

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 666/91
xExAxXNxX

198

DATE OF DECISION 18-6-92LAXMAN DEVJI MORE

Petitioner

MR. M S Ramamurthi

Advocate for the Petitioner(s)

Versus

UNION OF INIA & ORS

Respondent

MR. V S MASURKAR

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE S K DHAON, VICE CHAIRMAN

The Hon'ble Mr. M Y PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

g/c
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 BOMBAY BENCH, "GULESTAN" BUILDING NO.6
 PRESOCOT ROAD, BOMBAY-1

OA No. 666/91

Laxman Devji More
 Storekeeper
 Naval Armament Depot
 Trombay; Bombay 88
 R/o. Room No.1673
 Building no. 177;
 Central Government Colony
 Kane Nagar
 Koliwada;
 Bombay 400037

..Applicant

v/s.

1. Union of India
 Ministry of Defence
 South Block
 Naval Branch
 New Delhi 110011
2. The Chief of the Naval Staff
 Naval Headquarters
 New Delhi

3. The Flag-Officer
 Commanding-in-Chief
 Headquarters; Western Naval
 Head Quarters; Bombay-23

4. The General Manager
 Naval Armament Depot
 GunGate; Naval Dockyard
 Bombay 400023

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
 Hon. Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. M S Ramamurthi
 Advocate
 for the applicant

Mr. V S Masurkar
 Counsel
 for the respondents

ORAL JUDGMENT:
 (Per: S.K. Dhaon, Vice Chairman)

DATED: 18-6-92

The applicant was at the relevant time posted as an Assistant Store Keeper at Bombay. On no less than three occasions he was promoted to the ^{Senior} post of Stores Keeper but posted out of Bombay.

He declined to accept the offer of promotion on

personal grounds. The last order was passed on 17th August 1991 promoting him and also directing him to join at the Naval Armament Depot, Balasore. Again, he refused to go to Balasore on promotion. Thereafter, he was not allowed to join the office at Bombay. The stand taken by the department was that he could go to Balsore and join the post of a ~~Senior~~ Storekeeper there. For not being permitted to join as ~~Assistant~~ Storekeeper at Bombay, the applicant has approached this Tribunal by means of this application.

2. It would be convenient to extract the relevant portion of the order dated 17th August 1991 which reads :

" You are permanently transferred to Naval Armament Depot, Balasore on promotion to the post of Senior Store Keeper. You will be struck off strength of Naval Armament Depot, Trombay with effect from 23.8.91 P.M. You have been granted 12 days preparation/joining time from 24.8.91 to 4.9.91, (including intervening Sundays / Holidays) and directed to report to the Officer Incharge, Naval Armament Depot, Balasore, on or before 5.9.91 A.M."

3. The stand taken by the respondents is that after the said order the applicant could not be allowed to work as ~~Assistant~~ Storekeeper at Bombay. He having failed to join at Balasore, he will be deemed to be absent without leave. The only choice available to him even now is to accept the promotion and go to Balasore.

4. The crucial question to be decided is as to whether the applicant can be compelled to take the promotion. A perusal of the order clearly indicates that the order of promotion is linked with transfer to Balasore. The order of 17th August 1991 is not an order of transfer simpliciter. This Bench repeatedly asked the counsel for the respondents whether any statutory rules have been framed which may throw some light in the controversy. Learned counsel for the respondents frankly stated that there are no statutory rules on the subject. He, however, invited our attention to the communication dated 18.11.1981 from the Ministry of Home Affairs, Department of Personnel. This communication contains the relevant extract of the decision by of the Ministry of Home^{taken} on 1st October, 1981.

5. We are really concerned with paragraph 4 of the decision of the Ministry of Home Affairs. In the earlier part it is emphasised that if a person refuses to accept promotion he will be debared from being considered for promotion for a period of one year. Paragraph 4 reads as under:

"It is further clarified that in cases where the reasons adduced by the officer for his refusal of promotion are not acceptable to the appointing authority, then he should enforce the promotion on the officer and in case the officer still refuses to be promoted, then disciplinary action can be taken against him for refusing to obey his orders".

6. It is implicit in paragraph 4 that an officer cannot be compelled to accept an order of promotion. No disciplinary proceedings can be initiated straight away merely because he has refused to accept the offer of promotion. It is also implicit in paragraph 4 that an officer can make a representation giving reasons as to why he does not want to accept the offer of promotion. It is also implicit that the authority concerned is required to apply his mind and record his findings with reasons as to why the reasons given by the officer for refusing offer of promotion are good or bad. If he comes to the conclusion that the reasons are untenable and unsatisfactory, then, a stage may arrive for enforcing the order of promotion and thereafter, if necessary, for initiating disciplinary proceedings.

7. In the instant case the occasion to enforce the proposal of promotion has not arisen. We are saying so because the order dated 16.4.91 purported to have been passed by the Flag-Officer-Commanding, Western Naval Command, Bombay goes to show that that authority has not considered at all the reasons given by the applicant for not accepting the offer of promotion. The order merely says that since the applicant has refused the transfer on promotion, he (the applicant) may be directed to report to his

posting station without any further delay. We have already indicated that the order of transfer is inextricably linked up with the offer of promotion.

