

IN THE CENTRAL ADMINISTRATIVE TRIBAL

NEW DELHI

O.A. No. 551/2000
T.A. No.

DATE OF DECISION 21-9-2000

Surendra Bhania Petitioner(s)
R K Trivedi Advocate for the Petitioner(s)

Versus

Union of India Respondents
R N. Singh for Surendra Bhania Advocate for the Respondent(s)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(DR A. VEDAVALLI)

Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 551/2000

New Delhi this the 21st day of September, 2000

Hon'ble Dr. A. Vedavalli, Member (J)

Surendra Bhakta,
S/o Late Inder Dev Bhakta,
R/o 392 Devli Village,
New Delhi.

Applicant

(By Advocate: Shri R.K. Trivedi)

Versus

1. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Deputy Inspector General/NZ,
Central Industrial Security Force,
CISF Campus, Saket, New Delhi.

3. Deputy Commandant,
CISF, 2nd RES Bn,
Saket, New Delhi.

Respondents

(By Advocate: Shri R.N. Singh, Proxy counsel for Shri R.V. Sinha)

O R D E R

Hon'ble Dr. A. Vedavalli, Member (J)

The applicant, Surendra Bhakta, who is working as a civilian Pharmacist in the Office of the Deputy Commandant, CISF, 2nd BN, Saket, New Delhi (Respondent No. 3) is aggrieved by the order of the Respondents dated 6.10.1999 posting him to Udaipur and an order dated 8.2.2000 communicating, inter alia, the rejection of the applicant's representation dated 3.1.2000 by the Deputy IG/NZ CISF (Respondent No. 2) (Annexure A-1 colly.) The aforesaid orders have been impugned by the applicant in this OA.

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2. Heard the learned counsel for both the parties. Pleadings and all the material papers and documents placed on record have been perused. At the request of the learned counsel for both the parties, the OA is being disposed of at the admission stage itself.

3. Facts of this case, briefly, are as under:

The applicant on receipt of the first impugned order dated 6.10.1999 (Annexure A.1 colly.) posting him from Delhi to Udhampur submitted a representation dated 3.1.2000 to the IG, North Sector, New Delhi (Annexure A-2) seeking cancellation of the aforesaid posting order on medical as well as on personal grounds. The Chief Medical Officer (SG) CISF, Campus was requested by the Respondents by their letter dated 12.1.2000 (Annexure A-3) to examine the applicant and submit his report for perusal of Respondent No. 2. The Medical report was submitted by the said Chief Medical Officer to Respondent No.2 on 22.1.2000 (Annexure A-4). Thereafter, the aforesaid representation by the applicant was rejected by an order passed by Respondent No.2 as communicated by the second impugned order dated 8.2.2000 (Annexure A-1 colly.) The applicant in this OA has sought the quashing and setting aside of the aforesaid impugned orders and prayed for his retention at Delhi.

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4. Learned counsel for the applicant, Shri A.K. Trivedi, submitted that the impugned orders are bad on two grounds, viz (1) Total disregard of medical opinion and advice in an arbitrary and malafide manner and (2) discrimination.

5. Re the first ground, learned counsel for the applicant submitted his age about 47 years and as he is suffering from health problems viz. Hypertension and Osteo arthritis as is evident from the aforesaid medical report itself, he could not have been posted to areas and units located at high altitude and hilly terrain where extreme cold climatic conditions prevail like Udhampur, Dulhasti, Wagoora, Srinagar and Uri, etc. He contended that the respondents by their second impugned order dated 8.2.2000 have rejected his representation dated 3.1.2000 against his posting order to Udhampur without considering the medical report and recommendation of the Chief Medical Officer and hence their action is bad in law and deserves to be quashed along with the first impugned order.

Learned counsel for the applicant, Shri A.K. Trivedi, however, admitted that the post in which the applicant is working has all India transfer liability and that he has no objection for being transferred to any other area/unit in consonance with the aforesaid medical report and advice.

6. Re the second ground, the learned counsel for the applicant submitted that the Respondents in the case of certain uniformed personnel viz., Constables and Head Constables, as per the orders of Respondent 1

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as contained in the letter dated 22.7.1999 (Annexue A-5), below the age of 45 years only are to be posted as far as possible in CISF Units located at high altitude areas like Wagoora, Srinagar, Udhampur and Dulhasti, in view of the fact that the physical responses and capabilities tend to slow down with age. It was contended by the learned counsel for the applicant that there is no reason as to why the same principle should not be applicable to the applicant also though he is a civilian since he is aged about 47 years. He submitted that the non-application of the said order in the case of the applicant who is similarly situated due to his age and health problem is clearly discriminatory and on this ground also the impugned orders deserves to be set aside.

