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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 31.1.1989.

Regn. No. O.A. No. 576/88.

Shri Mohinder Singh Masson ... Applicant

Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the applicant: Shri G.N. Oberoi, Advocate.

For the respondents: Mrs. Raj Kumari Chopra, Advocate.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri M.S. Masson, Garrison Engineer (West), Ferozepur Cantt. against the impugned order dated 25th December, 1987 passed by the Chief Engineer, Chandimandir (respondent No. 3) transferring the applicant from Ferozepur to Bhandup (Bombay). The case of the applicant is that he was posted from Amritsar to Beas outstation from March, 1986 and again from Beas to G.E. (West), Ferozepur after three months. He had represented against these postings in such a short time on 2.1.1988 but there has been no reply. The postings were ordered on 9.4.1986. The applicant was posted on ad-hoc promotion twice, firstly from Amritsar to Beas and secondly from Beas to Ferozepur. As such, on regular promotion he cannot be further posted to another station as per

posting policy (Annex. A-2 to the Application). On regular posting, he was firstly placed in Situ at Serial No. 40. However, on 26.12.1987, he was posted ^{to}~~to~~_{to} G.E. Bhandup. He had represented against this posting on 2.1.1988 and again on 27.2.1988 on grounds of operation of his wife and for looking after his ailing father aged 87 years and ^{being} contrary to the posting policy. The representations were rejected. He has alleged discrimination on the ground that eight persons who returned from last tenure before him have not been posted out. Even if surplus Superintendents (B/R) Grade I are to be posted out, then only the junior-most are to be posted out first on the recognised principle of 'last come first go'. Para. 11 of the Posting Policy (Annexure A-2 to the Application) clearly lays down that if a person is moved out on ad-hoc posting, at the time of regular D.P.C. he will continue to serve in that station where he was posted on ad-hoc promotion. This is a posting involving inter-command transfers and, as such, the junior-most person in the grade will be declared surplus.

2. The respondents in their reply have denied that any legal right of the applicant has been violated and that the transfer is within the guidelines. It has been stated that the applicant was promoted to Superintendent (B/R) Grade I on ad-hoc basis on 26.2.1986 and was posted from Commander Works Engineers (Project) Amritsar to Garrison Engineer (Project) Amritsar. Subsequently, this promotion order was cancelled on 9.4.1986 whereby the posting of the applicant was changed from G.E. (Project) Amritsar to G.E. (West) Ferozpur Cantt. and he was transferred from G.E. (Project)

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Amritsar with effect from 21.7.1986 and since then, he has been working in that post at Ferozepur Cantt. The applicant has been transferred from present place of posting to G.E. Bhandup (Bombay) under Headquarters Southern Command in accordance with the guidelines contained in para. 10 of the E-in-C's Branch, Army Headquarters letter dated 30th December, 1983. As per these guidelines for selection grade posts, individuals posted out on promotion outside the Command are determined by identifying the longest stayee among the promotees serving in non-tenure stations within the Command and the period to determine the longest stayee for the purpose will be from the time he last returned from a tenure station. The applicant had returned from tenure station in October, 1983. All promotees who had returned from tenure station upto 22.5.1984 have been posted to Chief Engineer, Southern Command. It has been stated that the applicant was promoted to Superintendent B/R Grade I on ad-hoc basis to officiating Superintendent B/R Grade I by order dated 29th September, 1987 and was placed in position with effect from 9.10.1987 in the same formation (in situ) vide order dated 12.10.1987, as amended vide order dated 9.11.1987. The applicant had been promoted from ad-hoc to officiating Superintendent and from Ferozepur to Bhandup under the authority of the Engineer in Chief. The posting became necessary due to the fact that the applicant was already an ad-hoc Superintendent and was made regular and placed in position in the same formation as the validity of

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ad-hoc promotion vide the earlier quoted letter was to expire on 30.9.1987. This was done to avoid financial loss to all affected persons. These promotion orders have been issued as a 'stop gap' measure and have no bearing on posting to Southern Command as 35 promotees were to be posted to Chief Engineer, Southern Command from Chief Engineer, Western Command out of the panel drawn vide Engineer-in-Chief's letter dated 26.5.1987. The applicant by virtue of his last return from tenure was posted out. Amritsar and Beas are considered as a complex, i.e. one station for the purpose of posting and transfer. The applicant was posted to Ferozepur on ad-hoc promotion against a regular vacancy. The Army Headquarters letter dated 30.12.1983 regarding posting on promotion of selection posts is clear which states as under:-

"When the DPC panel is out, this Headquarters will decide as to how promotees will be adjusted within that command and how many will move out. This decision will be primarily guided with a view to balance the deficiencies in all the Commands. If promotees within a Command are more than the numbers allocated by this Headquarters to be adjusted within that particular Command, the surplus promotees will be posted out in other Commands if volunteers are not available. Before any promotee is adjusted even within the Command, the longest stayee among the promotees in non tenure station in a Command will move to other Command as allocated...."

