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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 258 of 1989

Date of decision : September 8, 1989.

K.Ram Mohan Rao,
son of late K.Adinarayana,
Superintending Engineer,
Ministry of Defence, Office of the
Commander Works Engineers, P.Factory,
Bolangir, District-Bolangir.

... Applicant.

Versus

1. Union of India, represented by the
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Army Headquarters, Kashmir House,
New Delhi.

... Respondents.

for the applicant ... M/s.C.V.Murty,
C.M.K.Murty,
S.Kr.Rath, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to
see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) At the outset some of the facts which are not in dispute, may be stated. The applicant joined as an Assistant Executive Engineer in March, 1963 in the Military Engineering Service. In due course he has been promoted to the rank of a Superintending Engineer. In June, 1986 though initially there was a proposal for posting him to Visakhapatnam, he was posted as Commander Works Engineers at Bolangir Ordnance Factory. In 1987 a set of rules cum guidelines were framed by the Engineer-in-Chief of Army Headquarters which was nomenclatured as Career Planning and Posting policy of MES Civilian Officers. In those guidelines, the normal tenures at different types of stations were recommended. Some stations were taken as hard stations and some as semi-hard and the others as ordinary. According to these guidelines, the normal tenure of an incumbent at a hard station would be for two years (paragraph 18 of the guidelines of policy of posting). Bolangir which comes under Southern command has been listed as one of the additional hard stations. According to paragraph 18 of the guidelines, an officer will have an option to give three choice stations for posting back from hard stations only subject to the limitation that the station from where the officer had moved to the hard station will not be included in choice stations. In accordance with this paragraph, the applicant gave choice for being posted after his tenure at Bolangir to any of the three stations Visakhapatnam, Madras and Nagpur. The applicant was not posted to any of those stations after having served at Bolangir but was ordered to join in Calcutta under the Chief Engineer, Eastern Command.

Manu Sengupta

As his representation to Respondent No.2 did not bear any fruit, he filed an application before this Tribunal which was numbered as Original Application No.437 of 1988. This original application was disposed of by this Tribunal on 28.3.1989. In the course of the judgment delivered in that original application, it was held that it was not open to this Tribunal to go into the disputed facts without any evidence to support the rival contentions but, however, this Tribunal directed that the competent authority should reconsider the request of the applicant provided he makes a fresh representation before the competent authority within 15 (Fifteen) days from the date of that judgment with a further direction that the competent authority may reconsider and if possible, post him in any of the three stations or any other three stations to be named by the applicant in that representation. The further observation was that inspite of this if it would not be possible on the part of the competent authority to post the applicant in those stations, including the stations to be chosen by the applicant in the subsequent representation, the applicant was to join at Calcutta. It is also undisputed that in the subsequent representation the applicant included three other choice stations viz. Hyderabad, Bangalore and Tiruchinapally (in short, known as Trichi). To this extent, the facts are undisputed.

2. In the present application, it has been averred that after the passing of the judgment in the earlier original application filed by the applicant there were vacancies at Visakhapatnam, Madras, Hyderabad and Trichi but the Respondent

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No.2 in violation of the directions of this Tribunal in Original Application No.437 of 1988 did not post the applicant to any of those stations, instead of that, Respondent No.2 posted others thereby the applicant was discriminated against. The averments with regard to the vacancies are to be found at pages 7 to 9 of the application. On these allegations, the applicant has prayed that his order of transfer to Calcutta vide Annexure-8 may be quashed and directions may be issued to the respondents not to implement the said order and to post him (the applicant) to any of the three places of his choice viz. Madras, Visakhapatnam, Nagpur or in the alternative to any of the other three stations namely Hyderabad, Bangalore or Trichi.