7. Learned proxy counsel for the Respondents counsel Shri R.N. Singh in reply to the first ground urged by the applicant submitted CISF 8th Bn was initially located at Jaipur and was shifted to Udhampur due to certain administrative reasons as there was no para-medical staff posted at Udhampur. The applicant was posted to 8th Bn, Udhampur to provide medical facilities to CISF personnel at that place. His posting was in view of the exigencies of work and his longer stay in Delhi. He was relieved by an order of the Chief Medical Officer, CISF Hospital, Saket, New Delhi dated 1.1.2000 (Annexure R-1) which was duly received by him and he was supposed to obtain his movement order from the concerned Commandant and proceed to his new place of posting in stead, he submitted his representation dated 3.1.2000 against his posting order.

Learned counsel for the Respondents further submitted that the applicant's grievance on medical grounds is nothing but an attempt to evade the transfer and that he had not submitted any evidence to show that he was suffering from any serious disease affecting his health and duties prior to his transfer order. The nature of his ailments are not too serious and such ailments generally develop at that stage of life. It was further submitted that the applicant's case was referred to the Chief Medical Officer to ascertain the position and authenticity of his sickness and that the Respondents are not bound to accept the recommendation of the Medical Officer. Learned Counsel for the Respondents contended that the aforesaid representation submitted by the applicant was rejected by the second impugned Order as being devoid of any merit after taking into consideration all the materials facts and after getting the medical opinion and hence the said order as well as the first impugned order are not illegal, malafide or arbitrary.

8. Re the second ground pressed by the applicant as to the discrimination, the respondents in their counter have taken the stand that the guidelines issued by the letter dated 22.7.1999 (Annexure A-5) is applicable only to Constables and Head Constables and not for all the ranks. Learned counsel for the respondents submitted that the nature of the duties of the said uniformed personnel and those of a Pharmacist who is a civilian is entirely different and hence the question of any discrimination does not arise. He contended that the impugned orders are, therefore,



perfectly valid in law. He relied strongly upon the judgement of the Supreme Court in the case of 1) S.L. Abbas Vs. Union of India & Ors. (1993) 4 SCC 357; 2) Gujarat Electricity Board & Anr. Vs. Atma Ram Sungomai Poshani (1989) 10 ATC 396; 3) Mrs. Shilipi Boss Vs. State of Bihar & Ors. AIR 1991 SC 532 in support of his arguments.

9. The applicant, in his rejoinder, has stated that he is still under treatment and had enclosed a copy of the prescription slip dated 11.7.2000 (Annexure RA-1) from Safdarjung Hospital, New Delhi.

10. I have given my careful consideration to this matter.

Re the first ground raised by the applicant viz., total dis-regard of the medical opinion by the respondents in an arbitrary and malafide manner, It is seen that the respondents themselves by their letter dated 12.1.2000 (Annexure A-3) have referred the applicant for medical examination to the Chief Medical Officer as desired by the second respondent (DIG, NZ) himself and requested him to submit his report. In the said letter they have stated that the applicant is under order of posting to CISF, 8th R.SDhuhasti (posting order to Dulhasti is not filed by either party). The medical examination report by the Chief Medical Officer dated 22.1.2000 addressed to the second respondent (Annexure A-4) is extracted below:

"Central Industrial Security Force
(Ministry of Home Affairs)

CISF Hospital
2nd Res.BN
Saket, New Delhi-17

No.E-20015/CISF/HOSP/Med./2000-31
Dated: Jan., 2000
To

The Dy. Inspector General,
CISF INZ Hqrs., Campus Saket,
New Delhi-17.

Sub: MEDICAL EXAMINATION : REG.
Ref: No.E-38-14/5/NZ/POSTING/2000 538

Pharmacist Surendra Bhakta of CISF 2nd Res. BN. reported to the undersigned this Afternoon for his Medical examination. He is already undergoing treatment at CGHS Dispensary, Pushpavihar, New Delhi for Arthritis both knees and mild Hypertension as per the prescription of CGHS. During past 3 months period he also reported on few occasions to the undersigned for the treatment of Osteo Arthritis, both knees as well as for his normal high to mild range of Blood pressure. Presently, he is continuing the treatment for the above mentioned problems and his condition is comparatively better with the treatment. He has already attain the age of 47 years and the health problems related to degenerative changes are already showing the impact on the body in the one form like Osteo Arthritis. Duly considering the nature and course of ailment, he is recommended, not to be posted in high altitude areas, hilly terrain and extreme cold climactic condition areas. He is also advised to continue his regular treatment at a place where the facilities of Orthopaedic treatment are available.

3. Submitted please.

Sd/-
(Dr. R.S. Rathore)
C M O (S.G)
CISF Hospital, Saket.

11. The order passed by the second respondents as communicated by the second impugned order dated 8.2.2000 (Annexure A-1) is as under:

"No.E-38014/5/NA/Posting/2000-2061
Office of the Dy. Inspector General/NZ
Central Industrial Security Force
(Ministry of Home Affairs)

CISF Campus Saket,
PO : Malviya Nagar
New Delhi-17

(P)
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Dated: 8 Feb' 2000

To

The Commandant,
CISF 2nd RE Delhi.

