

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 852/96.

Date of Decision

15.11.95 ⁹⁶

T.G.Hargude

Petitioner

Shri S.P.Saxena.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri R.R.Shetty for Shri R.K.Shetty.

Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

B.S.Hegde
(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 852 / 1996.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

15th, this the Friday day of November 1996.

T.G.Hargude,
Assistant Stores Superintendent,
Armed Forces Medical College,
Central Medical Stores,
Poona - 411 040.

... Applicant.

(By Advocate Shri S.P.Saxena)

V/s.

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ, P.O.
New Delhi - 110 011.
2. The Director General of Armed
Forces Medical Services,
(DG-2B), Ministry of Defence,
DHQ, P.O., M-Block,
New Delhi - 110 001.
3. The Commandant
Armed Forces Medical College,
Wanori,
Poona - 411 040.
4. Shri G.Ramachandran,
Senior Stores Superintendent,
Office of A.F.M.S.D.,
Delhi Cantt.

... Respondents.

(By Shri R.R.Shetty for Shri
R.K.Shetty.)

O R D E R

(Per Shri B.S.Hegde, Member(J))

In this Original Application, the applicant is seeking a direction to the Respondents No.1 to 3 to re-consider the case of the applicant for promotion to the post of Senior Stores Superintendent and to promote him in the vacancy which occurs at Pune and also to give a direction to the respondents restraining them from filling up the vacancy at A.F.M.C., by bringing R-4

Ab

...2.

on transfer.

2. The brief facts are that the applicant joined the Department in the year 1963 and was promoted to the post of Senior Store Keeper and transferred from AFMSD, Pune to A.F.M.C., Pune on 19.8.1993. Thereafter, he has not been transferred out of Pune during his entire service. He was considered for promotion by the DPC for the year 1995 and he was accordingly promoted and posted to New Delhi on Promotion. However, the applicant for reasons of ill health volunteered to forego his promotion and requested to retain him in Pune itself. The request was considered and accepted by the Respondents. After a lapse of one year the applicant was again considered for posting on promotion and posted again to New Delhi. The applicant in view of ill health and impending retirement in May, 1997 requested for continuance at Pune. The said plea was rejected by the Respondents and passed the impugned order dt. 15.7.1996 transferring one Shri G.Ramachandran from AFSMD, Delhi Cantt. to AFMC, Pune on compassionate grounds. The respondents vide their order dt. 23.4.1996 transferred the applicant from AFMC, Pune to DGAFMS at Delhi, which he challenged by filing this Original Application. The Tribunal after hearing the learned counsel for the applicant passed an interim order dt. 30.8.1996 staying the operation of the order passed by the Respondents dt. 15.7.1996 for a period of 14 days which continued

(Corresponding order
dt. 20/11/97
in m/s 23/97)

till the matter was reserved for orders. The respondents have filed their written reply for opposing the interim order to continue. Accordingly, the matter was heard on merits and reserved for orders. The contention of the respondents is, if the plea of the applicant is accepted it would cause considerable inconvenience to other officials who are similarly situated like the applicant. Insofar as Shri G.Ramachandran is concerned he was also working in AFMC, Pune, but he requested for retention in Pune, but his request was not accepted, thereafter his posting on compassionate grounds and his application was considered on merits as and when vacancy arose in Pune he would be posted. Accordingly, the Respondents have passed the order dt. 15.7.1996 transferring R-4 to Pune. However, in view of the interim order passed by the Tribunal, he could not take over the charge at Pune. The applicant is continued to hold the post of Senior Assistant Stores Superintendent.

(Corrected
vide order
dt 20/1/97 in
m.p. 23/97.)

3. In the light of the above pleadings, the question is to be seen here/whether the action of the respondents is justified in the facts and circumstances of the case transferring the applicant to Delhi pending his retirement in May, 1997. The Government Circular is quite clear to the effect that if a government servant is left with one year for retirement on superannuation his case should be considered for promotion in the same station.

Attn

...4.

It is not the case of the Respondents that there is no vacancy at Pune, the vacancy occurred in August, 1996 which has been offered to Shri G.Ramachandran. It is true that the Respondents are empowered to send a person on promotion outside the station, but in this case, the situation of the applicant is different. He is seeking retention in Pune on Medical grounds which is not disputed by the Respondents. Admittedly, the applicant is a heart patient and is undergoing treatment and he also to superannuate in May, 1997. Even under the government guidelines, if a person is to retire, normally he should be retained in a particular place if the retirement period is less than one year. The Supreme Court in Pt. Parmanand Katara V/s. Union of India & Ors. (AIR 1989 SC 2039) has observed that "There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment." Since the fact of the applicant's ill health is well known to the Respondents and he is to retire from service

in May, 1997, we see no justification in sending the applicant on transfer even on promotion, especially in view of his ill health. The respondents have to give considerable weightage to his medical certificate if it is found to be correct and there is no iota of argument or pleas on the part of the respondents that the certificate given by the medical authorities is ill founded or not genuine. Normally, the Tribunal is reluctant to interfere with the transfer order, but this is a peculiar case where the applicant is a heart patient and is undergoing treatment and in view of his pending retirement, we see no justification in transferring him to Delhi and so far as the R-4, Shri G.Ramachandran is concerned, he can be posted back to Pune after the retirement of the applicant.

4. In the result, the interim order granted shall be made absolute and the transfer order passed by the Respondents on 23.4.1996 is set aside and quashed. The respondents are directed to allow the applicant to complete his tenure at Pune till his retirement i.e. May, 1997 purely on the ground of his ill health. Accordingly, O.A. is allowed. The Respondents are directed not to disturb the applicant and the transfer order issued by the respondents is set at knot. No order as to costs.

M.R.K. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S. HEGDE)
MEMBER (J).