

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.248/2000.

this the 11/11 day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, member (A).

C.R.Naik,
Jr.Engineer (Civil),
H.Qr. College of Military
Engineering,
Pune - 411 031.Applicant.
(By Advocate Shri S.P.Saxena)

Vs.

1. The Union of India
through the Secretary,
Ministry of Defence,
D.H.Q. P.O.,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
New Delhi - 110 010.
3. The Chief Engineer,
Southern Command,
Pune - 411 001.
4. The Commandant,
College of Military Engineering,
Pune - 411 031.Respondents.
(By Advocate Shri R.R.Shetty for
Shri R.K.Shetty).

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

The applicant is a civilian employee working as Junior Engineer (Civil) under Respondent No.4 (R-4), the Commandant, College of Military Engineering, Pune at the time of filing of this OA. The applicant while working as Superintendent B/R Gr.I was transferred to Port Blair in 1997. However, the applicant was not released and continued to work under R-4. In the meantime, as per order issued by Ministry of Defence in 1999, the cadres of

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Superintendent B/R Gr.II and Gr.I have been merged into a common seniority group with the designation of Junior Engineer (Civil). As per the policy guidelines laid down by the Ministry of Defence the postings of the employees to the tenure stations is based on seniority and the seniormost person has to go on transfer/posting to the tenure station first. The posting at Port Blair is a tenure posting and the applicant was transferred being due as per seniority. It is the case of the applicant that after merger of cadres of Superintendent B/R Gr.I and II into a common seniority group, it is necessary to prepare a combined seniority list and thereafter as per the combined seniority list the seniormost person is to be posted on the tenure post. Since the applicant had not been relieved after his transfer in 1997 till the merger of the cadre, it is the plea of the applicant that combined seniority list of the Southern Command employees will have to be prepared first and his order for transfer should be given effect to. It is the contention of the applicant that he will not be the seniormost in the combined seniority list and therefore, the applicant is not due to be transferred to the tenure posting. The applicant for this represented on 21.3.2000, but no action on his representation has been taken. Therefore, feeling aggrieved the present OA has been filed on 4.4.2000 seeking direction to the respondents to first prepare the seniority list of the cadre of Junior Engineers on Southern Command and thereafter to post the seniormost from the Junior Engineer according to seniority list for tenure postings.

2. The Respondents have filed a written statement. The respondents submit that the applicant was posted against a tenure

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posting a Port Blair as per order dt. 28.2.1997. However, the applicant could not be relieved for transfer as the replacement could not be posted vice the applicant. Replacement Officer has since reported in January, 2000 the applicant has to carry out the transfer order to Port Blair. That the Respondents submit that the transfer has been effected in the public interest as per extant guidelines. It is also contended that as held by the Hon'ble Supreme Court in the case of Union of India Vs. S.L.Abbas, the transfer order can be interfered with by the Court in judicial review only in case the transfer order is in violation of statutory rules and has been issued with mala fide intention. The respondents plead that none of these grounds are existing in the present OA. The respondents further add that the combining of cadre of Superintendent B/R Gr.I and Gr.II has been done only from 9.7.1999 and this merger will not apply to the case of the applicant who has been transferred in 1997. The order issued on 28.2.1997 still stands and has not been cancelled and therefore the applicant has to carry out the same. The respondents also submit that the seniority list of Junior Engineer has already been prepared and from the combined seniority list, the senior persons have already been posted to tenure stations as per order dt. 14.2.2000. In view of these submissions the respondents plea is that the applicant has no case. Further, with regard to the representation dt. 21.3.2000 the respondents deny having received only representation. Hence the respondents state that no representation of the applicant is pending with the department.

3. The applicant has not filed any Rejoinder reply.

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4. We have heard the arguments of Shri S.P.Saxena, the learned counsel for the applicant and Shri R.R.Shetty for Shri R.K.Shetty, the learned counsel for the respondents.

5. It is rightly contended by the respondents while relying upon the Judgment of the Hon'ble Supreme Court in the case of Union of India vs. S.L.Abbas [AIR 1993 SC 2444] that the law on the scope of judicial interference in the matter of carrying of transfer orders is well laid down by the Hon'ble Supreme Court in catena of Judgments. It is within the competence of the concerned authority to decide who should be transferred and to where. A judicial interference in the challenge of transfer order may be warranted only if the transfer order is vitiated by mala fides or or it is made violation of statutory rules. In the present case, none of these grounds have been advanced by the applicant. From the facts brought out, the applicant was transferred to a tenure station, Port Blair as per order dt. 28.2.1997. This transfer order was as per seniority and as per due turn for tenure posting as per the guidelines laid down. It was brought out by the respondents that the applicant could not be released for transfer as the replacement vice him could not be posted in the College. In the meantime, a development took place, wherein as per the Government of India's instructions on 9.7.1999 the cadres of Superintendent B/R Gr.I and II were combined into one seniority group. It is the case of the applicant that in the combined seniority of Junior Engineer the applicant does not become due for transfer to a tenure station and therefore, his earlier transfer order needs to be reviewed. The respondents, however, contested this stating that the transfer order issued in 1997

still stands and the same has not yet been cancelled and the applicant should carry out the transfer order as per his turn rightly ordered. I find considerable merit in the stand of the respondents. The applicant cannot derive the benefit of merging of the cadres of Superintendent Gr.B/R I and II into one seniority unit due to a subsequent development. The applicant was transferred in February, 1997 based on his own turn as per seniority for tenure posting. If the applicant is allowed the benefit of subsequent developments, then those who had carried out transfer along with him to the tenure stations will be discriminated as the applicant will be deriving the benefit of delay in his release for transfer on administrative grounds. By getting the benefit of the combined seniority unit, the applicant will not undergo the tenure posting which he was due in 1997 as per his seniority. In the light of these observations, I am not persuaded to find any merit in the plea of the applicant that his transfer order needs to be reviewed in the light of the subsequent developments of merger of cadres of Superintendent B/R Grade I and Grade II.

6. In the result of the above, I do not find any merit in the OA and the same is dismissed. This will not, however, preclude the applicant from making any representation to the Department and consideration of the same by the Department. The interim order granted on 7.4.2000 stands vacated accordingly. No order as to costs.


[D.S. BAWEJA]
MEMBER[A]

B.