

MUMBAI
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ~~XXXXXX~~ BENCH
MUMBAI

O.A.No. 250 of 2001

DATE OF DECISION: 27-9-2001

Lalit Kumar Uttamrao Wadekar ..Petitioner(s)

Mr. S. P. Saxena

: Advocate for
the Petitioner(s)

Versus

UOI, through the Secy., M/o Defence, New Delhi & others. : Respondent(s)

Mr. R. K. Shetty.

: Advocate for
the Respondent(s)

THE HON'BLE SRI Justice V. Rajagopala Reddy, Vice Chairman
THE HON'BLE ~~XXX~~ Smt. Shanta Shastray, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? *AN*
3. Whether His/Their Lordship wish to see the fair copy of the ~~g~~ Judgement
4. Whether the Judgement is to be circulated to the other Benches ?

JUDGEMENT DELIVERED BY HON'BLE SRI Justice V. Rajagopala Reddy, VC

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH:

MUMBAI

O.A.No.250 of 2001.

Date of Order:27-9-2001.

Between:

Lalit Kumar Uttamrao Wadekar,
Draughtsman III, C.Q.A.(F.E.),
Aundh Camp, Pune-27.

..Applicant

and

1. Union of India, through the
Secretary, M/o Defence,
New Delhi-110 011.

2. The Director,
D.Q.A.E.(D.G.Q.A./EE-1),
Kashmir House, New Delhi-110011.

3. The Controller, C.Q.A.(F.E.),
Aundh Camp, Pune-27.

...Respondents

Counsel for the Applicant :: Mr.S.P.Saxena

Counsel for the Respondents : Mr.R.K.Shetty

Coram:

The Hon'ble Sri Justice V.Rajagopala Reddy, Vice Chairman

The Hon'ble Smt.Shanta Shastry, Member(Admn.)

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: ORDER :

(Per Hon'ble Sri Justice V.Rajagopala Reddy, Vice Chairman)

There are various Controllerates of Quality Assurance (for short "C.Q.A.") all over India. The Controllerate of Assurance (Fire Equipment), Controllerate of Quality Assurance (Engineering Equipment), Pune, and Controllerate of Quality Assurance (Special Vehicles), at Dehu Road, Pune, are the Controllerates functioning in Pune.

2. The Draughtsman working in CQA(FE) and CQA(EE) in Pune are inter-transferable as they maintain a single common seniority list. The draughtsmen in CQA(SV) Dehu Road have their own seniority lists for promotion. The applicant was promoted to the post of Draughtsman Grade-III in 1997 and was transferred from CQA(EE) to CQA(FE) Establishment. He was then given the benefit of CPWD Award for Draughtsman by placing him in the next higher scale of pay of Draughtsman Grade-II with effect from 31-7-1992. In view of the decision that the post of Draughtsman Grade-II was found surplus in CQA(FE), the applicant being the junior most in FE was asked to indicate

his willingness to go to other establishments. He was particularly asked for his willingness to go to CQA(SV) Dehu Road in the vacancy of Draughtsman Grade-II. Though he has given his willingness to go there, he made it clear that his willingness was subject to protection of his seniority. He was thereafter posted to CQA(SV) on 18-10-2000. The applicant made a representation on 23-1-2001 against the transfer and as the same was rejected, he approached this Tribunal in the OA.

3. It is contended by the learned Counsel for the Applicant Sri Saxena that the applicant was essentially holding the post of Draughtsman Grade-III as he was only upgraded into the post of Draughtsman Grade-II. He was not promoted in accordance with the rules from Grade-III to Grade-II. Thus he remained to be holding the post of Grade-III. Hence, the vacancy in the post of Draughtsman Grade-II cannot be a ground to identify ~~show~~ the applicant as surplus and transfer him to another Unit.

