

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1534 of 1996.

(UNLISTED)

VACATION BENCH

Present: Hon'ble Dr. B.C. Sarma, Administrative Member.

GOPENDRA NATH DASPOTEDAR, S/O LATE  
BHUPENDRA NATH DASPOTEDAR, AGED ABOUT 56½ YEARS  
WORKING FOR GAIN AS SR. ADMINISTRATIVE OF THE CER  
OFFICE OF CHIEF ENGINEER, EASTERN COMMAND, FORT  
WILLIAM CALCUTTA-21 NOW RESIDING IN QUARTER  
NO. (II4) A 26 GROUND FLOOR, OPPOSITE FORT WILLIAM  
POST OFFICE, CALCUTTA-21.

.....APPLICANT.

-VERSUS-

1. UNION OF INDIA, SERVICE THROUGH SECRETARY  
MINISTRY OF DEFENCE, NEW DELHI-1;
2. ENGINEER-IN-CHIEF, ARMY HEADQUARTERS KASHMIR  
HOUSE, DHA PO, NEW DELHI-11;
3. CHIEF ENGINEER, EASTERN COMMAND, FORT WILLIAM,  
CALCUTTA-21.

...RESPONDENTS.

For the petitioner: Mr. B.C. Sinha, counsel.

For the respondents: Mr. S.K. Dutta, counsel.

Heard on: 24.12.96.

Ordered on: 24.12.96.

JUDGEMENT

B.C. Sarma, A.M.

1. The dispute raised in this application is



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about the impugned letter dt.16.12.96 issued by the Chief Engineer, HQ, Eastern Command, Fort William, Calcutta and Engineer-in-Chief, New Delhi's letter dt.15.12.96.

2. *Briefly* Stated facts of this application are as follows:-

3. The applicant is the Senior Administrative Officer and has been working under the defence authorities and he is now posted in the Eastern Command, HQ under the Chief Engineer Eastern Command, Calcutta. The applicant contends that his date of birth is 1.7.1940 and therefore, he has one and a half years of service left for <sup>retirement</sup>. By the impugned order dated 3.9.96, the applicant was transferred from Calcutta to Lucknow under the Chief Engineer, Central Command, Lucknow. The applicant further contends that as per order by the authorities, he is going to be SOS from this HQ on 26.12.96. It is also contended that the applicant was originally a displaced person from erstwhile East Pakistan and he has now been settled in West Bengal and his family also resides in Calcutta. It is, therefore, necessary for him to stay in Calcutta until the date of retirement in order to settle his personal problems. The applicant contends that he did not avail either compassionate posting or last leg posting till now and as per the guidelines, which are annexed at Annexure-A2 to this petition, the applicant is entitled to get at least two compassionate postings. It is further contended that the applicant was earlier in Jabalpur and before coming to Calcutta on transfer, he did not ask for any compassionate posting. Being aggrieved by the order issued by the respondent authorities, as discussed hereinbefore, the instant application has been filed with a prayer that the posting Order dt.3.9.96 at Annexure-A.3 to the



petition  
/and the letters dated 15.12.96 and 16.12.96 at Annexure-A.7  
(Jointly) to this petition be quashed and set aside and a  
direction be given to allow the applicant to continue in his  
present post of Senior Administrative Officer and to go on  
pension establishment on 30.6.98.

4. This application has been moved as an unlisted  
matter to-day. However, Mr.S.K.Dutta, 1d.counsel appearing  
for the respondents, strongly opposes the <sup>claim</sup> demand of the appli-  
cant. Mr. Dutta submits that the guidelines dated December,1987,  
which have been annexed to this application, have already been  
superseded by another set of guidelines which were issued by  
the Army HQ on 21.2.91. Mr. Dutta also submits that the applicant  
is an Executive Officer and,therefore, normal tenure of posting  
at the present place of posting in respect of the applicant is  
2 to 3 years as mentioned in the guidelines dated 21.2.91.  
Mr.Dutta submits that as per the said guidelines,Staff tenures  
on compassionate ground will be restricted to two years. No  
officer has a right to posting at or near home station/selected  
place of residence on the plea of last leg posting. However ,  
they may be offered such postings provided a suitable staff  
post is available and is in the interest of the organisation.  
Mr.Dutta further submits that the applicant has already availed  
of two compassionate postings and in support of this contention,  
he has produced before me a relevant file bearing no.131051/1369,  
GND/EplB. Mr. Dutta states that it will appear from the File  
that on 13th September,1982 the applicant had submitted a  
representation while he was serving at the field for a posting  
in Calcutta. This was considered in July,1984 and he was  
transferred to Calcutta under the Chief Engineer,Calcutta. He  
continued to serve there upto December,1987 i.e., for about 3/<sup>1/2</sup>  
and a half years. Mr. Dutta also submits that the applicant  
had submitted another representation on 23.2.82 while he was  
serving at Jabalpur / under the respondents for a posting in

Calcutta and this was perused by the Engineering Branch, ENC, Eastern Command, Calcutta. Mr. Dutta also submits that in pursuance of that representation, he was transferred again to Calcutta and according to Mr. Dutta, the applicant had already spent about 14 years of service in Calcutta. Therefore there is no wrong in transferring him to Lucknow, HQ of the Central Command in public interest.

