

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 440 of 1996.

Present : Hon'ble Dr. B.C.Sarma, Member (A)

K. A. RAMAIAH

VS.

UNION OF INDIA & ORS.

For applicant : Mr. G. Chatterjee, Counsel.

For respondents : Ms. K. Banerjee, Counsel.

Heard on : 11.9.96 :: Ordered on : 11.9.96.

ORDER

The dispute raised in this application is about the impugned order of transfer passed on the applicant on 24.1.96 transferring him from Calcutta to Vishakapatnam as Head Draftsman.

2. Briefly stated, the facts of the case are as follows :
The applicant is a Head Draftsman functioning under the respondents in Calcutta and being aggrieved about certain service matters regarding unjust treatment to him, he had filed a case before this Tribunal bearing No. 75 of 1992 which was disposed of by a judgement dated 21.8.95 wherein the claims of the applicant, as per his contention, were confirmed. The applicant contends that this caused annoyance to the authorities as a result of which he has been transferred by the impugned order. It is his further contention that his name figures in the panel prepared by the respondents for giving promotion to the post of Chief Draftsman and he made a prayer before the authorities that he should be transferred to Vishakapatnam only on promotion as Chief Draftsman. The respondents by a letter dated 21.12.95, as set out in annexure-A to the application also ^{had} given him assurance that his request for promotion to the grade of Chief Draftsman and posting at Vishakapatnam will be considered sympathetically as and when ^{the} individual will be due for promotion. But being annoyed for coming before this Tribunal, the respondents have vindictively and in a malafide manner transferred him from Calcutta to Vishakapatnam in the same post of Head Draftsman.

Being aggrieved thereby, the instant application has been filed with the prayer that respondents be directed to defer or stay or keep in abeyance the order of transfer of the applicant to Vishakhapatnam until such time as there is a vacancy of Chief Draftsman, as set out in annexure-A to the application.

3. The case has been resisted by the respondents by filing a reply. The stand taken by the respondents is as follows :

The applicant has made a prayer for transfer to Vishakhapatnam sometime in November, 1995 and, thereafter, the letter, as set out in annexure-A to the application was given. It is the specific contention of the respondents that although the name of the applicant figured/in the panel prepared for giving promotion to the post of Chief Draftsman, there are still three persons above him who are senior in the merit list and waiting for promotion to the post of Chief Draftsman. Unless these three persons are accommodated, the case of the applicant cannot be considered for giving promotion. Since the applicant had earlier expressed his intention for going to Vishakhapatnam to take care of certain personal matters, the applicant has been transferred to Vishakhapatnam by the impugned order in the same post which he has been holding in Calcutta. The respondents have denied categorically that the impugned transfer order was passed in a mala fide manner or the order is vindictive or was passed being annoyed by the conduct of the applicant by approaching this Tribunal. The impugned order has also not violated any assurance given to the applicant as at annexure-A to the application. The respondents have, therefore, prayed for dismissal of the application since it is devoid of merit.


4. The matter has been examined by me carefully after hearing the learned counsel for both the parties, perusing records and considering the facts and circumstances of the case. It is admitted by the respondents that applicant's name is in the panel prepared for promotion to the post of Chief Draftsman, but there are still three persons senior to the applicant in the said panel. Without considering their case, transfer and posting of

the applicant on promotion as out of turn cannot be considered by the respondents. I have perused the contents of annexure-A to the application and I find that respondents had given some assurance to the applicant to the effect that his case for posting at Vishakapatnam on promotion to the grade of Chief Draftsman will be considered sympathetically as and when he becomes due for promotion. The question now is whether this assurance at annexure-A to the application has been violated by the impugned order of transfer. I find that the assurance was given to the applicant only with respect to consideration of his case for transfer to Vishakapattam and that too when his promotion become due. Although applicant's name figures in the panel prepared for promotion to the post of Chief Draftsman, he will be eligible for promotion only when those three senior persons case for promotion is considered. This being the position, the assurance that was given to the applicant by the respondents earlier cannot be effected now. It can be considered by the respondents only when his turn comes for giving promotion as per the order shown in the panel. It is a fact that the applicant himself had prayed before the respondents to transfer him to Vishakapattam to take care of certain personal matters. The respondents have stated in their reply that it was in keeping view to his request the impugned order of transfer was passed. I further find that the applicant, while he has prayed for going to Vishakapatnam, which is his hometown, he made a condition that he can be transferred only on promotion. The peculiar stand taken by the applicant is not at all understandable to me. If he is interested in going on transfer to Vishakapatnam to take care of his personal matters he should go now and if the authorities want to consider his case for posting after the turn of promotion comes it is upto them to consider. But I am clearly of the view that the applicant cannot put any condition precedent for his transfer. I also find that in the application peculiar relief has been prayed for and the relief is as follows :

"The applicant, therefore, prays for a direction upon the respondents to defer-stay and or keep in abeyance the order of transfer of the applicant to Vishakapatnam untill such time, there is vacancy of Chief Draftsman as assured in Annexure-A to the application."

As I have already stated if the applicant is interested in going on transfer to Vishakapatnam, the respondents have already fulfilled his desire and have passed the impugned transfer order. But the applicant himself has put the condition that he is willing to go on transfer only on promotion to the post of Chief Draftsman. Such a condition cannot be given quarters in the administrative interest. I am, therefore, of the view that the application is liable to dismissed.

5. For the reasons given above, I find no merit in this application. The application is, therefore, dismissed without passing any order as regards costs. I would like to make it clear that this dismissal will not act as a bar if the authorities concerned want to consider his case for giving him a posting at Vishakapatnam when the opportunity arises, as per annexure-A to the application.


(B.C. Sarma)
MEMBER (A)