Sub: REQUEST FOR CANCELLATION OF POSTING ORDER

Reference application dated 3.1.2000 submitted by No. 51010087 Pharmacist Surendra Bhakta to the DIG/NZ for cancellation of posting order.

2. The request in respect of No. 851010087 Pharmacist Surendra Bhakta has been considered by the DIG/NZ and endorsed the following remarks:-

"I do not agree. Relieve him at once at Dulhasti. If he does not join, action be initiated against him as per rules."

3. As desired by the DIG/NZ take action accordingly and submit compliance report to this HQrs. at the earliest.

Sd/-

For Dy. Inspector General/NZ

Copy to:

1. Shri R.S. Rathore,
Chief Medical Officer (SG),
CISF Campus Saket,
New Delhi-17.

For information and necessary action please.

12. On a perusal of the aforesaid impugned order, it is seen that there is absolutely no indication as to the consideration of the contents of the medical report given by the Chief Medical Officer. No reasons are given by the second respondent as to why he does not agree. The remarks passed by him are bald and cryptic and do not show any application of mind. It is evident that the contents of the medical report and the advice of the CMO have been totally ignored by the second respondent and the applicant was ordered to join at Dulhasti, which is clearly against the medical advice. It was also stated in the said order that if the applicant

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fails to join, action will be initiated against him as per rules. The contents of the counter filed by the respondents and arguments advanced by the learned counsel for the respondents also do not disclose any tenable or valid ground on which the second impugned order can be justified.

In view of the above discussion, I find that the first ground raised by the applicant has considerable merit and the impugned orders are vitiated by arbitrariness and malafides.

The decisions of the Apex Court cited by the learned counsel for the respondents supre also will not help the respondents in view of the above findings on the facts and circumstances of this case as discussed.

13. Re the second ground raised by the applicant as to the impugned orders being discriminatory, the relevant guidelines/instreuctions dated 22.7.1999, regarding the posting of the Constables/Head Constables to CISF Units mentijoned therein located in high altitude areas (Annexure A-5) are as under:

"To

The Dy. Inspector General,
Northern Zone Hqrs.,
CISF Campus Saket,
New Delhi-110 17./

SUB: POSTING OF CONSTABLES/HCS TO CISF
UNITS PGCIL WAGOORA, HMT SRINAGAR,
HEP URI AND DHEP DULHASTI.

DG has desired that Constables and Head Constables to be posted in CISF Units located at Dulhasti, Wagoora, Srinagar and Uri should be below the age of 45 years as far as possible. Persons of higher age group should

be re-located and the vacancies be filled up with younger personnel because physical

responses and capabilities tend to slow down with the age. This exercise should be completed by 31st July, 1999.

2. It has also been desired that a special entry should be made in the service records of those personnel who have served in these Units. A special stamp should be got made for this purpose. The personnel who have served in the above four Units, on completion of their tenure shall be asked to give three places of choice for their next posting and they should be posted to one of these indicated places as far as possible.

3. A compliance report may be submitted by 01.08.99.

St/-
(R.R. Bhardwaj)
Acts. Inspector General (Est)"

It is seen that the respondents are well aware of the fact that on the physical responses and capabilities tend to slow down with the age" and persons below the age of 45 years only should be posted in the aforesaid units as far as possible. While so, the applicant admittedly is 47 years old and is actually suffering from Osteo arthritis in both the knees and high blood pressure and is still under treatment for the above problems as per the medical report (Anneuxre A-4) The CMO in the said report stated that the applicant has already attained the age of 47 years and the health problems related to degenerated changes are already showing the impact on the boy in the one form like osteo arthritis. After duly considering the nature and course fore of the ailment the CMO recommended that the applicant is not to be posted in high altitude areas, hilly terrain and extreme cold climatic condition areas. The degenerative changes which occur in the body are part of the aging process and their impact on the health of the individual is common to all human beings irrespective of the fact whether a person is a Constable/Head Constable or a Pharmacist.

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16.

The contention of the respondents that there is a difference in the nature of the duties of the Constables/Head Constables and a Pharmacist is, therefore, untenable and cannot be sustained.

14. In the light of the the above facts and circumstances, I am of the view that non application of the aforesaid guidelines/instructions dated 22.7.1999 (Annexure A-5) to the case of the applicant is clearly discriminatory and illegal and the impugned orders, therefore, deserve to be set aside.

15. In the facts and circumstances of this case and in the light of the foregoing discussion, the OA is allowed. The impugned orders dated 6.10.1999 and 8.2.2000 (Annexure A-1 colly.) are quashed and set aside.

16. Respondent No. 2 is directed to consider the representation of the applicant against his posting to Udhampur/Dulhasti on its merits in accordance with law and in the light of this order and pass appropriate posting orders either retaining the applicant in Delhi, if possible, or to any other area/place in consonance with the medical advice as contained in the CMO's report dated 22.1.2000 (Annexure A-4) within two months from the date of receipt of a copy of this order.

Order as above.

No costs.

A. Vedavalli
(Dr.A. Vedavalli)
Member (J)

Mittal