3. The main plea of the respondents is that the previous application i.e. Original Application No.437 of 1988 was really dismissed, therefore, a fresh application is barred by the principles of res judicata. Though the applicant is a civilian officer, his services are connected with the Defence of the country and as such is quite sensitive and important and before posting a person to any particular station, various aspects are to be considered carefully. Having considered the case of the applicant carefully, it has not been possible to post him to any of the stations chosen by him and as such, he cannot make any grievance for being posted to Calcutta. The reasons for the inability of the Respondent No.2 to post the applicant in any of the stations viz. Visakhapatnam, Hyderabad/Secunderabad, Trichi and Madras have been stated in paragraph 6 of the counter (pages 6 to 8 of the counter).

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It is stated that out of the 5 vacancies of Staff Officer Grade I in the Office of the Chief Engineer, Visakhapatnam, three belong to the Military Secretary's Branch and those three posts are to be manned by Army Officers as and when required and the incumbents of rest of the posts could not be transferred so as to accommodate the applicant. The remaining one post available at Visakhapatnam is an executive post and according to the guidelines, the applicant having held an executive post at Bolangir, cannot again be given an executive posting. With regard to Hyderabad/Secunderabad it has been stated that due to some administrative reasons, Shri K. Lakshmana Rao was shifted from Vizag prematurely and posted at Secunderabad and the other post is to be manned by an Engineer having Electrical and Mechanical Degree and as the applicant is a Civil Engineer, he cannot be adjusted against that post. With regard to Trichy, it has been stated that the Office of the Chief Engineer (Projects), Avadi, Madras had been closed and the Office of the Chief Engineer (Projects) at Trichy was established. Out of the three posts at Trichy, one was transferred to Chief Engineer, Madras Zone to accommodate one Shri D.S. Kesavamurthy, S.E. with a view to avoid disturbance of the Officer who was to retire on 31.7.1989. But even after the retirement of Shri D.S. Kesavamurthy, the applicant cannot be posted there as the applicant does not possess the qualification of a high grade structurally qualified officer. Of the two other posts available there, one is to be manned by an Electrical-cum-Mechanical Engineer and against the other a person has been posted in his last leg in service who is not to be disturbed according to the guidelines relied on by the applicant. At Madras, of the three

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posts one is to be manned by an Electrical and Mechanical Engineer and the other two are manned by persons who are in the last leg of their service. Thus, it has been stated that it has not been possible to post the applicant in any of the stations of his choice.

4. After the counter, the applicant has filed a rejoinder disputing many of the facts alleged in the counter and raising contentions that the expression 'a high grade structurally qualified Officer' does not convey any definite meaning and as such so far as the vacancy arising after the retirement of Shri Kesavamurthy is concerned, the applicant, who is a Civil Engineer and has been in service for a long period of 26 years, can be adjusted against that vacancy. In the rejoinder also a list of persons who were working at Bolangir and were transferred to the stations of their choice has been given. In the rejoinder also some other facts relating to the incumbents whom the respondents have alleged to be non-transferrable have been stated to show that the facts alleged by the respondents with regard to those persons are not true.

5. Mr. Dalai, learned Additional Standing Counsel for the Central Government has very strenuously urged that the self-same question having arisen in the earlier proceeding and a decision having been rendered, the present application is barred by the principles of res judicata. True it is that the order posting the applicant to Calcutta was the matter for consideration in the earlier application but this Tribunal really did not express any final opinion on whether the applicant was to go to Calcutta, the opinion expressed by it was a qualified one in that if

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after the applicant gave three more choice stations and if thereafter on reconsideration of all the circumstances, the applicant's transfer to Calcutta becomes unavoidable, the applicant is to join there in Calcutta. The principles of res judicata would apply only if with regard to a particular question a final opinion is expressed and not otherwise and as has been shown above, the decision of this Tribunal in the earlier case was a qualified one and not final, rather a direction to the respondents was to reconsider the matter in the light of the circumstances arising and obtaining after the applicant named three other choice stations. Accordingly, this contention of Mr. Dalai relating to res judicata cannot be countenanced.

