

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00245/2020

Date of Order: This, the 18th day of December, 2020

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

MES No. 300294
Shri Amit Kumar Mittal, IDSE
Son of Shri Gopal Mohan Mittal
Military Engineer Services
P-14/2 Sector D
Dinjan Military Station, Dinjan
District – Dibrugarh, Assam, Pin – 786189.



... Applicant

- Versus -

1. The Union of India
Represented by the Secretary to the
Government of India, Ministry of Defence
South Block, New Delhi – 110011.
2. The Engineer-in-Chief
Military Engineer Services
Engineer-in-Chief's Branch
Integrated Head Quarter
Ministry of Defence (Army)
Kashmir House, Rajaji Marg
New Delhi – 110011.

O.A. 040/00245/2020

3. Shri V.K. Reddy, IDSE
Chief Engineer
O/o Chief Engineer
Shillong Zone, Shillong
Spread Eagle Falls, Shillong
Pin – 793011.

4. Shri Rajesh Kesarwani, IDSE
Superintending Engineer
Military Engineer Services
O/o Commander Works Engineer
Dinjan Military Station, Dinjan
Assam, Pin – 786189.

.....Respondents.



For the Applicants: Sri Adil Ahmed & D. Goswami
For the Respondents: Sri R. Hazarika, Addl. CGSC
Sri S.C. Keyal, Adv. for res. No. 4

ORDER (ORAL)

MANJULA DAS, MEMBER (J):

This O.A. has been remanded back from the Hon'ble Gauhati High Court vide its judgment and order dated 01.12.2020 in WP (C) No. 5105/2020 for deciding the matter afresh on merit after hearing all the necessary parties in this regard. Accordingly, in

O.A. 040/00245/2020

pursuance of the Hon'ble High Court's direction dated 01.12.2020, matter was listed in this court on 04.12.2020. On 04.12.2020, this court passed order in presence of learned counsel for official respondents as well as private respondent and concerned officer, as follows:-



"As agreed by the parties, list the matter on 09.12.2020. Meanwhile, learned counsel for the respondents as well as Officer Sri Nuruddin, who appeared in person and assisted the court, are hereby directed to obtain instructions in regards to the vacancy position/possibility of vacancy either at Bangalore or at Meerut to accommodate the applicant."

2. Thereafter, matter was listed on 09.12.2020. On 09.12.2020, this court further passed order in presence of learned counsel for official respondents and private respondent as follows:-

"In view of that, I hereby direct Sri R. Hazarika, Addl. CGSC to obtain instruction from the department by Friday positively as to what is the status of vacancy position either at Bangalore or at Meerut in the post of Director/Project Manager and what is the priority to fill up the said posts.

O.A. 040/00245/2020

List the matter on Friday i.e. 11.12.2020. Copy of this order shall be handed over to Sri R. Hazarika, Addl. CGSC by today itself."

3. On 11.12.2020, when matter was listed, this court again passed orders in presence of learned counsel for official respondents as well as private respondent as follows:-



"As there is no Division Bench and since there is urgency in the matter, let the present matter be placed before the available Division Bench for deciding the issue.

Accordingly, list the matter before the Division Bench on 17.12.2020. However, there is no bar for the respondents to consider the case of the applicant for posting him at Bangalore in the vacancy, if so arises.

A copy of this order shall be communicated to all the parties by the registry."

4. Despite granted sufficient opportunities on three occasions, the respondent authorities (official as well as private respondents) though filed written statement however, not able to bring any proper instructions as directed by this Tribunal.

O.A. 040/00245/2020

5. It is noted that on earlier round of litigation, present applicant had filed an O.A. No. 040/00209/2020 with a prayer for setting aside the impugned Turnover Posting of SE bearing No. 70001/SE/59/2020 dated 02.07.2020 by which, the applicant was posted at DGNP Mumbai as Director which was his 3rd choice place. This Tribunal vide judgment and order dated 09.10.2020, disposed of the said O.A. and directed the respondent No. 2 to consider and dispose of applicant's pending representation dated 22.07.2020 within a period of two months from the date of receipt of this order.



6. Present matter relates to choice posting whereas the applicant has completed his tenure posting of 02 years at NER on 16.01.2020. Accordingly, he submitted his repatriation proforma by preferring his three choices in order of preference, namely (i) Bangalore, (ii) Meerut and (iii) Mumbai as per guidelines of Cadre Management of MES Officer. However,

O.A. 040/00245/2020

respondent No. 2 vide impugned order dated 02.07.2020 had posted him to his third choice i.e. Mumbai without considering his first choice at Bangalore.

