

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 5/92

199

T.A. NO:

DATE OF DECISION 24/2/92

Shri Arun Dwarkanath Pradhan Petitioner  
Thane

Shri D.K.Ghaisas Advocate for the Petitioners

Versus

Union of India, Advocate Respondent

Shri R.K.Shetty, Advocate Advocate for the Respondent(s)

CORAM:

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 ? *no*
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 ? *no*

*U. Savara*  
( Usha Savara ) 24.2.92  
Member(A)

~~mem~~

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY

Original Application No.5/92

Shri Arun Dwarkanath Pradhan,  
Thane

....

Applicant

vs

1) Union of India,  
Through its Secretary,  
Ministry of Defence,  
New Delhi.

2) Dakshin Kamand Mukhyalaya  
Engineering Shakaha,  
Headquarters, Southern Command,  
Engineering Branch  
Pune-411001

3) Garrison Engineer(Project),  
Sandoz Baugh Post,  
Kolshet Road, Thane-400-607

....

Respondents

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

Appearances:

Shri D.K.Ghaisas,  
Advocate for the applicant.

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

Dated: 24/2/92

JUDGEMENT

(Per: Ms. Usha Savara, Member(A))

The petition has been filed impugning the order No. (1) dated 2nd November 1991 and order No. (2) dated 13th December 1991 by which the applicant has been transferred to Jamnagar. The applicant is a draughtsman in the office of Garrison Engineer (Project). He has been in service since 1959. From 11th July 1989 the applicant has been working under Garrison Engineer, Thane. On 25th Nov. 1989 the second respondent promoted the applicant to the cadre of Senior Draughtsman and transferred him under the Chief Engineer, Dry Dock, Vaizag. The applicant made a representation on 14th December '89 to the Garrison

(B)

Engineer, Southern Command , Pune requesting him to consider his posting either at Pune or Bombay because of his personal difficulties. (Exhibit 'A'). He was informed by letter dated 17th Jan.1990 that due to non-availability of vacancy his request was rejected (Exhibit 'B').

On 28th Feb.90 the applicant made another representation pointing out that some vacancies would be created in Pune in the cadre of Senior Draughtsman and therefore his posting in Pune may be reconsidered. (Exhibit 'C').

By letter dated 3rd May 1990, second respondent informed the applicant that his request for posting at Pune had been accepted and the posting orders would be issued after finalisation of promotions from Senior Draughtsman to the Chief Draughtsman (Exhibit 'D'). On 24th October 1990, the second respondent informed Garrison Engineer, Bombay Zone, Bombay, that since the senior draughtsman, who were to be promoted as Chief Draughtsman, had refused promotion, there were no vacancies in the cadre of Senior Draughtsmen to accommodate the applicant in the Pune Complex. (Exhibit 'E'). However, the applicant again represented for transfer to Pune on 7.11.90 (Exhibit 'E').

2. By letter dated 7th Jan.91 Commander Works Engineer issued an order stating that since the applicants representation had been rejected, his transfer order should be implemented. On 23-1-91 the applicant made another representation to the second respondent pointing out that two other draughtsmen had been accommodated



in Pune while his request for such accommodation had been turned down, therefore, his refusal to accept the promotion be accepted and his posting order be cancelled. However, the second respondent by his order dated 2nd Nov. 1991 transferred the applicant to Jamnagar as a Senior Draughtsman. The promotion-cum-posting order of the applicant transferring him to Jamnagar was passed on 23rd Nov. 91 which has been challenged by this application. The subsequent representations of the applicant were also rejected and he was informed that he would have to report to Jamnagar.

3. Mr. D.K.Ghaisas learned counsel for the applicant submitted that the applicant had been subjected to number of transfers since he has joined the service. He has complied with all such orders in the past. Due to compelling circumstances, the applicant has requested for posting either at Pune Complex or in Bombay Complex. The learned counsel submits that there is nobody to look after the applicant's ailing, aged mother. His wife is suffering from some female disease since 1984. His only son<sup>^</sup> studying in Bombay in final year degree course, and he, himself is also suffering from Asthama. It was for these reasons that the applicant had requested the respondents to accommodate him either in Pune or in Bombay. It was on these considerations that the respondent No.2 had accepted his request for posting at Pune and informed him that he would be accommodated there after finalisation of promotions from Senior Draughtsman to the Chief Draughtsmen. Since the Sr.Draughtsman /refused promotion, the expected vacancy in Pune did not materialize and therefore the

