

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**NEW BOMBAY BENCH**

O.A. No. 645/91

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198

DATE OF DECISION 5.3.92.Shri N.L.Dusa & Ors. PetitionerShri A.D.Poojary Advocate for the Petitioner(s)

Versus

Secretary, M/o Defence, & Ors. RespondentShri R.K.Shetty Advocate for the Respondent(s)**CORAM**

The Hon'ble Ms. Usha Savara, 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 ? *Yes.*
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 ?

U. Savara
5.3.92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

6

CA.NO. 645/91

Shri N.L.Dusa & Ors.

... Applicants

v/s.

Secretary, Ministry of Defence
New Delhi & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms.Usha Savara

Appearance

Shri A.D.Poojary
Advocate
for the Applicants

Shri R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated : 5.3.92

(PER: Usha Savara, Member (A))

This application has been jointly filed by three applicants challenging the orders of Chief Engineer, Bombay Zone, Bombay dated 11.3.1991 and 18.4.1991 by which the applicants have been transferred to Non-Tenure Station. They are also challenging the order dated 19.9.1991 by which their names were listed as not having complied with the orders of transfer/posting.

2. The applicants have been working as Lower Division Clerks in the Office of Commander Works Engineers Bombay and Garrison Engineer (West) office, Colaba, Bombay since 1977. It is their case that they were due for a Tenure posting and had given their options for three Choice Stations. Their names figured on the "Warning list" of basic staff, categorywise, who were due for Tenure posting but they have been arbitrarily transferred to Non-Tenure Station. The applicants' case is totally based on letter of the Chief Engineer dated 1.11.1990 to which the Warning lists were attached. Para 7 of this letter specifies that

Individuals earmarked for posting to a Tenure Station as per the warning lists enclosed will not be posted out under Surplus/Deficiency Policy. It is alleged by the applicants that instead of issuing posting orders for Tenure Stations, some juniors have been posted to Tenure Station and the applicants have been transferred to Non Tenure Station with malafide intention. This action of the Department is contrary to the policy decision and the guidelines for transfers of civilians sub-ordinates. The orders are arbitrary, malafide and not tenable in law. Since the orders have been passed violating the guidelines specifically provided for posting to Tenure Station, therefore it is prayed that the orders be quashed and set aside and the Respondent No. 3 be ordered to issue posting orders for the applicants for Tenure Stations during the academic year.

3. Mr.R.K.Shetty, learned counsel for the respondents contested the stand taken by Shri A.D.Poojary, learned counsel for the applicant. It was submitted by Shri Shetty that the applicants have been serving in the MES and have an All India Service Liability and that they have been rightly transferred in the exigencies of service and in public interest under the Rules and therefore there are no malafides. It was pointed out that Bombay Zone being the Controller of Administration of subordinate staff of entire command has the responsibility to maintain Manning level of various formations. In order to comply with this requirement, certain adjustments namely liquidation of surpluses where surpluses exist, and making good deficiencies where deficiencies exist, has to be carried out as and when required. For this purpose a station/ station complex seniority is the criterion and not service seniority. All such surplus Station seniors from Bombay complex have been posted to different formations to fill up the vacancies there. The applicant LDCs are among such Station Seniors. Station Seniority is entirely different from service seniority. Service seniority is based on

8

the date of initial appointment in the Department and whole Command will be taken into account for this purpose. Station seniority is based on the date of reporting in a station/station complex. It is further submitted by the learned counsel that the applicants' grievance is baseless. The number of Tenure Stations had been reduced so there were only few vacancies available in 1991. However, as per the policy laid down, the volunteers have to be given priority over all others for being posted to Tenure Station. As there were more volunteers than vacancy, none of the LDCs were posted to Tenure Station from the service seniority list. In the circumstances, the question of posting of anyone junior to the applicants to a Tenure Station did not arise. There were no malafides in the action of the department and even the applicants have not specifically alleged malafide against any particular individuals. The posting orders were made as per the policy guidelines and have also been made in the interest of State. Shri Shetty relied upon the decision of the Supreme Court of India, Civil Appeal No. 5418/1990, dated November, 19, 1990, Present Mr. Justice K.N. Singh, Mr. Justice K. Ramaswamy, Between Mrs. Shilpi Bose and Ors. And State of Bihar & Others. The Hon'ble Supreme Court has held that a Govt. servant holding a transferable job has no vested right to remain at one place or the other. He is liable to transfer. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if an order is passed in violation of executive instructions, the courts ordinarily should not interfere with the order. For this reason Shri Shetty prayed that the application be dismissed.

4. After the arguments were concluded, it was submitted by Mr. Poojary, the learned counsel that the applicants would be satisfied if a direction is given to the respondents to

9

consider the case of the applicants for Tenure posting as and when their turn comes according¹to the service seniority.

5. The learned counsel for the respondents have no objection to this prayer being granted. I, therefore, direct the respondents to consider the case of the applicants for Tenure posting as and when their turn comes according to the service seniority list, regardless of their station seniority in Ahmedabad where they have already joined in compliance with the transfer orders. The application is disposed of accordingly with no order as to costs.

Usha Savara
(MS. USHA SAVARA) 8.3.92
MEMBER (A)

(10)

5/3/92

Order/Judgement despatched
to Appellant/Respondent(s)
on 16.9.92

C.P. No. 87/93
For order fixed
on 5/7/93

Y. S.
21/7/93

Dated: 5.7.93

It is informed that Shri A.D. Poojary who was appearing for the applicant has expired. Shri Ramesh Ramamurthy has filed his vakalatnama.

Heard counsel for the applicant.

Issue notice to the respondents.

Shri R.K. Shetty accepts notice on behalf of the respondents and the proposed contemner and requests for time to file reply.

Reply to be filed within four weeks with an advance copy to the counsel for the applicant. List the C.P. for orders on 6.8.93.


(V.D. DESHMUKH)
MEMBER (J)

NS

Notice issued to Contemner
on dtd. 8/7/93.

12/7/93

Per Tribunal

Date: 1/8/93

Applicant in person / by R. Ramon

Advocate / Respondent by R.K. Shetty

Counsel. Due to want of time

The matter adjourned to 27/8/93

for Final Hearing


Dy. Registrar

Reply of Respondent to
CP No. 6-8-93
& same is served
on other side

ms


O.A. 645/91

Dtd. 27-8-93

Shri M.S. Ramamurthy for the applicant.

Shri R.K. Shetty for the respondents.

Shri Ramamurthy says that relief
prayed in C.P. has already been granted
to the applicant. He, therefore, seeks
to withdraw this C.P. C.P. is disposed of
as withdrawn.


(M.Y. Priolkar)
Member(A)

dt 27/8/93
order/Judgment despatched
to Applicant/Respondent(s)
on 27/9/93

8/9
16/9