

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(19)

O.A.NO. 512/1991

DATE OF JUDGEMENT: 3.4.1991.

SHRI D.N. SHARMA

.....

APPLICANT
(IN PERSON)

VERSUS

ENGINEER-in-CHIEF,
ARMY HEADQUARTERS,
KASHMIR HOUSE,
RAJAJI MARG,
NEW DELHI.

.....

RESPONDENT
through
MRS. RAJ KUMARI CHOPRA,
ADVOCATE

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

J U D G E M E N T

(Delivered by Hon'ble Mr. T.S. Oberoi, Member(J).

In this application, the only question requiring adjudication is the alleged unwarranted transfer of the applicant, from Delhi to Madras, vide order dt. 18.9.90 (Annexure 'B' to the OA). Though, the applicant has mixed up his other grievances regarding his seniority, etc. but, a separate OA (No.488/91) has also been filed by him, for the same, and therefore, need not be gone into this judgement.

2. The applicant's case briefly is that he is presently working as Director (Additional Chief Engineer), in the Engineer-in-Chief's Branch, Army Headquarters, w.e.f. 17.1989, on the retirement of Shri S.N. Laxmana. According to the applicant, the vacancy of Additional Chief Engineer is still there, on which he is officiating, but has been posted to Madras, vide order dt. 18.9.1990 (Annexure 'B'),

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directing him to move to Madras, on promotion, on the same post, in which he is officiating at New Delhi, w.e.f. 1.7.1989.

3. The applicant has urged for the cancellation of his transfer, on various grounds, such as that he is retiring from service, after about a year i.e. w.e.f. 1.3.1992, and as such, being in the last leg of his service, he should be retained in Delhi, because of his various personal problems like ailment of his wife; to facilitate the matrimonial negotiations of his three marriagable daughters; to facilitate the processing and finalisation of his pension papers; etc. He also cited some instances, in which such requests have been accommodated. He has also stated that this is his first and last posting in Delhi, in view of his impending retirement on 1.3.1992.

4. The applicant has also urged that there is no administrative expediency or urgency, necessitating his transfer to Madras, as he is already officiating in the post of Director which is held by Additional Chief Engineer, on the retirement of Shri S.N. Laxmana, w.e.f. 1.7.1989, on which he can be continued to be posted, till his claim, vide OA No. 488/91, also pending before this Tribunal, for promotion to the post of Additional Director General, is decided, which can materialise only at New Delhi, as there is no post of Additional Director General, elsewhere. He has also stated that, besides the post of Additional Chief Engineer/Director, on which he is offici-

ing, at least three more posts are likely to fall vacant, as the incumbents serving on them are likely to be posted out of Delhi, and therefore, he can be accommodated on any of the same, also.

5. He has alleged and attributed malafides, in the matter of his posting out of Delhi, in order to complicate the above aspects of his personal matters, on account of his litigating his grievances for quite some time, in the past. He has also alleged that his earlier transfer out of Delhi, in 1989, was also motivated with the same considerations, and had to be dropped, because of orders from Hon'ble Supreme Court, as per annexures 'C' & 'D'. His representations dt. 25.10.90 and 31.10.90 (Annexure 'E' & 'F'), having NOT brought forth any result, he has filed the present OA, seeking cancellation of his transfer to Madras, in pursuance of Hon'ble Supreme Court's Order annexure 'G'.

6. The respondents in their short reply, opposing admission and interim relief, raised a preliminary objection that the applicant has not made union of India, through the Secretary Ministry of Defence, a party/respondent in the case, and therefore, the present OA is bad in law and deserves ^{to} be rejected on that ground alone. They have also opposed the applicant's case on the ground that organisational and functional requirement is an

over-whelming consideration for posting and there is no vacancy of Additional Chief Engineer, in Delhi, against which the applicant could be adjusted here, in order to avail of his promotion as an Additional Chief Engineer, failing which he cannot be promoted to that post. It has also been stated that the applicant has already completed his tenure of posting at Delhi, where he had been serving since 15.10.1985, roughly more than 5½ years, as against the normal tenure of 3 to 4 years and thus has served for nearly two terms/tenures of posting at Delhi. It has also been stated by the respondents that though it remains to be the endeavour of the Department to give last posting at home station or near about, it is subject to availability of suitable posts and is not always feasible at higher ranks, because of the limited number of posts and in the interest of functional/organisational requirements. As regards applicant's seniority, it has been stated that the same has been fixed up, in accordance with Hon'ble Supreme Court's Judgement in C.A. No. 3224/89 dt. 8.8.89, as it was because of that the applicant's promotion as Additional Chief Engineer, has come about, and hence, his posting against the available vacancy at Madras.

7. We have given our careful consideration to the rival contentions, as briefly discussed above. Hon'ble Supreme Court's Order dt. 11.2.1991, (Annexure 'G'), reads

(1X)

as under:-

"We have heard counsel for the petitioner and are satisfied that no case for contempt has been made out. However, we make it clear that the grievance of the petitioner, if any, may be examined before an appropriate forum. It is open to the petitioner to move an appropriate Forum at Delhi, before his transfer."

8. The respondents have filed only a short reply, against admission and interim relief. The applicant has also not filed any rejoinder. However, keeping in view the nature of the matter involved i.e. relating to applicant's impending transfer, we are of the view that it can be disposed of, with whatever material is on record.

9. During the course of arguments, the learned counsel for the respondents had also informed us that the applicant, in continuation of his representations annexure ^{FD} 'E' & 'F', was given a personal hearing regarding his retention in Delhi, but the same could not be granted, because of the above stated difficulties, and so, the matter having been given due consideration, at the appropriate level, with the administrative authorities, there is hardly any occasion for this Tribunal, to interfere.

10. We have given our careful consideration to all the aspects involved in the case, including the one men-

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tioned in the preceding sub-para. We are also conscious of the trend of judgements in such like matters, as evident from Union of India & Others Versus H .N. Kirtania (Judgements Today-1989(3)S.C.131), etc. but, in view of the peculiar circumstances of the case, particularly that the matter has already gone to the Hon'ble Supreme Court, who have, vide their order dt. 11.2.91, reproduced above, directed that petitioner's grievances in this regard, be examined, and also that, Hon'ble Supreme Court's order is much later, in point of time, to the representations dt. 25.10.90 and 31.10.90 (Annexure 'E' & 'F' to the OA), we are inclined to hold that Respondents may give a fresh look to applicant's grievances, with regard to his impending transfer to Madras, from all aspects mentioned in the OA, including the anticipated vacancies in the post of Additional Chief Engineer, and take an appropriate decision in this regard. Till passing of such an order, the applicant's transfer to Madras, is held in abeyance.

We order accordingly and dispose of the OA, on the above lines, leaving the parties to bear their own costs.

sd/- 3.4.91
(I.K. RASGOTRA)
MEMBER(A)

sd/- 3.4.91
(T.S. OBEROI)
MEMBER(J)