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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

D.A.No. 193 of 2004

Dated : This the 6th day of April, 2004

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mr. S.C. Chaube, A.M.

Hemant Kumar Srivastava,
Aged about 48 years, son of
Sri Raghunath Prasad, Resident
of D 60/61-D, Ghati Gaibi,
District Varanasi.

...Applicant.

By Advocate : Shri A.K. Sinha and
Shri S.K. Srivastava

Versus

1. Union of India through Development
Commissioner for Handloom, New Delhi
Udyog Bhawan.
2. Zonal Director,
Weavers Service Centre,
Bunkar Colony, Bharat Nagar, Delhi.
3. Assistant Director (Administration),
Weavers Service Centre, Bunkar Colony,
Bharat Nagar, Delhi.
4. Officer Incharge,
Weavers Service Centre,
Chawka Ghat, District Varanasi.

....Respondents.

By Advocate : Shri S.C. Mishra

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this D.A. applicant has challenged the
(pg 25)
order dated 08.1.2004 / whereby he was promoted to the
post of Technical Superintendent in the pay scale of

.....pg 2/-

(25)

Rs.5500-9000 and was posted at Weavers Service Centre, Sri Nagar (J&K) until further orders. He has also challenged the order dated 03.2.04 whereby he was relieved from his present place of posting at Weavers Service Centre, Chawka Ghat, Varanasi(pg 27).

2. Grievance of the applicant in this case is that he is not physically fit as he is suffering from heart disease. Even earlier in the year 1990 when he was promoted as Technical Superintendent and was posted at Meerut, he had to get himself reverted for being posted at Varanasi as he was seriously sick at Meerut. So this time also when he was promoted and posted at Sri Nagar, he had given in writing on 13.1.2004(pg 48) to the Regional Director through proper channel about his physical condition giving the background how earlier also he had sought reversion, with a request that he may be allowed to work at the same place where he is presently working. Yet without considering his representation, respondents relieved him vide order dated 03.2.04 which shows total non application of mind. He further submitted that in his promotion order itself, it was specifically mentioned that the incumbent may be relieved of his duties from Weaver Service Centre, Varanasi, if, he accepts the promotion but since he had not accepted the promotion he could not have been relieved on 03.2.2004. Moreover respondents have themselves sought willingness from the employees vide their circular dated 12.1.2004 asking them to give the willingness in case they were interested for temporary posting in Sri Nagar (pg 49).

3. It is submitted by the applicant's counsel that applicant did not give any such willingness, on the contrary, had given in writing that he is not in a position to go to Sri Nagar, therefore, there is absolutely no

justification in relieving the applicant for joining at Sri Nagar. He has, thus, prayed that the relief as prayed for may kindly be granted.

4. Respondents on the other hand submitted that under Prime Minister's Economic Package to the state of Jammu and Kashmir, one new Weaver Service Centre at Nowshera, Sri Nagar was proposed to be established under the instruction of office of Development Commissioner, Handloom, Ministry of Textile, Udyog Bhawan for which 20 posts were sanctioned in Group A,B,C and D categories. Since post of Technical Superintendent was one of those 20 sanctioned posts and applicant was recommended by D.P.C. for regular promotion as Technical Superintendent, therefore, ~~which~~ was decided to post him at Nowshera in public interest as per seniority. As far as circular dated 12.1.2004 is concerned, they have explained that it was issued to deploy staff from various Centres on temporary transfer/tour under stop gap arrangement pending regular arrangement in terms of recruitment rules. They have further submitted that since applicant was promoted, he had to be relieved in public interest to set up the new Weavers Service Centre at Sri Nagar. The other persons, who were promoted and posted at Sri Nagar have accepted promotions and joined their duties at Weavers Service Centre, Sri Nagar except the applicant and organisation cannot function according to the convenience of employees. They have submitted that if applicant is not well he can avail the treatment even after joining at Sri Nagar. There is nothing on record to show that ~~have~~ doctors ~~are~~ advised him not to be posted on hill station. They have, thus, submitted that there is no merit in the D.A. the same may accordingly be dismissed.

5. We have heard both the counsel and perused the pleadings as well. Counsel for the applicant strenuously argued that applicant was not willing to accept the promotion

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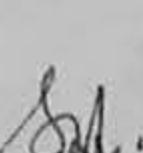
(4)

due to his failing health and he has even given in writing but from the representations, which has been shown to us, we find there is no specific averments to this effect that he is willing to forgo the promotion (pg 48). However, applicant, who is present in the Court has categorically stated that he is not in a position to accept the promotion. If that be so, then applicant should give in writing to the Competent authority within one week from the date of receipt a copy of the order in clear terms that he is not willing to accept the promotion due to heart problem alongwith medical certificates and request to the authorities to allow him to continue either at the same place at Varanasi or someother near by place where he can get proper medical treatment. In case applicant gives such a request in writing within one week from the date of receipt of the order, respondents shall consider the same, keeping in view the medical certificates produced by him and then pass appropriate speaking orders thereon within two weeks under intimation to the applicant.

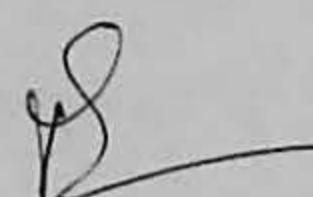
6. It is submitted by the applicant that till date no other person has been posted in his place at Chowka Ghat, Varanasi as Pattern Maker-cum-Designer and he is willing to work on the same post without claiming benefit of the promotion, which has been given by the respondents.

7. In view of the categorical statement made in Court till his representation is decided by the authorities concerned, respondents shall allow the applicant to work on the post of Pattern Maker-cum-Designer by making it clear that he would not be entitled to any benefits due to the promotion. This temporary arrangement, however, would be only subject to the availability of the vacancy at Varanasi.

8. With the above direction this O.A. is disposed off with no order as to costs.



Member (A)



Member (J)

Brijesh/-