

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABADAllahabad : Dated this 27th day of May, 2002.Original Application No.70 of 1997.CORAM:-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Mr. C.S. Chadha, A.M.

Musafir Prasad

S/o Late Shri D.N. Chauhan,

R/o House No.114/9, Jawahar Nagar,

Naini, Allahabad.

(Shri Rakesh Verma, Advocate)

.Applicant

Versus

1. Union of India through the
Director General, Ordnance Services,
Army Headquarters, Post Office DHQ,
New Delhi-110011.
2. Officer-in-Charge, AOC Records,
Post Office Trimulgherry,
District Secunderabad-500015.
3. The Commandant, Central Ordnance Depot,
Chheoki, Naini, Allahabad.

(Shri SC Tripathi, Advocate)

.Respondents

O R D E RBy Hon'ble Mr. C.S. Chadha, A.M.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality of the order of respondent no.2 passed on 21-11-1995, cancelling the promotion-cum-transfer order of the applicant to the post of Office Superintendent Grade II.

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2. The brief facts of the case are that the applicant was working as U.D.C. at C.O.D., Chheoki, Naini, Allahabad when he was empanelled for promotion as Superintendent Grade II, by means of a panel issued on 12-1-1995. As a result of the empanelment he was promoted to the said rank and also transferred C/o 56 APO (which has been clarified to be posted to Srinagar) vide an order dated 15-6-1995. By means of a letter dated 11-7-1995 (Annexure-CA-1), a copy of which was received by the applicant, and his initials affixed on the copy on 12/7 as a token of receipt, he and others similarly promoted were directed to forward their willingness/unwillingness certificate, duly countersigned by the Group Officer latest by 14th July, 1995. It has been further provided that the concerned individuals should be "relieved and directed to the office of the Personnel Officer for collection of their movement orders and their onward despatch to the new units latest by 22-7-95 positively". It has been averred by the respondents that according to a policy laid down by the Army Headquarters in this regard, such civilian ^{her} officials ought to express their willingness within five days of the receipt of the order and actually move to their new places of posting within 30 days. Apparently the promotion-cum-posting orders were cancelled because the applicant did not categorically express his willingness to accept the promotion-cum-transfer within the stipulated time. However, the applicant has claimed that the time allowed to him to express his willingness had been extended, by a letter dated 20-9-1995, upto the 25th Oct, 1995 and he did submit his willingness to respondent no.3 on 19-10-95, which was forwarded by him on 21-10-1995. The applicant has further claimed that his willingness was reiterated

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by a telegram dated 26-10-1995, but yet again by a letter dated 8-11-1995 (Annexure-A-VI) he was asked to send his willingness/unwillingness certificate immediately. He has, therefore, claimed that he submitted his willingness within the time extended by the respondents themselves, ^{and} and therefore, cancellation of his promotion on 21-11-1995 was illegal and unwarranted.

3. In their counter affidavit, while stressing the policy of the Army Headquarters of completing movement to the new units within 30 days, the respondents have made a subtle difference between merely accepting/ giving willingness for just the promotion and a comprehensive willingness ~~to~~ not only to accept the promotion but also the transfer that accompanied the promotion. The contention of the respondents is that, despite laying down the deadline for movement as 22-7-95 vide Annexure-CA-1, the applicant continued to represent through his commanding officer that he be given promotion in situ, i.e. that he be retained at Allahabad itself. Annexure-CA-IV clarifies that such requests were forwarded by the applicant's CO on 5-7-95, 8-8-95 and 10-8-95 and they were turned down by letters to his CO on 27-7-95, 21-8-95 and 5-9-95 respectively. The reasons why such a request could not be accepted was also mentioned. Therefore, it is quite evident that this case is not of simply cancelling the promotion after non-compliance of the promotion-cum-posting order after 30 days but of the senior authorities giving several opportunities to the applicant to mend his ways and go to Srinagar on promotion ^{but without any result} Despite having informed his CO, about the superior authorities' inability to accept the request of the applicant to be retained at Allahabad, he continued to be the cause of

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protracted correspondence between his CO and the superior authorities of the Army Ordnance Corps, Secunderabad between 5-7-95 and 5-9-95. The Army Authorities need to maintain discipline and that is why there was the deadline of movement being completed within 30 days of the posting orders. Annexure-CA-1 was itself some sort of relaxation as it provided time, for compliance of an order dated 5-6-95 upto 22-7-95. Despite this and thrice turning down the applicant's request for being retained at Allahabad he did not show ~~an~~ any urgency in giving his consent to move to Srinagar, as the last letter refusing his request was dated 5-9-95 and yet he awaited further orders.