In the present case, the Engineer in Chief had directed that 35 promotees from the panel of 104 names should be posted to Southern Command on promotion. Accordingly, the seniority list of individuals was drawn and all individuals who had returned from tenure station upto 22nd May, 1984 and serving in non tenure stations were ear-marked for posting to Southern

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Command. It has been stated that the applicant has been posted according to the transfer policy and the policy annexed with the Application is no longer relevant. Para. 11 of the Engineer in Chief's letter dated 30.12.1983 clearly stipulates that when an individual has to move out on ad-hoc promotion to another station, he will not be moved at the time of regular DPC if the individual does not make the grade or his seniority is altered in the DPC panel. In the present case, the applicant has made the grade and as such, para. 11 of the policy has been wrongly quoted by the applicant. The seniority of promotees for posting to other Commands on tenure basis has no connection with the existing Superintendent B/R Grade I who had been promoted long ago.

3. In the rejoinder, the applicant has stated that as he was posted on regular promotion placing him in position in situ, he is no longer promotee and is due for posting in turn alongwith others already promoted and a large number of such persons are from 1977. The applicant maintains that he is governed by para. 11 of the posting policy as he was posted from Amritsar to Ferozepur which is another station on ad-hoc promotion and at the time of regular DPC, his seniority is altered from serial No. 191 in ad-hoc DPC panel to serial No. 211 in the regular DPC panel and, as such, he will continue to serve in that station where he was posted on ad-hoc promotion. The learned counsel for the applicant relies mainly on para. 11 at page 13 of this Application which lays down that when an individual has to move out on ad-hoc promotion to another station, at the time of regular DPC if the individual does not make the grade or his seniority is altered in the DPC panel, he will continue to serve in the same station where he was posted on ad-hoc promotion. Shri G.N. Oberoi, learned counsel for the applicant also pointed out that out of the

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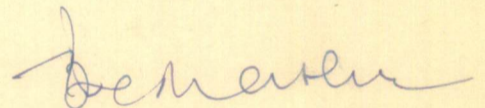
same panel, some persons senior to the applicant were kept at the same station and the transfer orders of three persons were cancelled.

4. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, said that the present case is fully covered by the judgment of this Tribunal in the case of Shri Yadhvir Chadha Vs. Union of India & Ors., O.A. No. 545/88 decided on 15.11.1988, where the circumstances are absolutely the same. She pointed out that the language of the judgment covering the case of Shri Yadhvir Chadha in O.A. No. 545/88 is exactly the same as in the present case. In that judgment, the court has accepted that in order to avoid financial loss to the affected persons, their promotion orders have been issued as a 'stop gap' measure and the posting on promotion in September, 1987 could not be considered a regular posting of the incumbents. In the above quoted case of Shri Chadha, it was held that the posting on promotion could not be considered a regular posting and merely because the applicant happened to continue for three months in Delhi, it cannot be contended that his posting on promotion in September, 1987 was a regular posting in Delhi itself and he should be considered a regular incumbent of the higher post in Delhi. As such the guideline regarding transfer of the longest stayee was not applicable in that case. The pleas taken by the applicant in the present case are the same as taken by Shri Chadha in the above cited case. There are no

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allegations of malafide and the transfer, as such, cannot be considered either to be arbitrary or discriminatory or violative of any policy guidelines issued by the respondents.

5. I have carefully considered the arguments on both sides and gone through the judgment of this Tribunal in O.A. No. 545/88 and am satisfied that the present case is similar to the one decided by this Tribunal in the aforesaid case on 15.11.1988. I see no reason for differing with the orders passed in that case. No mala fide has been alleged against the respondents who are the best judge where to utilise the services of their officers. In the circumstances, the application is dismissed. There will be no order as to costs.



(B.C. Mathur)
Vice-Chairman.
31.1.1989.