6. Mr. Dalai has very vehemently contended that the administration has considered all the aspects of the matter and has come to the conclusion that the order posting the applicant to Calcutta cannot be varied and he has further reiterated the contention that country's defence being of paramount importance and as admittedly the applicant's services are connected with the defence of the country, it would not be proper on the part of this Tribunal to sit in judgment over the orders passed by the competent authorities. There cannot be any quarrel over the proposition that the Military Services of the country are important and sensitive and it is almost an accepted principle that the Administrator is the best Judge to know his requirements and a Court or a Tribunal would be slow to interfere with the administration, but it is also equally true and settled that in the name of the privilege of the Administrator, he cannot be allowed to act arbitrarily or capriciously. Within this limited scope this Tribunal

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is to examine whether the prayer of the applicant is acceptable or not. Mr. Dalai has further contended that the guidelines on which the applicant has relied upon expressly provide a free hand to the Administrator in the interest of administration and it is an additional embargo on the powers of this Tribunal. Within the limited scope available to this Tribunal, the facts and the reliefs sought for may now be examined.

7. Efficiency in the service is to be maintained and with that end in view the guidelines were prescribed. By making a provision for a person serving in a hard station to name some stations of his own choice for his posting back, were really aimed at so as to give an incentive to a person posted at a hard station to work sincerely and efficiently so that he can have the privilege of having a choice as otherwise the person serving at a hard station may feel disgruntled. Therefore, the guidelines have the force almost akin to the rules framed. That being so, it can be said that unless the exigencies of the circumstances so require, the principles laid down in the guidelines should be respected and followed and unless it is really impossible to post a person who spent his tenure at a hard station to be transferred to a station of his choice, he should be posted back to one of the stations chosen by him. As has been stated above, the fact that initially the applicant named three stations as choice stations and the administration took the stand that it was not possible to post the applicant to any of the three stations of his choice and subsequently he named other

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three stations to be his choice, and he has not been posted to any of the choice stations named by him, has remained undisputed.

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Mr. Murty, learned counsel for the applicant, has drawn our pointed attention to page 12 of the rejoinder and has contented that there is no justification to keep Shri L.V. Subba Rao at Visakhapatnam as he has been posted there since July, 1985, that is beyond the normal tenure of three years. In this regard, in the counter of the respondents it has been stated that Shri Subba Rao has been there since November, 1986. This Tribunal does not ordinarily enter into facts which are not admitted. Therefore, without any other material it would not be possible to accept this contention of Mr. Murty concerning Shri Subba Rao.

8. During the arguments at the Bar it came out that before being posted to Bolangir, the applicant was posted to Hyderabad and one of the conditions for choosing station is that the choice station should not be one from which the person was transferred to the hard station. Therefore, Hyderabad/Secunderabad cannot be a station for his choice. Mr. Murty has very vehemently argued that the reason assigned by the respondents for not posting the applicant to Madras are vague and untenable. In this regard, it has been urged by Mr. Dalai that the post available at Madras is to go to one whom should be a high grade structurally qualified officer. That the applicant is a Civil Engineer and that structures are part of the curriculum of a civil Engineer cannot possibly be doubted. The applicant joined as an Assistant Executive Engineer in the Civil side and he has had in the meantime got promotions and has come to the rank of a Superintending Engineer. No person could be promoted to a higher rank unless he is efficient and considered fit. Many a time a person learns

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much by experience and the applicant has in the meantime rendered service as a Civil Engineer for more than two decades and a half and therefore, he cannot be said to be a person lacking any experience connected with civil engineering matters relating to the Military Engineering service. Therefore, the ground assigned by the respondents *prima facie* does not appear to be very sound. In the circumstances, it would be proper to give a direction to the respondents to consider the posting of the applicant to Madras, *unless there be any other impediment.* *M.*

9. This application is accordingly disposed of leaving the parties to bear their own costs.

Member (Judicial)
8.9.89

B.R.PATEL, VICE-CHAIRMAN,

I agree.

B.R.Patel
8.9.89
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack.
September 8, 1989/Sarangi.