4. The applicant claims total innocence for this delay by stating that his CO wanted to retain him at Allahabad, whereas the respondents have averred that the applicant being a senior clerk in the office of the CO managed to get letters containing the repeated requests for his retention, signed by his CO surreptitiously. Even conceding, for argument's sake, that the letters were not written by the CO at the applicant's behest, but on his own, it cannot be denied that the applicant was fully aware that the said requests were thrice turned down, the last being on 5-9-1995.

5. The applicant did not submit his willingness even soon after 5-9-1995, nor after another letter dated 6-10-1995 by which he was directed to move immediately, and again reminded on 17-10-1995 (as mentioned in Annexure-CA-IV). Para 5 of the same letter also mentions that the applicant's CO had ^{also been} informed that the promotion of the applicant was liable to be cancelled for non-compliance in terms of the policy of Army Headquarters, in this behalf, laid down on 16-9-1993.

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6. The applicant draws strength from a letter dated 20-9-1995 by which time was extended for sending his willingness upto 25-10-1995. However, we find that by a later communication of 23-9-1995 the last date for sending the willingness certificate was fixed at 30-9-95. Moreover, the tone and tenor of the letter of 20-9-95 clearly indicates that it was seeking an unwillingness certificate for cancellation of the promotion order. This is what exactly happened when the applicant received a further communication on 8-11-1995 (Annexure-A-VI) enclosing a blank form of an unwillingness certificate.

7. We, therefore, come to the conclusion that the applicant should have expressed his willingness to accept his promotion-cum-transfer by 14-7-95 and actually moved by 22-7-1995 (in terms of Annexure-CA-I) and despite thrice being told ^{his} that requests for ^{his} retention ^{at Allahabad} cannot be accepted he continued to stay at Allahabad and did not give his clear-cut willingness ^{to go to Srinagar} According to his own admission in Para 4(iii) of the OA, he gave his willingness for the first time on 19-10-1995, which was forwarded by respondent no.3 on 21-10-95 and reiterated by a telegram on 26-10-1995. The respondents have clearly averred that the last mentioned 'willingness certificates' sent on 21-10-1995 and 26-10-1995 were also incomplete in as much as they did not mention the applicant's willingness to accept a transfer to Srinagar. This is proved by the fact that after having been totally fed up with the dilly-dallying approach of the applicant finally they sent him an unwillingness certificate blank form (Annexure-A-VIII) to be signed and sent back, to which the applicant replied on 13-11-1995 (Annexure-A-VII) reiterating that he had already sent his willingness on 19-10-1995 &, therefore, the unwillingness form was

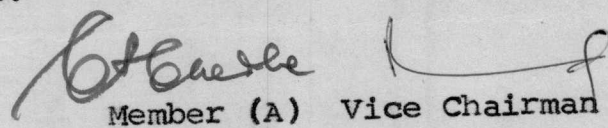
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not relevant in his case. Even after all this correspondence, even in Annexure-A-VII the applicant did not mention his willingness to go to Srinagar and his CO maintained the same stubborn attitude by his letter at Annexure-A-IX which he wrote after the cancellation of promotion was received. He merely stated that the willingness sent once stands, without mentioning any willingness on the part of the applicant to go to Srinagar.

8. Therefore, there is no doubt in our minds that despite several opportunities given to the applicant he did not clearly accept his movement, on promotion, to Srinagar right from 5-6-1995 (the date of his promotion) upto 13-11-1995 (the date he wrote Annexure-A-VII) and, therefore, the army authorities were quite justified in cancelling his promotion on 21-11-1995, in their effort to enforce discipline as laid down in the policy of the Army Headquarters. We, therefore, find no merits in the OA and the same is rejected.

No order as to costs.


Member (A) Vice Chairman

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