

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/226/2020

HYDERABAD, this the 10th day of March, 2021

Hon'ble Mr. AshishKalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



Ch. Jayasankar Rao, S/o. Sri Ch. Appa Rao,
Aged about 56 years,
Occ: Asst. Engineer (Civil) Gr.B,
O/o. the Garrison Engineer (Works)4,
Directorate General Naval Projects,
Visakhapatnam-14,
R/o. Ground floor1, Surya Sundara Enclave,
APSEB Colony, Butchirajupalem,
Visakhapatnam – 530 027.

...Applicant

(By Advocate :Sri Siva)

Vs.

1. Union of India rep. by
The Secretary, Ministry of Defence,
South Block, New Delhi.
2. Military Engineer Services rep. by
Engineer-in-Chief, Engineer-in-Chief's Branch,
Kashmir House, Rajaji Marg,
New Delhi – 110 001.
3. The Chief Engineer Eastern Command,
Engineers Branch Headquarters,
Eastern Command, Pin – 908 542 C/o.99 APO.
4. The Director General, Naval Project,
Naval Base Post, Visakhapatnam – 530 014.
5. The Chief Engineer (Air Force),
Allahabad.

....Respondents

(By Advocate: Smt K. Rajitha, Sr. CGSC for
Sri B. Rajeswara Rao, Addl. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The applicant filed the OA challenging the order dt. 28.12.2018 issued by the 2nd respondent in so far he is concerned, whereunder he has been posted from Vizag to Allahabad and also rejection of his request for retention, vide order dt. 23.04.2019.

3. Brief facts of the case are that the applicant while working as Assistant Engineer on a substantive basis in the respondents organisation was transferred from Vizag to Allahabad vide order dt. 28.12.2018. Applicant represented on 22.01.2019 to modify the order of posting to Bangalore or grant retention, but it was rejected. Due to health reasons, applicant is on medical leave and has thus not been relieved. Nevertheless, respondents intend to relieve the applicant from Vizag unilaterally and hence the OA.

4. The contentions of the applicant are that earlier he was posted to different places in the country and he has complied with the transfer orders of the respondents. Further, based on the interim direction of the Tribunal in OA 443/2019, the applicant was promoted on adhoc basis as Executive Engineer and that, on joining Allahabad, he may be promoted and retained at the same place. The said OA is also pending adjudication. Applicant has sought posting at Bangalore since his children are studying there and his wife is not keeping good health. Though the request was recommended by

R-4, the same was not considered by R-3 & R-2 on the basis of some cases pending against the applicant. Finalization of the cases are pending for reasons of lack of adequate action on part of the respondents. In the meanwhile applicant developed cardiac problem and is on medical leave from 19.3.2019 till 12th March 2020. However, respondents directed the applicant to get relieved on 28.2.2020 despite being on medical leave.



The Tribunal, at the admission stage, passed an interim order on 13.03.2020 directing respondents to retain the applicant at Visakhapatnam till the learned counsel for the respondents reverts with instructions and the said interim order has been extended from time to time and is still subsisting.

5. Respondents *per contra* state that the applicant has to be shifted from Vizag to Allahabad as he has completed 3 years tenure at Vizag in a sensitive post. The transfer is necessitated as per transfer policy and in administrative interest. In regard to education of the children of the applicant, since they are studying in VI & III standards, there is no provision for posting the applicant as requested on the ground of children education. Medical facilities are available at Allahabad to take care of the health of the applicant and that of his wife.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the transfer of the applicant from Vizag to Allahabad. Applicant has represented to the respondents to modify the transfer order, but it was turned down. The respondents have submitted that

the transfer has to be effected as per transfer policy and that the applicant has been working in a sensitive post at Vizag for 3 years. Hence, in administrative interest he has to move. In respect of modifying the transfer order to Bangalore on grounds of children education, it could be considered only if the children were to study in X or XII standard and not when they are in III & VI standard as in the case of the applicant. Medical facilities are available at Allahabad to take care of the medical needs of the applicant and his wife.



II. When the case up for hearing on 11.02.2021, the Ld. Counsel submitted that the applicant is nearing retirement and hence has represented to the respondents on 04.03.2021 for change of posting to Bangalore on compassionate/ last leg policy and the same was forwarded to the concerned on 05.03.2021. The applicant has filed documents before this Court to the said effect. As seen from the documents filed, it is seen that the request of the applicant has been favourably recommended by the EE (SG), Offg CWE (Wks) 2, DGNP Visakhapatnam on 09.03.2021. Final decision thereon is awaited.

Hence, any decision of the Tribunal in the OA would reflect on the decision of the respondents in regard to the representation of the applicant. Nevertheless, we do observe that transfer is an incidence of service and Tribunal has very narrow scope to intervene, unless the transfer effected is malafide. The applicant is continuing at Vizag on the basis of the interim order passed on 13.03.2020. Nevertheless, in view of the submission made

by the Ld. Counsel for the applicant, we direct the respondents to dispose of the representation cited of the applicant, more particularly in view of the favourable recommendation of the authorities as stated above, within a period of 8 weeks from the date of receipt of this order in accordance with extant rules and as per law. Till the disposal of the representation, the interim order passed on 13.03.2020 will hold good.



IV. With the above direction the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/