

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.1155/88

Date of Decision: 19.10.1993

Shri V.P. Sachar

Applicant

Versus

Union of India through

Ministry of Defence Respondents

Mrs. Raj Kumari Chopra Counsel for the respondents.

CORAM:

Mr. C.J. ROY, Hon. Member(J).

Mr. P.T. THIRUVENGADAM, Member(A).

JUDGEMENT(Oral)

(delivered by Hon. Member(A) Shri THIRUVENGADAM)

This matter came up for hearing on 18.10.93 when neither the applicant nor his counsel was present. The case was adjourned ~~for~~ <sup>for</sup> today. Today also, none was present on behalf of the applicant. This is an old matter coming since 1988. Hence, we proceed to dispose of the matter on the basis of arguments put forth by the learned counsel for the respondents Mrs. Raj Kumari Chopra and pleadings on record.

2. The applicant joined the Military Engineering Service (MES) as Superintendent B/R-II on 27.9.64 and retired on 31.1.88 after expiry of three months notice under Rule 48A of the CCS (Pension) Rules 1972 from CWE Delhi Cantt. The case of the applicant is that he was promoted to the post of Superintendent B/R-I <sup>based on proceedings</sup> on 5.12.87 after the proper DPC and instead of being kept in situ was posted out to CE SC Pune (Annexure A-2). He applied for advance of TA/DA and requested to be relieved on promotion. Neither he was granted any



TA/DA advance nor relieved to take up higher appointment. This OA has been filed with the prayer for a direction to promote him from 5.12.87 to the post of Superintendent B/R-I with all consequential financial benefits and status including pensionary and other terminal benefits with 18% interest on all dues till the payment is made.

3. The respondents have admitted in the counter that the applicant had tendered 3 months notice on 30.10.87 for voluntary retirement w.e.f. 31.1.88. The notice was submitted when the applicant was working as Superintendent B/R-II. In the meanwhile, his promotion order was issued by HQ CE Western Command Chandimandir and posted as Superintendent B/R-I. On receipt of promotion order, the applicant was particularly asked to withdraw his three months' notice to enable the implementation of the promotion order. But the applicant showed his unwillingness to withdraw the voluntary retirement notice. They contend that the applicant has no case for promotion under following grounds:

(1) Having submitted the notice for voluntary retirement in the lower post as Superintendent B/R-II, it would not be in order to retain the higher grade post of Superintendent B/R-I ~~on the same note~~.

(2) The applicant was working under the Controller Western Command. He had to move on transfer to Southern Command which he did not physically carry out. Hence the claim for promotion is not tenable.

(3) When the applicant was asked to withdraw the notice for voluntary retirement to enable implementation of the promotion orders, the applicant expressed his unwillingness.

4. We have heard the learned counsel for the ~~went~~ respondents and ~~gone~~ through the records of the case. After the submission of the voluntary retirement notice by the applicant in October 1987, a promotion

order was issued on 5.12.1987 vide CE WC Chandimandir order No.31292/747/EID, which did not specify the actual place of posting in Southern Command. Subsequently, there was correspondence between various authorities of CE WC, as is clear from the Annexure R-III letter dated 26.12.1987 indicating that the applicant had been posted to CE Ahmedabad Zone. There is also an instruction that move or transfer has to be implemented by 31st January 1988. The Commander Works Engineer vide Annexure R-I letter dated 5.1.88, asked the applicant to submit his view in regard to retirement aspect and advising that his retirement from the post of Superintendent B/R-II would otherwise be treated as null and void, if he is relieved to move to Southern Command on intimation of the actual station of posting. He was asked also asked to state clearly as to whether he would go on voluntary retirement as Superintendent B/R-II<sup>TR</sup> or he would like to move on promotion to Southern Command. To this letter the applicant submitted a reply dated 7.1.88, wherein, he reiterated his stand to proceed on voluntary retirement on expiry of the notice period w.e.f. 31.1.88. The applicant insisted that the duty station of Southern Command having since been received vide Chief Engineer Western Command letter dated 26.12.87 (the applicant having been posted to Chief Engineer Ahmedabad Zone), he should be relieved on promotion and promoted and permitted to retire w.e.f. 31.1.88 after taking the charge of the higher grade post. In his letter of 7.1.88, the applicant further pleaded for the sanction of TA/DA claim as well as for an early issue of movement order. On 18.1.88, the concerned authorities of the Western Command advised

the applicant that the notice of the voluntary retirement dated 30.10.87 tendered by him for retirement w.e.f. 31.8.88 has been accepted under the provisions of Rule 48A of CCS (Pension) Rules 1972. Finally the applicant stood retired w.e.f. 31.8.88. The contention of the respondents that ~~the~~ promotion <sup>of</sup> cannot be ordered when the party had given notice that voluntary retirement is not acceptable. No rules prohibiting ~~the~~ promotion <sup>during</sup> through such notice could be produced. The letter issued to the applicant by the authorities on 5.1.88 advising him to persist with his request for voluntary retirement or forego his promotion, is not based on any rule ~~position~~. Even the stand taken ~~in regard to~~ <sup>that he</sup> place of posting in Southern Command was not known at the time of issue of the letter dated 5.1.88, does not get support <sup>from the records</sup>. Since the Western Command vide letter dated 26.12.87 had indicated that the applicant had been posted on promotion to CE Ahmedabad Zone. The applicant had been pleading for movement order and even in his letter dated 7.1.88, he had lodged a claim for TA/DA from Delhi to Admedabad as well as for early issue of movement order. The department should have arranged for releasing the applicant atleast at this stage, when he had given a representation on 7.1.88.

5. In the conspectus of the above facts and circumstances of the case, we feel that this is a case of unnecessary delay on the part of the administration in not releasing the applicant in time and just allowing the voluntary retirement notice period to drift by. By this delay, the applicant has been unduly denied the benefit to retire in a higher grade, to which he was found fit by the relevant DPC. In the

circumstances, we deem it fit and proper to dispose of this case with a direction to the respondents that the applicant should be deemed to have been promoted to the higher grade of Superintendent B/R-I w.e.f. 10.1.88 with all consequential benefits towards salary from 10.1.88 to 31.12.88. He should also be paid the revised terminal benefits taking into account the deemed promotion w.e.f. 10.1.88. However, no TA/DA shall be admissible to him since the actual movement order from Delhi to Ahmedabad did not take place.

6. The respondents are directed to comply with the above directions as expeditiously as possible, preferably within a period of three months from the date of communication of this judgement.

There will be no order as to costs.

*P. T. Thiru*

(P.T. THIRUVENGADAM)

MEMBER(A)

kam191093

19.10.93

*C. P. Roy*

(C.P. ROY)

MEMBER(J)

19.10.93