

Central Administrative Tribunal, Allahabad.
CIRCUIT BENCH, LUCKNOW.

Registration O.A.No. 285 of 1989 (L)

K.L.Chopra Applicant

Vs.

Union of India and others Respondents.

Hon. D.K.Agrawal, JM

Hon. P.S.Habeeb Mohammad, AM

(By Hon. D.K.Agrawal, JM)

The abovenamed Applicant has approached us u/s.19 of the Administrative Tribunals Act XIII of 1985 for issue of writ of certiorari to quash the order dated 6th Oct. 1989 (Annexure A-1) passed by Garrison Engineer, East, Lucknow- Respondent no.3 by which the Applicant has been transferred and directed to join staff duty in the office of CWE(P) Lucknow.

2. Briefly, the facts are that the Applicant was appointed as Sub Overseer in the department of Military Engineering Services in the year 1958 and subsequently promoted to the cadre of Superintendent B/R Grade II and continues to hold the same post. The Applicant's grievance is that he has been unfairly treated inasmuch as, on the one hand the department has held that departmental promotees from the post of Sub Overseer to the post of Superintendent B/R Grade II are more suitable for executive duty rather than staff duty and on the same analogy, directed the posting of G.P.Pande on executive duty, on the other hand, the Applicant has been discriminated. His representation dated 12.6.1989 has been rejected vide order dated 5.10.1989 without assigning any reason. Reference has also been made to

K.R. G. Sood

para 5-A of the policy framed by the department for the posting of Superintendent B/R Gr.II which lays down that they should be posted from one division to another division or from one sub-division to another sub-division. The Applicant has further stated in para 11 of his rejoinder that he has no objection to his transfer in accordance with the policy to any other division or sub-division but he should not be posted on staff duty because the department has already held in the case of G.P.Pande that departmental promotees from the post of Sub-Overseer to the post of Superintendent B/R Gr.II are more suitable for posting on executive duty.

3. The Respondents have denied the contention of the Applicant. Their contention is that the Applicant has already been posted on executive duty for about 3-4 years and, therefore, he has been shifted to staff duty.

4. We have heard learned counsel for the parties and perused original record as well. We are of opinion that the case can be finally disposed of. It need not be made to linger on any more. It is true that the guidelines for transfers are not mandatory but the policy of posting stands on a different footing. The policy of transfer and posting as framed by the department has been filed as Annexure A-4. A perusal of paras 5-A and 5-B thereof indicates that Superintendent B/R Gr.II are to be posted from one division to another division or one sub-division to another sub-division while Superintendent B/R Gr.I are to be posted to executive or staff duty or vice-versa. This is the main sheet anchor of the Applicant. We are constrained to observe that the Respondents have not brought on record any instance where a Sub Overseer promoted departmentally to the post of Superintendent B/R.Gr.II has been posted on staff duty. The

Dr. Ag. S. S. S.

annexure A-5 is an order of the department itself which mentions that Superintendent B/R Gr.II promoted from the post of Sub-Overseer are more suitable for executive duty rather than staff duty. The said letter was issued while posting G.P.Pandey on executive duty. The question, therefore, is as to why the Applicant has not been treated at par with G.P.Pandey. We are of opinion that the department should have stated specifically reasons while rejecting his representation dated 12.6.1989. The often quoted maxim that "Justice should not only be done but shown to have been done" is equally applicable on administrative actions. The administrative orders should not only be fairly passed but shown to have been fairly passed. We are unable to find any reason as to why a distinction has been made in the case of the Applicant in the instant case. If the department has been consistently following the policy of posting departmental promotees on executive duty, we feel that the Applicant is entitled to the same treatment, more particularly when the Applicant has no objection to his transfer from one division to another division or from one sub-division to another sub-division. We would not like to interfere with the discretion of the competent authority as regards the transfer of the Applicant but we are inclined to direct the Respondents to give the Applicant a posting on executive duty.

5. The Application is accordingly allowed partly. The Respondents are directed to post the Applicant on executive duty in any division or sub-division which they consider proper. The parties are left to bear their own costs.

MEMBER (A) 19/4/1990

Dr. Agrawal
19.4.90.
MEMBER (J)

Dated: April 1990
kkb.