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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 16 of 1986
T.A. No.

DATE OF DECISION 24.10.86

MAJOR MAHAVIR PRASAD YADAV Petitioner

SHRI S. I. NANAVATI Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent
MINISTRY OF DEFENCE, N. DELHI

SHRI S. R. SHAH Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI, Vice Chairman

The Hon'ble Mr. P. M. JOSHI, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

O.A. No. 16/86 and
contempt Application No:29 of '86.
Per: Hon'ble Shri P. H. Trivedi, Vice Chairman

JUDGMENT

1. The applicant, Major Mahavir Prasad Yadav, Administrative Officer, 1, Gujarat BN NCC, has impugned the orders dated 2nd April, 1986, posting him at Kolar, and also sought directions for quashing and setting aside the impugned Annual C.Rs for 1982-83 & 1983-84. He has also sought directions for his promotion without taking them into account. The learned Shri Rajesh Dave for advocate/Shri Nanavati, for the applicant, has taken the stand that the applicant, M.A., L.L.B., is a highly educated person. Although prior to 1981-82, he was getting 8 out of 9 marks in his Annual Confidential Reports, due to his high educational qualifications, he fell foul of Lt. Col. K. D. Sanguri, who is not, he claims, well educated, thus causing some personal friction between them. The extract of adverse A.C.R. for 1982-83 was communicated to the applicant and he represented against it on the 16th August, 1983, which resulted in the expunction of the adverse remarks. However, the figurative assessment was not changed and the applicant's representation in this regard was rejected. Against this decision, the applicant's representation dated 6th February, 1986, is still stated to be under consideration of the Government. In the meantime, the applicant has been transferred from Ahmedabad to Kolar by the impugned order dated 2nd April, 1986. The applicant has pleaded that while there are 570 officers in NCC, there are only 131 stations which due to difficult

conditions are graded as hard stations, and the Government's policy that the tenure in good stations should be 3 years and in hard stations should 2 years, will result in an officer going to a hard station only after 9 years of service in a good station. The applicant's stand is that he is working continuously for 6 years and 4 months in a hard station, and therefore, he cannot be posted to any other hard station. He has shown that Kolar is a hard station, according to Government's orders.

2. Against this, the learned advocate for the respondent, Shri S. R. Shah, has denied that the applicant was getting more than 8 marks out of 9 and that his low grading by the Lt. Col. Sanguri is due to any personal friction. The expunction of the remarks has been ordered according to merits by the competent authorities who have, at the same time, also rejected the representation for modifying the figurative assessment, as it was found to be objective. The progressive stages in which the applicant's representations are considered is a confidential matter and the applicant's access to such an information and use thereof constitutes misconduct. The applicant's representation that he has already served for 6 years in hard stations does not bring out the fact that he has sought his postings in specific places of his choice, and when this is so, the instructions provide that the weightage attached to service in hard stations is not allowed. Similarly regarding some other officers viz. Major D.P. Sharma, Major V.M. Desai, Lt. Col. U.S. Brar & Major Harish Kumar, in so far as the applicant's plea of discrimination against him is concerned, the respondent

has denied the contentions of the applicant.

3. After hearing the learned advocates and perusing their application and the reply, it is difficult to hold that the link between the case of the applicant regarding his promotion or his representation against adverse remarks and his transfer is anything but tenuous. The applicant's representation regarding adverse remarks has already resulted in expunction of the remarks. It was informed during the hearing that both figurative assessment and pen picture are done by the same officer Lt. Col. Sanguri. If so, it is hard to accept that when the remarks were expunged by order dated 3rd January, 1984, the representation about the figurative grading was rejected. It is possible that there may be cases in which the pen picture may be modified and the adverse remarks in it may be expunged, but assessing officer's appreciation in the figurative report in terms of the number of marks may still not be modified, representing as it may, the place that the assessing officer gives to the officer reported upon in the scale of 1 to 9. However, there is no doubt that there is some connection between the two even if one is not entirely derived from the other. We would draw the attention of the Government and all the concerned authorities to see that this aspect is fully considered and after examination of the case, such change as may be warranted in the figurative assessment should be made.

4. Regarding his transfer, we note that the officer has been at Ahmedabad and in soft stations since 1976. The instructions regarding posting of officers in hard and soft stations specifies the period

for which they can be retained in them. No attempt of arithmetical correlation between the number of officers and the number of hard stations is relevant or can affect the right of the Government to transfer officers in public interest or create any prescriptive right in such officers to continue in good or soft stations. There is no obvious injustice in the applicant being asked to move from Ahmedabad to Kolar. The charge of discrimination also has been denied and after considering the reply of the respondent, we are satisfied that it has no weight.

5. The officer has an old father and children undergoing education. There is no doubt that there would be some inconvenience and perhaps even hardship that he may have to undergo due to the transfer. However, this is a normal feature of service in transferrable jobs.

6. The application has no merit and it fails. Bearing in mind the result of this application and the circumstances stated, in the contempt application we do not see any good reasons to take contempt proceedings against the respondents. We refrain from making any order as to costs.

P. H. Trivedi
(P.H. TRIVEDI)
Vice Chairman

Joshi
(P.M. JOSHI)
Judicial Member.