

199

DATE OF DECISION 3.9.92

Petitioner

Advocate for the Petitioners .

Versus

Respondent

Advocate for the Respondent(s)

The Hon'ble Mr. 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 ?
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 ?

J. Savara
 (USHA SAVARA) 39.92
 MEMBER (A)

Briefly stated, the facts of the case are that the applicant, who was working as Mate at Mathura on a basic salary of Rs. 1030/- asked for a transfer to Ahmednagar on compassionate grounds. He was transferred to Ahmednagar but posted as a Mazdoor, although there were vacant posts of mate available. His salary was also fixed at Rs. 940/- P.M. by letter dated 12.9.91. It is the applicant's case that there is no specific provision for reduction in salary on reversion due to transfer. It is pleaded that though the posting is on reversion, the transferee is entitled to the salary for the post he held prior to transfer. Further, the rule on reversion on transfer should be made applicable only if the equivalent post is not available. The applicant has worked for the respondents for 20 years only at Mathura, and is in a transferrable post. Since vacancy was available at Ahmadrnagar, even though he made a request for transfer, he should not have lost all seniority. Lastly, the reduction of his salary is contrary to Article 89 A of CSR Vol.I.

Shri R.K. Shetty, learned counsel for the respondents contested the application. He submitted that the applicant's request for transfer on compassionate grounds had been accepted, and he had given his willingness to go to Ahmednagar on the lower post of Mazdoor as per Ex. R 1. He also relied upon order dated 25.7.89 by which the applicant was transferred. It was clearly stated in para 5 that the applicant would not get the benefit of previous service in the grade for promotion or confirmation. It is argued by Shri Shetty that the applicant, having accepted the conditions of transfer could not turn around and challenge the transfer order and fixation of his pay at Rs. 940/- as a Mazdoor. He relied upon the judgement in the case of W.P. Sanka Vs U.O.I. and ors. AISLJ 1992(1)(CAT 124.

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 722/91

Shri Pralhad Bhagat

.... Applicant.

V/s.

Union of India through,
The Secretary, Ministry of
Defence, Government of India,
South Block, New Delhi.

Engineer-in-Chief
Army Head Quarters
Kashmir House,
New Delhi.

Chief Engineer
Southern Command,
Pune-1.

Commander Works Engineer
Ahmednagar, Inside Fort
Ahmednagar.

Garrison Engineer (Project)
Inside Fort,
Ahmednagar.

... Respondents.

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

Appearance:

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 3.9.92.

{ Per Ms. Usha Savara, Member (A) }

The application has been filed praying for a direction to the respondents to post the applicant to the vacant post of mate at Ahmednagar, and to continue to pay him salary at Rs. 1030/- P.M.

The case was fixed for 1.4.'92 for final hearing at the request of the applicant's counsel, however she was not present on that day, and time was allowed for filing rejoinder. Case was fixed for final hearing on 6.4.'92, but there was no appearance by her, and rejoinder was not filed. She was present on the next day of hearing but requested for time to file rejoinder on 10.6.'92. She did not appear on that day nor has she appeared today. The case is being decided on merits at the admission stage itself.

(8)

I have heard the learned counsel and perused the documents filed by both the parties. The facts are undisputed. The applicant had been transferred to Ahmadnagar from Mathura on his own request after giving his consent to being posted on a lower post, as per rules. The applicant had been informed that his past services would not count for seniority or promotion by letter dated 25.7.'89. He cannot now turn back and repudiate his commitment. Nor is it of any relevance that there is a post of mate vacant in Ahmadnagar. He is, according to his own letter of consent, only to be posted in the lower post, and there is no rule which says that you may be posted in a lower post, but draw the salary of a higher post. In this respect, I am following the judgement of the Hon'ble Supreme Court in the case of Govt. of Andhra Pradesh Vs. M.A. Kareem and ors. (1991) 17 A.T.C. 303.

In view of this, I declare that the application has no merit, and therefore, it is dismissed with no order as to costs.

Usha Savara
(USHA SAVARA) 3.9.92
MEMBER (A)

NS/