), MOD

1. Lt. Gen. S.R. Mehta, PHS, DGMS (Army)
2. Maj. Gen. K Chauhan, ADGMS (15, HRPS)
3. Shri R.R. Kumar, Dir MS (Civ).
4. Shri J. Sahni Dy. Dir. MS (Civ),

Petitioner:

1. Shri Santosh Kumar

Issue: Transfer of Shri Santosh Kumar, UDC, Military Hospital, Gwalior

Background

Smt. Rameswari Devi w/o Shri Santosh Kumar, UDC, Military Hospital, Gwalior sent a representation to the Hon'ble Chairperson of the Commission regarding harassment and transfer of her husband Shri Santosh Kumar from Agra to Gwalior due to prejudices. The comments of the Ministry of Defence were called vide NCST letter dated 25.06.2009 and 25.08.2009. Shri R.R. Kumar, Director, MS(CIV), DGMS (Army) Integrated HQ, Ministry of Defence replied vide letter dated 31.08.2009 that "Shri Santosh Kumar, UDC was transferred from Military Hospital Agra to Military Hospital Gwalior on administrative grounds in May, 05. In Nov 06, Military Hospital, Gwalior requested for posting of Shri Santosh Kumar to MH Agra. However the application of the individual was returned with some observations for resubmission. HQ Southern Command, Pune forwarded fresh application of the

individual vide letter dated 31 Dec 06, comments of MH Agra were sought on his request for compassionate ground posting vide this HQ letter dated 11.01.07. However MH Agra refused to take back the individual on the grounds that a number of complaints against Shri Santosh Kumar, LDC were being received even after his posting to MH Gwalior. MH Agra recommended to post the individual to any other station unit in Agra other than MH."

02. The Commission was informed that Shri Santosh Kumar had filed an OA in CAT (Principal Bench, New Delhi) for posting to Agra. Hon'ble CAT gave direction to consider the application of Shri Santosh Kumar for posting on compassionate grounds. In compliance of Court directions, a Speaking Order was passed to the individual vide DGMS letter No. B/72402/DGMS-3(B) dated 01.10.2008. Accordingly, Shri Santosh Kumar was posted to AATS, Agra by the AG Branch. However, Shri Santosh Kumar himself submitted his unwillingness for joining at AATS, Agra and again requested to post at Army Medical Corps Unit, Agra.

03. The petitioner was informed of the reply. The petitioner subsequently informed the NCST that a warning letter dated September, 2009 had been issued to her husband Shri Santosh Kumar for taking up the matter with the NCST. In this context, attention of the Ministry was invited towards DoP&T instructions on the subject vide this Commission's letter dated 18.09.09. In response, the Director MS (CIV), DGMS (Army) replied vide letter dated 22.10.2009, stating that it is noteworthy that the representation has not been sent by the employee himself nor it is pertaining to the matter of appointment. The attention of NCST was invited to GOI decision No.4 below Rule 20 of CCS Conduct Rules which inter-alia states that representation sent by the relatives is not only in utter disregard to Govt. orders but is also an affront to the personal dignity of the officials when they themselves have full right to represent in regard to their service matters.

DISCUSSIONS

04. Meanwhile, the Major General, ADGMS (IS, H&PS), DGMS (Army) has furnished a detailed reply dated 01.01.2010. Since the reply so far received was not satisfactory a hearing was held on 20.01.2010. The Hon'ble Member(TS) gave

opportunity to Shri Santosh Kumar, UDC, **Agra Cantt.**, Agra, husband of this petitioner. Shri Santosh Kumar stated that his humble request was that he may please be transferred to Agra on compassionate grounds with consideration for old parents and family circumstances of maintaining two establishments.

05. DGMS (Army) explained that Shri Santosh Kumar was previously working at AMC, Unit at Agra. There were complaints and other issues of charges against him. It was also informed by the DGMS that at occasions disciplinary actions were proposed against Shri Santosh Kumar but the officers took lenient view and Shri Santosh Kumar was simply transferred and no disciplinary action was contemplated against him. It was also informed that the ACR's of Shri Santosh Kumar were not fully satisfactory yet he was promoted. At earlier occasion, ACR's were not communicated but in May 2009 the remarks were intimated to Shri Santosh Kumar. It was also informed that there were 13 complaints against Shri Santosh Kumar.

06. It was also mentioned by DGMS that while transferring Shri Santosh Kumar as LDC at AATS Agra in October, 2008 utmost care was taken to protect pay of Shri Santosh Kumar. The DGMS informed that at present there was no post of UDC at Tundla, Mathura and Agra.

OBSERVATIONS

07. The Commission first of all raised reservations and viewed seriously on the warning issued by DGMS vide letter B/72404/SK/DGMS-3(B) dated September, 09 ignoring the DoP&T instructions. The officers of DGMS stated that a clarification had been taken from the Ministry with regard to OM dated 05.01.98 and the contention that SC/ST can only approach the NCST in the matter of appointments against reserved quota. The order was re-discussed and it was read with the earlier instruction and its expression with literal spirit in OM no 80/2/69-(SCT) (I) dated 01.10.1974, which states that the expression "reserved quota" will include matters relating to confirmation promotion, grant of other concessions allowed to SC/ST employees from time to time." The DGMS was advised to withdraw the warning letter dated September, 09 issued to Shri Santosh Kumar in the matter and to issue

instructions to the DGMS officials to strictly observe the DoP&T instructions in the matter of SCs/STs. The DGMS was also advised that there was no question that individual petitioner only could represent to National Commission for Scheduled Tribes. The NCST takes cognizance suo motto also. Since the family of Shri Santosh Kumar, a ST employee is suffering due to his absence from his family, Smt. Rameswari Devi wife of Shri Santosh Kumar has right to represent before the concerned authorities for redressal of the grievances.

08. Looking into the conditions and circumstances of the position explained by the DGMS, the Commission advised the DGMS to consider the transfer of Shri Santosh Kumar and post him at Agra. The DGMS, while assuring to transfer Shri Santosh Kumar to Agra, stated that his case can be considered for transfer to any other place at Agra except MH, Agra in view of the position explained in paragraph 5 and 6 above and for this, Shri Santosh Kumar should make a representation again and it will be considered. Accordingly Shri Santosh Kumar was advised to urgently make a fresh representation to DGMS for his transfer to Agra.