6. It is further noted that in similar cases i.e. O.A. No. 407/2014 (order dated 08.12.2014), O.A. No. 96/2017 (order dated 12.04.2017) and O.A. No. 163/2017 (order dated 19.06.2017), all the respective applicants have also been prayed for posting in 1st preference. Sri Adil Ahmed, learned counsel appearing for the present applicant, who cited the aforesaid decisions of this Tribunal, submitted that the applicant in O.A. No. 96/2017 did submit his repatriation proforma vide letter No. 88112/205/E8 dated 25.11.2016 by giving 03 (three) choice place of stations namely (1) Chandigarh, (2) Delhi and (3) Udhampur. While disposed of the said O.A. 96/2017 vide order dated 12.04.2017, this Tribunal passed order as follows:-



O.A. 040/00245/2020



"10. In view of the above, in the interest of speedy justice, it would suffice if a direction be issued to the applicant to make an application before the respondent authority with a prayer to consider his case for posting him at Chandigarh within a time frame. Accordingly, I direct the applicant to make a representation before the respondent authority within two weeks from the date of receipt of copy of this order. On receipt of such representation, the respondent authority, shall consider the case of the applicant by disposing the application to be made by the applicant subject to the availability of vacancies at Chandigarh by modifying the posting order No. 70001/SE (QS&C)/191/2017 dated 10.04.2017 in case of the applicant. The exercise of considering the case of the applicant for choice posting at Chandigarh shall be carried out within a period of two months from the date of receipt of such a representation to be made by the applicant. Meanwhile, applicant be allowed to continue as Director (Contract), in the office of the Head Quarter, Chief Engineer, Spread Eagle Falls, Shillong Zone, Shillong."

7. Even the Hon'ble Gauhati High Court in similar nature of case, vide its order dated 23.04.2008 in W.P.(c) No. 1539/2018, upheld the decision of this Tribunal dated 31.05.2007 passed in O.A. No. 181/2006. In view of that, learned counsel for the applicant prayed for posting of the present applicant either at Bangalore (1st

O.A. 040/00245/2020

preference) or at Meerut (2nd preference) wherein the post is available. However, the respondent authorities by ignoring the claim of the applicant; has posted him at Mumbai, which was his third choice place.

8. Today, Sri Adil Ahmed, learned counsel appearing for the applicant has produced an RTI reply dated 03.12.2020 wherefrom it appears that there is a vacant post at Bangalore which is equivalent rank to the post held by the applicant. Said RTI reply dated 03.12.2020 reads as follows:-



“2. The relevant information is as under:-

Posting Modalities Authorisation	Held	Remarks
05	04	As per PM-2020-21 issued vide A/93296/Proposal/19-20/20/E2W(Est) dt 04 Sept 2020

(b) Para 2. Cut off date of turnover is 31 Dec 2020. 01x officer is due as per cut off dates. Officer due out beyond cut off date are due out in Mar/Apr 2021.”

O.A. 040/00245/2020

9. According to Sri Ahmed, applicant is going to attain age of 56 years by 09.01.2021 and completing 03 years in North East hard station on 15.01.2021 in utter violation of para 19 (a) & (b) of Cadre Management Policy as per which he cannot be sidestepped (posted) after 55 years of age and total stay beyond 2 years. It was further submitted by Sri Ahmed that respondents sidestepped/posted the applicant to CCE Army No. 1 Dinjan on supernumerary strength (without work) on 10.12.2020 while hearing of the case was under progress in this Tribunal that too, by utter violation without BOD and without availability of vacancy within in the CCE Army 1 Dinjan has adjusted the applicant within two days. As such, there is no bar for the official respondents more particularly respondent No. 2 to accommodate him at Bangalore immediately. Right from the beginning, respondents are torturing the applicant and his family.



O.A. 040/00245/2020

10. We have heard Sri Adil Ahmed, learned counsel for the applicant and Sri R. Hazarika, learned Addl. CGSC for the respondents, perused the pleadings and all the materials placed on record.

11. From the RTI reply, since it is evident that there is a vacant post available at Bangalore and one post of Director level post will be exit on 31st December 2020, moreover, a resultant vacancy will fall in March/April 2021, in view of that and in the interest of justice, we deem it fit and proper to direct the respondent authorities to accommodate the applicant at Bangalore in any post equivalent to the post held by the applicant within a reasonable time.



12. As apprised by Sri R. Hazarika, learned Addl. CGSC for the official respondents and as per RTI reply dated 03.12.2020, since it is explicit clear and evident that there is a post of Director level lying vacant at

O.A. 040/00245/2020

Bangalore, in view of that, respondents are hereby directed to accommodate the applicant at Bangalore either in the post of Director or equivalent immediately but not later than six weeks from the date of receipt of a copy of this order. It is further directed the respondents that till the accommodation of the applicant at Bangalore, the post of Director or equivalent post, shall not be filled up at Bangalore.



13. Consequently, movement order under File No. 10111/153/E1C(I) dated 07.11.2020 shall not be given effect to.

14. With the above observations and directions, O.A. stands disposed of. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

O.A. 040/00245/2020