It is also argued that ^{as} the units of FE and EE maintain a common seniority list, ^{in the list} Only the last person should be shown as surplus. The applicant not being the last person, cannot be transferred. It is lastly argued that there are vacancies

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in CQA(EE) in the post of Draughtsman Grade-II and the applicant can be conveniently transferred to the said unit by which his seniority would be protected.

4. In the reply it is, however, stated that the applicant having given his willingness to be transferred to CQA(SV) at Dehu Road, he cannot now turn round and question the order of transfer. It is also stated that the applicant being the last Grade-II employee in FE unit, he was shown as surplus candidate and he was transferred to Special Vehicles, Dehu Road, as there was a vacancy in the said unit, and the said unit was willing to accept the applicant. The learned Counsel for the Respondents also contends that the applicant cannot be transferred to CQA(EE) at Pune as the said unit has not expressed its willingness to fill up the vacancies in the said unit so as to accommodate the applicant.

5. We have given careful consideration to the pleadings as well as the arguments advanced by the learned Counsel on either side.

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6. We find no merit in the contention that the applicant still continues to work in the post of Draughtsman Grade-II. It is no doubt true that by virtue of CPWD Award, the Draughtsman Grade-III in some of the units have been upgraded to Draughtsman Grade-II without there being any promotion as per the rules. Even otherwise when Grade-III employee was upgraded to Grade-II and when he was discharging the duties of Grade-II drawing the scale applicable to Grade-II Draughtsman for all purposes, the applicant should be treated as an employee holding the post of Draughtsman Grade-II. Hence, it cannot be said that the applicant cannot be shown as surplus Grade-II employee in FE unit. The contention that the applicant was not the last person in the seniority list in Grade-II and hence he cannot be transferred, cannot also be countenanced. Admittedly a common seniority list has been prepared of both the units viz., FE and EE and the applicant may not be the last person in the said seniority list. However, when there was a surplus strength in Grade-II in FE, who-ever is the junior most in FE should alone be identified as surplus candidate. Admittedly the applicant is/junior most in the

FE unit. Hence, he was rightly considered for transfer.

7. It is the case of the applicant that there are vacancies in CWA(EE) at Pune and the ~~post~~ ^{D/Man} in both the units being interchangeable and if the applicant is transferred to EE unit, his ~~seniority~~ ^{seniority} will be protected. If he was transferred to SV unit, he has to take the bottom seniority in the said unit. In view of this contention, we have asked the learned Counsel for the Respondents ^hSri Shetty to obtain instructions as to the availability of vacancies in EE unit, Pune. Accordingly, the learned Counsel, having obtained the instructions, submits that there are vacancies in EE unit. The learned Counsel for the Applicant also submits that out of the strength of 12 Grade-II in EE, the present staff is only 8. Thus there are 4 vacancies in EE of Draughtsman Grade-II. The interchangeability and transferability of Draughtsman Grade-II in these two units is not in controversy. It is the only argument of the learned Counsel for the Respondents that a decision ~~is~~ to be taken by the employer to fill up the post and until such a decision is taken, the same ~~cannot~~ be filled up.

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8. We do not agree. The principle of inter-transferability has no meaning unless the vacancies in ^A unit are filled up from the surplus of the other unit. It should also be noted that the applicant was initially ~~been~~ appointed in EE unit as Tracer and was transferred to FE where he was now presently working. If the applicant is transferred to ~~SV~~ ^{EE}, his seniority cannot be protected. As per the impugned order, the ~~protection of~~ seniority was not maintained.

9. As a result, the OA has to be allowed. The impugned order of transfer is quashed. The respondents are directed to consider the transfer of the applicant as Draughtsman Gr.II in CQA(EE), Pune, instead of transferring him to SV, Dehu Road. No costs.

Shanta J
(Smt. Shanta Shastry)
Member(A)

Om Rajagopal Reddy
(V.Rajagopala Reddy)
Vice Chairman

Dated: this the 27th day of September, 2001

Dictated in the Open Court

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