5. Mr. Dutta, 1d. counsel for the respondents, also submits that the applicant has made certain incorrect statements in the application. For instance, he has submitted that the applicant ~~has~~ never availed of any compassionate postings or last leg posting throughout his service career of 33 $\frac{1}{2}$  years. This is not correct. Mr. Dutta further submits that the applicant further suppressed <sup>the fact</sup> that he has ~~not~~ filed an O.A. being no. OA 1342 of 1996 which was already executed by an Order of this Tribunal dt. 11.11.96. Mr. Dutta, therefore, prayed for dismissal of the application on the ground that this application has no merit.

6. I have examined the matter after hearing the 1d. counsel for both the parties and perused records and have considered the facts and circumstances of this case. Normal tenure of a staff officer including ~~instructional~~ staff is 3 to 4 years for all cadres. It has also been mentioned in the amended guidelines that such tenure may have to be curtailed to adjust officers on compassionate last leg posting or repatriation from tenure stations. Staff tenures on compassionate ground will be restricted to two years. I find that on 13th September, 1982 the applicant had filed a prayer for a compassionate posting

Or

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which was considered by the respondents and he was given a posting to Calcutta. Mr. Sinha, 1d.counsel for the petitioner, however, submits that the applicant was not eligible to get a compassionate posting in 1982. Since the amended guidelines was issued only in 1991 and the guidelines which has been annexed to the application appears to have been issued in 1987, I find that no such documents have been produced before me to prove that ~~the~~ such compassionate posting was applicable or not in 1982. The applicant had applied for a posting of his choice in 1982 and there is no doubt that such provision was instituted in 1980 and the applicant was given the posting of his choice in 1984. Subsequently, when the applicant was in Jabalpur, he had filed another application for a posting of his choice in Calcutta and that was on 23.11.92 which was also considered by the respondents and he was posted to Calcutta in August, 1993 in which place he is still continuing till date. It, therefore, appears that the applicant ~~has~~ already ~~fixed~~ availed two compassionate postings or posting of his choice and ~~have been~~ found that that this has been suppressed in the application and he has made incorrect statement that he had never availed of any compassionate posting.

7. I find that the applicant had earlier filed an OA which has been mentioned herein that the said OA has been adjudicated by an order dated 11.11.96 in the following terms: "we dispose of the petition at this stage itself with the order that the respondent no. 2 herein shall appropriately dispose of the representation made by the petitioner and till the representation has been disposed of, the order of transfer giving the posting out of Eastern Command, Calcutta, shall remain stayed. ...." Pursuant to the said direction given by the Tribunal, respondent no 2 herein had duly considered the representation of 13th

August, 1996 on 10th December, 1996 and after passing a speaking order, it has been rejected. In this application, curiously enough, the applicant has again come up for quashing the earlier judgement passed on 3.9.96 along with the speaking order issued by the respondent no. 2 on 10th December, 1996 when he has made incorrect statements/in this present application. at para 7

8. I find that pursuant to the Order of this Tribunal passed on 11.11.96, the representation of the applicant was duly considered by the respondents on the basis of the reasons given herein which has been turned down. This Tribunal, therefore, cannot sit in judgement for the facts stated by the executive authority. I would also like to mention that the guidelines on which the applicant placed so much emphasis do not confer an enforceable right upon the Government servant which can be enforced through legal process as is mentioned in Union of India-VS-S.L. Abbas (1993(2)ATJ 147) case. Therefore, I am of the view that the speaking order passed by the respondents cannot be violated and accordingly the application is liable to be dismissed at this stage of admission itself.

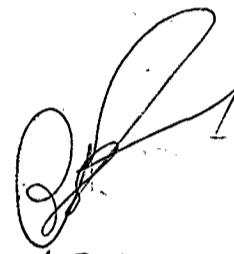
9. For the reasons given above, I do not find any merit at all of this application. It is, therefore, dismissed without passing any order as to costs.

10. Mr. Sinha, 1d. counsel for the petitioner, submits that since the applicant's son is going to appear Annual Examination of Class-VIII to be held sometime in April, 1997, the applicant may be permitted to stay at Calcutta till the month of May, 1997. I have considered the submissions of Mr. Sinha and would like to pass an order to the effect that

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if the applicant is so interested, he may file a separate representation to that effect to the appropriate authorities. I order that dismissal of this application shall not be a bar to the consideration of same representation by the respondents and the passing of appropriate orders thereon.

No order as to costs.



( B.C.Sarma )  
MEMBER(A)