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O.A.NO. 94 OF 2005

Order dated 1.3.2005

Heard Shri S.K.Padhi, learned counsel for the applicant. A copy of this O.A. has been served on Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents.

2. The applicant has approached this Tribunal, facing an order of transfer from Gopalpur-on-Sea to Mumbai passed by the Director General, Personnel/EIB, Military Engineer Services, Engineer-in-Chief's Branch, Army Headquarters, New Delhi, who has not been made a party in this Original Application. In the said posting order dated 25.1.2005, which is the cause of action of the applicant, the name of the applicant is not available. On being questioned, the learned counsel for the applicant submitted that the applicant has not so far received a copy of this posting order and he also drew our notice to Sl.No.63, page 3 of that posting order, where the name of one "Shri S.Boda M.Boda, A.E." appears and ^{that} ~~which~~ should be taken as his name. On our further enquiry, whether he had drawn the notice of the issuing authority, i.e., the Director General, Personnel/EIB, Military Engineer Services, pointing out that he has neither received a copy of the posting order nor his name appears in the posting order although against Sl. No.63 MES No.printed is the one which has been allotted to him, he,

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however, answered in the negative. He has also confirmed that he has not submitted any representation to the concerned authority either against his premature posting or against his posting to a non-executive post far away from his home town, thereby violating the posting guidelines framed by the Respondent-organization. He has also admitted that he has not availed of the opportunity given to the officers to represent against the posting if any within 45 days of issue of posting order through proper channel. We also find that although he has not so far taken advantage of the departmental remedy available to him, at paragraph 6 of the O.A. he has submitted that "he is not able to represent the authorities as per Clause 36 of the policy in view of the fact that as per the posting order (Annexure-4) the move of the officer from the present post is on relief and hence the applicant is not be (sic) in a position to represent in such a short period". We are not impressed by the above reasoning. It is difficult to accept that. For the reason given by the applicant, if he cannot find time to take recourse to the departmental remedy, how he could find time to approach the Tribunal for redressal of his grievance. We are also unable to accept that he has got a cause of action as in the impugned posting order, his name is not appearing. In the circumstances, we would direct him to represent to his departmental authority through proper channel taking advantage of the policy guidelines

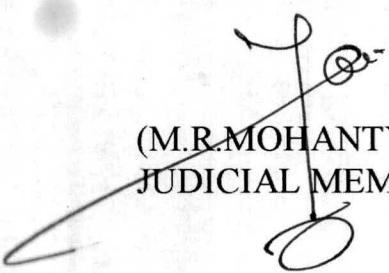
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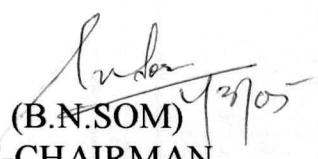
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that an officer under order of posting has a right to represent to the Director General, Personnel/EIB, Military Engineers, Engineer-in-Chief's Branch, Army Headquarters, New Delhi, within forty-five days of issue of posting through proper channel. His plea that he has not received the posting order is of no help to him as he has already produced before us a copy of the impugned posting order which if implemented will cause hardship to him, as submitted during oral argument.

3. Having regard to the facts and circumstances of the case, we dispose of this Original Application by giving a direction to the applicant to act under Clause 39 of the policy, if he is so advised, and only after exhausting the departmental remedy, if his grievances are not redressed, he can approach the Tribunal for relief. We have no doubt that pending disposal of the representation of the applicant, no coercive action should be taken by the Respondents in the matter.

4. The O.A. is accordingly disposed of. Copy of this order be given to both the parties for compliance.


(M.R.MOHANTY)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN