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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~  
NEW BOMBAY BENCH

O.A. No. 407/87  
~~XXXXXX~~

198

DATE OF DECISION 3.2.1989

Shri B.S.Raut Petitioner

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India and others Respondents

Shri R.K.Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.P.S.Chaudhuri, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Yes

No.



(16)  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 407/87

Shri B.S.Raut,  
Ward No. 25,  
Weekly Market,  
Pulgaon, Teh. Deoli, Dist. Wardha.

Applicant

v/s.

1. Union of India through  
the Secretary Govt. of India,  
Ministry of Defence,  
New Delhi-11.
2. Chief Engineer, Southern Command,  
Pune-1.
3. Garrison Engineer, MES Pulgaon Camp,  
Pulgaon, Teh. Deoli, Dist. Wardha.

Respondents

CORAM: Hon'ble Member (A) Shri P.S. Chaudhuri

Appearances :

Shri G.S. Walia  
Advocate  
for the Applicant

Shri R.K. Shetty  
Advocate  
for the Respondents

JUDGMENT

Dated: 3.2.1989

(PER: P.S. Chaudhuri, Member (A))

This application was filed on 22.6.1987 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays for quashing Office Order No. 59 dated 20.3.1987 transferring him from Pulgaon to Ojhar and, instead, posting him at one of his choice stations and, failing that, allowing the applicant to serve at Pulgaon for another tenure or at least one year till a vacancy occurs at his choice station. He has also prayed for other consequential reliefs. The case is, therefore, one which comes within the jurisdiction of a Single Member Bench in terms of the Chairman, Central Administrative Tribunal's Order No. 1/32/87-JA/2161(A) dated 21.3.1988.

2. The applicant joined MES as a Lower Division Clerk in 1963. He was promoted as Upper Division Clerk in 1976 and was posted at Pulgaon. On 20.3.1987 the impugned order was issued transferring the applicant in the same capacity, viz. Upper Division Clerk, from Pulgaon to Ojhar. The applicant represented against this posting. But this application was rejected telegraphically. The applicant then approached this Tribunal on 22.6.1987. On that day this Tribunal passed an ad interim ex parte order of stay of transfer of the applicant to ojhar till 6.7.1987. That stay was continued till further orders by this Tribunal by an order dated 6.7.1987.

3. Thereafter, on 10.2.1988 the applicant filed M.P.No. 73/88 submitting that the respondents had issued Office Order No. 13 dated 12.1.1988 transferring the applicant from Pulgaon to Ojhar on promotion as Office Superintendent, Grade II. When this M.P. was heard on 17.2.1988 the applicant submitted that he had waived his promotion for the time being. On this, the Tribunal directed that Office Order No. 13 dated 12.1.1988 be stayed till further orders.

4. After this, on 8.8.1988 the respondents filed M.P.No. 442/88 praying that both the above mentioned stay orders be vacated and the respondents be permitted to transfer the applicant to Ojhar. With this M.P. the respondents had attached a copy of the applicant's letter dated 28.11.1987, the concluding sentence of which reads as under :- "In case, there will be no contempt of court order either by you or me to relieve on permanent transfer to GE(P) Ojhar on promotion to Office Superintendent, I may be relieved at your convenience please." When this M.P. was heard on

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5.9.1988, the respondents submitted that the applicant had taken a transfer advance of Rs.2,000/- on 19.1.1988. A copy of the receipt for this payment had been attached to the M.P. It was the respondents' contention that these facts showed that the applicant was interested in his permanent transfer on promotion.

5. The respondents have contested the application by filing their reply and sur-rejoinder. I also heard Mr.G.S.Walia, learned advocate for the applicant and Mr.R.K. Shetty, learned advocate for the respondents.

6. It was Mr.Walia's submission that the respondents must frame a policy in respect of transfers and strictly adhere to this policy. If any compelling circumstances force them to deviate from this policy, they must make out a strong case for such a deviation. It was his contention that the respondents do have a transfer policy but the applicant's transfer was in contravention of this policy. He submitted that the respondents' had not made out any case whatsoever for this contravention, let alone a strong case. He added that this submission was quite apart from the genuine and pressing personal circumstances of the applicant which had been detailed in the application.

7. The relevant instructions on the subject are that on 10.4.1984 the respondents issued an instruction regarding postings. It was laid down that an individual serving in a tenure station would be allowed to opt for return to the original station from where he had been posted or to another choice station. Personnel serving in a tenure station were permitted to opt for another tenure if they so desired. It was indicated that every effort would be

made to accommodate a person in one of the three choice stations (to be given by an individual before completion of tenure while submitting his representation form) after he had completed his tenure at the tenure station. It was also indicated that an individual could serve in a tenure station for a maximum of two tenures or six years, which ever is less, after which he would be compulsorily turned over unless he opted to remain there as a local recruitee permanently in which case he would have to forego his option of seeking a choice station posting. In an earlier circular, dated 22.10.1981, it had been brought out that some of the persons were giving only one choice station or stations which were in the same complex like Kamptee - Nagpur. It was made clear that all tenure completed personnel should be advised to indicate three clear choice stations. It may be noted that Pulgaon is one of the specified tenure stations.

8. On 20.12.1984 the respondents had circulated a list of persons serving in tenure stations who had opted to be treated as initially recruited and to remain permanently in the tenure station. These persons were not initially recruited in these tenure stations but had opted to be so treated. The circular indicated that consequent on this option to remain permanently in a particular tenure station, they were not eligible for turn over to their choice stations. It was made clear to the optees that their option to remain in the particular tenure station did not give them a right for permanent stay there and that contingencies like the following may warrant their posting out of the particular tenure station :-

- (a) Posting of surpluses arising due to closure of formations or reduction in establishment.
- (b) Posting out on promotions.
- (c) Posting on administrative grounds/job requirement.

9. In order to plan tenure postings to and from tenure stations for the year 1987, the respondents issued a circular dated 30.9.1986 calling for particulars of all personnel who would be completing tenure service by 30.6.1987. The personnel were required to indicate three separate choice stations for turn over. It was specifically indicated that persons indicating less than three separate choice stations would be turned over to any other station as per job requirement if they could not be accommodated in their only choice station for any reason. It was also indicated that no individual would be allowed to continue in a tenure station beyond two tenures. In response to this circular the applicant gave choice stations as under :- (a) Nagpur, (b) Kamptee and (c) Ambajhari.

10. It was Mr.Shetty's submission that the applicant's transfer order dated 20.3.1987 clearly indicated that it has been ordered in the interests of the state. It was his contention that these interests took priority over personal domestic needs. He cited Santosh Kumar Biswas v. Union of India & ors. (1988 (II) SLJ (CAT) 264) in this regard. It was his submission that the three choice given by the applicant, viz. Nagpur/Kamptee/Ambajhari pertain to one and the same station complex and that hence, in terms of circular dated 22.10.1981, the applicant had given only one choice. It was his further submission that there were surpluses in the Nagpur station complex and hence the applicant could not be accommodated there, which was his only choice. It was Mr.Shetty's submission that the applicant could have selected other stations also but had thought fit not to do so. He was therefore posted elsewhere. Mr. Walia attempted to counter this by submitting that although there were surpluses at Nagpur and Kamptee,

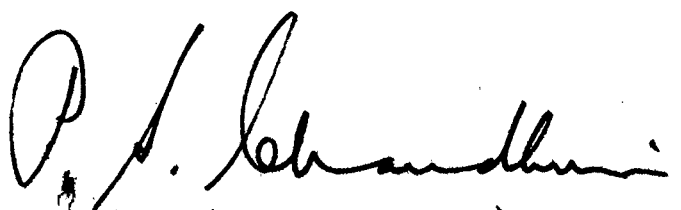
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there was a shortfall under GE(AF), Nagpur. It was his contention that the 3 establishments had been shown separately and the vacancy position had been assessed separately and hence these should be treated as separate stations. I do not, however, see any force in Mr. Walia's arguments because the rules provide for consideration of a station complex as a whole.

11. It was Mr. Shetty's further submission that even if the applicant was a permanent optee of Pulgaon in terms of the circular dated 20.12.1984, this circular made it quite clear that it did not give him a right for permanent stay there. He could be posted out of Pulgaon not only on promotion but also on the other grounds mentioned therein. He submitted that the applicant had put in almost 12 years at Pulgaon on 30.6.1987, i.e. almost four tenures of 3 years each. It was Mr. Shetty's submission that, further, the applicant had by now managed to stay on at Pulgaon for almost 2 years after the original order of transfer dated 2.3.1987. There was therefore no reason why he could not be transferred out either in the same grade or on promotion.

12. Based on this discussion, I am of the view that the application does not have any merit.

13. The application is accordingly dismissed. The ad interim orders of stay granted during the hearing of this application and that are still in force are hereby vacated. In the circumstances of the case, there will be no order as to costs.



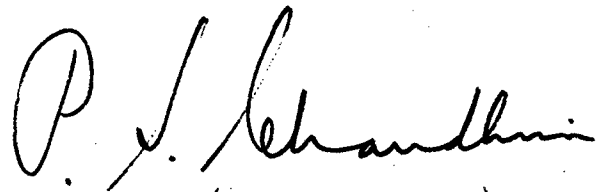
(P.S. CHAUDHURI)

Member (A)

O.A.No.407 of 1987

Dated: 3.2.1989

After this judgment had been pronounced in open Court Mr.G.S.Walia, learned advocate for the applicant, made a prayer for staying the judgment for a period of one month or so because he needed to consult his client regarding filing an application for review in this Tribunal or a Special Leave Petition in the Supreme Court. He submitted that the stay regarding transfer had already been in force for over a year and hence its extension by a month more would not cause any inconvenience or hardship to the respondents. Mr.Shetty, learned advocate for the respondents, vehemently opposed this prayer. I see no merit in the prayer and it is, therefore, summarily rejected.



(P.S.Chaudhuri)  
Member(A)