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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 436/98

New Delhi: Dated: this the 26th day of August, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Shri N.K. Rajpal,
S/o Shri Om Prakash Rajpal,
R/o P-1/2 New APS Colony,
Delhi Cantt, Delhi-10

Presently posted as Surveyor Assistant Grade-I
(JE (06) in the Office of Garrison Engineer (Central),
Delhi Cantt. Applicant.

(By Advocate: Shri A.K. Behra)

Versus

1. Union of India
through the Secretary,
Govt. of India,
Ministry of Defence,
DHQ, PO
New Delhi-11

2. Engineer in Chief,
Army Headquarters, Kashmir House,
DHQ PO,
New Delhi.

3. Chief Engineer,
HQ Western Command,
Chandi Mandir- 134107

4. Chief Engineer,
Delhi Zone, Delhi Cantt.-10

5. Garrison Engineer (Central),
Delhi Cantt, Delhi -10. Respondents.

(By Advocate: Shri R.P. Agarwal)

JUDGMENT

HON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A).

Applicant who is Surveyor Assistant Gr.I impugns respondents' order dated 4.4.97 (Annexure-A1) transferring him within Western Command from Delhi to Lalgarh Jatan, which is a tenure station and respondents' orders dated 9.8.97 and 6.1.98 (Annexure-2 colly) rejecting representations against the same.

2. Admittedly respondents have issued detailed policy guidelines governing the postings/transfers of Group 'C' & 'D' personnel of MES, to various Commands vide Hq. letter dated 31.8.94(taken on record) which in turn have been amplified and circulated within Western Command vide letter dated 22.5.95 (also taken on record) which supercede the earlier guidelines. As per aforesaid letter dated 22.5.95 the list of Tenure Station within Western Command include Hissar, Bhatinda, Sirsa and Lalgarh Jattan.

3. Admittedly applicant was transferred from Central Command to Western Command vide order dated 30.10.92 and by his own admission was taken on strength (TOS) at his present posting in Delhi under GE(C) Delhi on 10.8.93 (para 4.8 of OA).

4. On 16.9.96 Western Command issued a Command Seniority List for policy to Tenure Stations for SA Gr.I and SA Gr.II(Annexure-A5). On 14.3.97 respondents directed applicant to report to CWE Delhi (EIP Section) for checking the seniority list and also for giving 3 choice stations for tenure posting(Annexure-A6). In response to that applicant in his representation dated 20.3.97 (Annexure-A7) claimed that he had already done tenure from December, 1984 to April, 1988, but nevertheless gave 3 choice stations for tenure posting namely Hissar, Sirsa and Bhatinda.

5. As per applicant's own averments in para 4.4 to 4.6 of his OA, the tenure postings of applicant between December, 1984 to April, 1988 was in Southern Command and not in Western Command, and as per 1994-95 guidelines the rotation between tenure

and non-tenure stations is determined within each Command (which is clear from para 11 of aforesaid Circular dated 31.8.94). Applicant therefore cannot legitimately contend that because he had put in a tenure posting in S. Command between 1984-1988, he was not due for a tenure posting in Western Command in 1997. It is clear that applicant himself recognised this fact because otherwise there was no reason for him to have given his 3 choices for a tenure posting in his representation dated 20.3.97.

6. In that view of the matter respondents cannot be said to have acted illegally, arbitrarily, malafidely, or discriminatorily or in violation of Articles 14 and 16 of the Constitution, in posting applicant not to one of the three tenure stations opted by him, but to another tenure station, because there is no legal obligation on respondents at all times to post persons due for tenure postings to tenure stations of their choice.

7. It is important to remember that applicant's challenge is not to the fact that he has been posted to one tenure station (Lalgarh Jattan) instead of another tenure station of his choice (Hissar, Bhatinda or Sirsa), but to his posting to a tenure station at all. From what has been noticed above, this challenge does not succeed, more particularly as para 4 of respondents' Circular dated 22.5.95 provides that respondents may, on administrative grounds post an individual to a tenure station, even on

out of turn basis.

8. Even if applicant were posted from Central Command to Western Command on compassionate grounds, as contended by respondents (which is denied by applicant) protection from posting to a tenure station would be available only for 3 years, and as applicant was posted to a non-tenure station in Delhi within Western Command on 10.8.93, the three years period expired on 9.8.96 and applicant became due for a transfer to a tenure station within W. Command thereafter.

9. During hearing applicant's counsel asserted that persons at Sl. Nos. 7, 9, 10, 16, 17, 18, 19, 20, 21, 27, 29, 30 and 32 in the Command Seniority List for posting to tenure stations who had not done tenure (Appendix-'A') had remained untouched for a tenure posting for longer periods than applicant, but the aforesaid seniority list shows that this assertion is incorrect. While applicant was taken on strength (TOS) under GE(C) Delhi as per his own admission on 10.8.93 which is also confirmed by the date in Col. 5 against his name in that list, a glance at the dates in Column 5 of the aforesaid command seniority list in respect of all the aforementioned persons shows that they were taken on strength at their present formation/unit after 10.8.93. Further in respect of the persons mentioned in para 4.17 of the OA, two of them have been taken on strength much after applicant, while in respect of the others they have already done tenure, and applicant cannot compare himself with them, as pointed out by respondents in their

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reply to that para. In rejoinder to that para applicant has contended that the list prepared by respondents is inaccurate, but unless he can disprove the fact that S/ Shri Verghese and Agarwal were taken on strength after him, or that the others named by him have indeed done tenure, he cannot cite their cases to support his own contention that he has been discriminated against. Even if Babu Lal Meena (Sl. 36 of the Command Seniority List who have done tenure) has never done tenure as contended by applicant in rejoinder he has been TOS under GE(N) Palam on 25.6.97, that is nearly 4 years after applicant was TOS under GE(C) Delhi.

10. In the light of the above the OA warrants no interference and the ruling in 1995 Supple. 4 SCC 169 A. Ray Vs. State of Orissa relied upon by Shri Behra does not advance applicant's claims. The OA is dismissed. No costs.

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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