8. We, therefore, come to the conclusion that the applicant is entitled to insist that he may be allowed to join as an Assistant Store Keeper at Bombay.

¶ We are not expressing any opinion on the promotion question
¶ as to whether, in the absence of any agreement expressed or implied or in the absence of any statutory rule, an employee can be compelled to accept the offer of promotion. We are also not expressing any opinion on the question whether an order of transfer simpliciter can or cannot be passed against the applicant.

9. Learned counsel for the respondents has urged :

- i) The applicant has refused to go on promotion outside Bombay on three occasions.
- ii) He holds a transferable post and, therefore, he is bound to go out side Bombay on transfer, and transfer order dated 17.8.1991 is really an order of directing the movement of the applicant from Bombay to Balasore and it is not mere order of promotion.
- iii) The order of 17.8.91 has resulted in an automatic termination of services of the applicant at Bombay.
- iv) If the applicant refuses to accept the order of transfer disciplinary action could be initiated against him.
- v) In the order of 17.8.91 the provision that the applicant would be struck off

strength of Naval Armament Depot, Trombay, only tantamounts to saying that the applicant would be treated as relieved.

10. We clarify that it is still open to the department to make up its mind as to whether an order of transfer simpler should or should not be passed. It goes without saying that if an order of transfer has been lawfully passed, legal consequences as permissible under law will follow in the event of any disobedience of that order. Contention no.(ii) stands answered by the observations made by us above. We do not accept the contention no.(iii). The applicant was on or before 17.8.1991 employed in an organisation which apparently has its branches at different places. Therefore, it is not correct to say that the order of 17.8.1991 has resulted in an automatic termination of services of the applicant at Bombay. We have already expressed our opinion on contention no.(iv). For reasons already recorded the contention (v) cannot be accepted in the absolute form and statute as stated

11. The question we are now to deal is as to whether the applicant would be entitled for any emoluments with effect from 23.8.1991. Having considered the matter carefully, we are of the view that, keeping and in view the facts, the circumstances of the case, the petitioner would be deemed to be on leave without pay. Learned counsel for the applicant pointed out that for

certain limited periods the applicant had submitted
 ↗ medical certificates. If that be so, it will be open
 to the authority concerned to examine the authenticity
 ↗ the relevancy of the said certificates and thereafter
 give its decision thereon.

12. We direct, if the applicant reports at Bombay
 in his capacity as ~~Assistant~~ Store Keeper, the respon-
 dents shall not prevent him from resuming his duties.
 However, we again clarify, that it would be open to
 the department to proceed against the applicant in
 ↗ the light of the observations made above ^{and} in accordance
 with law, after he is allowed to join as ~~Assistant~~
 Store Keeper at Bombay.

13. With these directions this application is
 disposed of finally.

14. A prayer has been made by the learned
 counsel for the respondents that this order may not be
 given effect for a period of six weeks so as to enable
 the respondents to prefer a Special Leave Petition
 before the Supreme Court. The prayer is rejected.

M Y Priolkar
 (M Y Priolkar)
 Member (A)

S K Dhaon
 (S K Dhaon)
 Vice Chairman

Something done.

(M.Y.)

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(17)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

C.P. No. 40/93

O.A. 666/91

Lakshman Devji More,
Room No.1673, Building
No.177, Central Govt.
Colony, Kanenagar,
Koliwada,
Bombay - 400 037. .. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
2. Chief of Naval Staff,
Naval Headquarters,
New Delhi.
3. Flag Officer
Commanding-in-Chief,
Headquarters, Western
Naval Command,
Bombay - 400 023.
4. The General Manager,
Naval Armament Depot,
Gungate, Naval Dockyard,
Bombay - 400 023. .. Respondents

AND

1. Shri J.L.Jonwal,
Manager,
Naval Armament Depot,
Trombay, Bombay-400088.
2. Shri R.W.Limje,
Deputy General Manager,
(T), Naval Armament Depot,
Trombay, Bombay - 400 088. .. Contemners

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman

Hon'ble Shri M.Y.Priolkar, Member(A)

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Appearances:

1. Mr. M. S. Ramamurthy
Advocate for the
Applicant.
2. Mr. V. S. Masurkar
Counsel for the
Respondents.

TRIBUNAL'S ORDER:

Date: 12-7-1993

Heard Mr. M. S. Ramamurthy for the applicant
and Mr. V. S. Masurkar for the respondents.

2. The directions given in para 11 of the judgment delivered in O.A. are clear and the respondents could have acted upon accordingly, to treat the period of absence as leave without pay, if the respondents were not satisfied with the medical certificate. The period of absence, in view of the position clarified in the judgment, should be treated not as break in service but leave without pay.

3. C.P. is disposed of with this direction.

Copy of the order be furnished to both the parties.


(M.Y. PRIOLKAR)
M(A)

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(M.S. DESHPANDE)
VC