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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.701/2006

DATED THE 21st DAY OF JANUARY, 2008.

CORAM:

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

Nawal Kishore,
R/e B-694, Panki,
Kanpur.

... Applicant

(By Advocate Sri R.Verma)

V/s

1 Union of India through
the Secretary, Ministry of
Defence (Department of
Production), New Delhi.

2 The Director General of Aeronautical
Quality Assurance, New Delhi.

3 The Officer Incharge,
Detachment Air,
Armament Inspector Wing,
Kalpi Road, Kanpur - 208 009.

... Respondents

(By Advocate Sri S.Singh)

(ORDER)

Hon'ble Dr.K.B.S.Rajan, Judicial Member

The applicant, working as Asst. Foreman, working at Kanpur, was transferred to Itarsi on promotion vide order dated 25-04-2006 but he had refused to accept promotion as he wished to remain in the same station and his request for retention having not been acceded to has filed this O.A. And, on 13th July, 2006, this Tribunal has granted stay of the impugned order.

2. The grounds for challenge include that he has just five years to superannuate and due to compelling circumstances, he has to remain at Kanpur itself and it was for that reason that he chose to forgo even his promotion; that such a refusal of promotion is not uncommon and the respondents have all along been accepting such requests. And, in respect of a few where such request had not been accepted, the affected individuals have filed applications before this Tribunal and interim stay had also been granted.

3. The points highlighted by the respondents in their short counter and supplementary counter are as under:-

(a) Para 4 of short counter: "at the place of posting, where the applicant is presently posted, there is hardly any work. Moreover, out of 27 years of service, the applicant has already spent 24 years at the present station."

(b) Preliminary submission in the counter: "... applicant's request to forgo his transfer on promotion and acceptance of retention in the same grade in the present station although considered on humanitarian grounds but could not be acceded due to exigencies of service"

(c) Preliminary submission in the counter: "the decision taken by the respondents is in the interest of service/administration and to cater for exigencies of service."

(d) Para 7 of reply to rejoinder: "... transfer of personnel from one establishment to another within the organization is done as per the standing rules of All India Service Liability. This not only serves the purpose of manning vacant posts by suitable officers, Technical Staff, but also helps to broaden their range of experience, which

works both to the individual and Organizational advantage... Transfers are done based on the workload at different filed establishment. There is high necessity for continuity and build up of experience in the technical projects particularly for the development and production of air armament stores. Therefore, the officers/technical staff are to be normally rotated to different functional areas within organization."

(e) Para 8 of counter to amended OA: "... posting , transfer on administrative grounds and in the interest of organization may be resorted to irrespective of the ibid norms. As such, in the interest of organization, as there is not much work load at present place of the applicant, i.e. Kanpur, the applicant has been transferred to Def. AAIH Itarsi."

4. Counsel for the applicant argued that if there be any reduction in the complement, the same would be proportional in all the grades and not with reference only to one grade. While the respondents have stated that there is no work for Asst. Foreman, and consequently, the applicant was transferred, no such revision of strength in Chargeman II or I has been made. Again, it is the case of the applicant that it was not a transfer simplicitor but one of transfer on promotion and as such, the reason given by the respondents cannot be the actual reason.

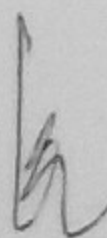
5. Counsel for the respondent, as usual, has been brief, to the point and specific and focused on the main aspects of the matter, and reiterated the contentions, as extracted above. Again, he had invited the attention of the Tribunal to the decisions of the Apex Court as extracted in the counter.

6. Arguments were heard and documents perused. The applicant has



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decided to forgo his promotion for the purpose of remaining at Kanpur itself. He is facing superannuation within the next few years. His is the case that he was transferred on promotion. In other words, in case he was not within the promotion zone, he would not have been disturbed from Kanpur. There is no mention by the respondents that even if the applicant had not been promoted and posted out, he would have, in the grade of Asst. foreman, been transferred, as there was no work. If so, the complement of Asst. Foreman would have undergone a reduction. As per SRA I (order dated 12th April 2002) the complement of Asst. Foreman had only increased and not decreased and in so far as Kanpur unit is concerned, there is no change in the complement. If the version of the respondents that there is no work at Kanpur be true, then there should have been a clear statement by the respondents that after promoting and posting the applicant out of Kanpur, it was decided not to post any Asst. Foreman at Kanpur. This was not there even by inkling. Again, Asst. Foreman is to supervise CM II and CM I and in case none is posted there, there would not be any one available to supervise the CM II and CM I. Of course, there would be one Foreman to supervise. However, it would be curious to note that if for lack of adequate work some post be not filled up, then it may be the highest post or reduction of one or two posts where there are many. Here, keeping Foreman post intact and stating that there is no work for Asst. Foreman does not appeal to logic. The applicant has refused his promotion for the reason that he has to remain at Kanpur. Provision exists for such refusal. The promotion to the applicant was not on the ground that there was no work at Kanpur but on the basis of his seniority and merit. As such, there is no link between the so called non availability of adequate work at Kanpur and the promotion to the applicant. Sure enough, the transfer of the applicant was on promotion and



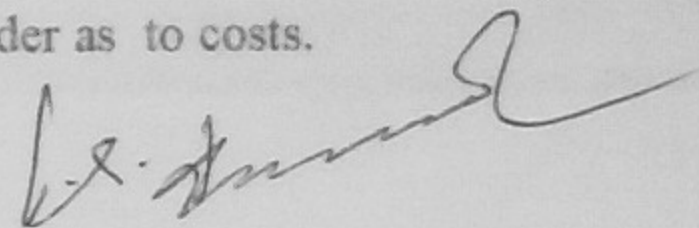
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due to non availability of vacancy of Foreman at Kanpur. The reasons adduced by the respondents that there was no adequate work at Kanpur does not appear to be the real reason.

7. In view of the above, the OA succeeds. It is declared that rejection of the request of the applicant for retention when such retention is permissible under the provisions of the Rules, is illegal and unjust. The Respondents are directed not to give effect to the order dated 25th April, 2006 in so far as the applicant is concerned.

8. Under the circumstances, there shall be no order as to costs.



DR.K.B.S.RAJAN
JUDICIAL MEMBER