8

applicant's request was rejected by the respondents. However, it is submitted by the learned counsel that one Mr. Chakravarty and one Mr. S.D.Datar, both of whom were junior to the applicant in the cadre of Draughtsman Gr.I were promoted to the cadre of Senior Draughtsman and were absorbed in Pune Complex. However, the applicant was denied the posting to Pune and Bombay despite the fact that there had been vacancies in which he could be accommodated. Later, the applicant had even refused the promotion so that he may not be disturbed from Thane. In view of the facts, the refusal to accept the promotion should have been accepted by the respondents and his posting order should have been cancelled. The authorities have rejected his pleas in an arbitrary manner and compelled him to come to the Court by way of present application. It is therefore prayed that the posting orders at Ex.I and Ex.II be quashed or set aside, only to the extent of applicant's posting at Jamnagar, instead he should be directed to be absorbed at Pune or Bombay in the cadre of Senior Draughtsman. In the alternative it is prayed that refusal to accept promotion should be accepted and he be allowed to continue in the same post which applicant is holding at present at Thane. It is also prayed that he may be accommodated either in Bombay or in Pune even on the same post i.e. Draughtsman Grade-I.

4. Mr. R.K.Shetty, learned counsel for the respondents strongly contested the claim of the applicant. He pointed

out that the applicant has all India service liability and is being transferred in public interest. It was submitted by the learned counsel that on his promotion as Sr. Draughtsman the applicant was posted to the Chief Engineer, Dry Dock, (Vaizag). It was not possible to adjust him in situ since there were four promotees from Bombay Complex and there was only one vacancy available there, hence the junior most in the station was adjusted in Bombay and other three officers were posted to Vaizag, where vacancies of Senior Draughtsman existed and there was a requirement of their services. The applicant's request for posting to Pune was seriously considered and accepted in anticipation of vacancies occurring due to promotion of Senior Draughtsman to Chief Draughtsmen, which was in process at that time. But the Senior Draughtsman of Pune Complex refused their promotion and therefore the applicant's request could not be complied with. Further his request for adjustment in situ was also rejected due to non-availability of vacancy for the post of Senior Draughtsman. The reasons put forward for refusal of his promotion have not been accepted by the Command C.E. who was the competent authority and accordingly his refusal of promotion was rejected.

5. The learned counsel submitted that Shri Chakravarty and Shri S.T.Datar were promoted as Senior Draughtsman and adjusted in situ in Pune Complex. ~~Further the applicant was serving at Bombay~~ against Military vacancies which were not utilized by Record Office for service personnel. The ~~applicant~~ was serving at Bombay. Pune and Bombay are different stations and separate station seniority is

maintained for each station in such cases. The applicant is from Civilian cadre and could not be posted in military cadre. vacancy. The applicant is governed by all India service liability and his posting orders have been correctly issued as per existing policy and job requirements. It is the responsibility of the Chief Engineer, Pune to provide manpower requirements to all locations in the command. There was reduction in establishment of Vaizag and therefore the applicant was diverted to Jamnagar on promotion. There was no malafides in the transfer. In the circumstances the application be dismissed as being devoid of merit.

6. I have heard the learned counsel and perused the annexures filed by them. The legal position in this regard has been clearly laid down by the Supreme Court decision in Gujrat Electricity Board vs Atma Ram Saugomal Poshani (1989) 11 ATC. It has been observed by the Hon'ble Supreme Court that transfer of Government servant is an incident of service. No Government servant has a legal right for being posted at any particular place. Transfer from one place to another is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and efficiency in public administration. In Kirtania case, the Supreme Court observed as under:

" Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing ground rendering the transfer order illegal on the ground of violation of Statutory Rules or on the ground of malafides."

(11)

It is thus clear from the above observations that a Central Government employee who is on a transferable post, has no option but to abide by the orders of transfer except when the order is ~~contrary~~ to Statutory Rules or is malafide.

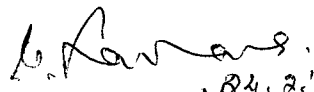
In case, he has a particular difficulty, he may make representation to the authority concerned and await its decision.

This position has also been reiterated in the latest Supreme Court decision cited in Labour Law Journal December 1991

Vol. II Mrs. Shilpi Bose & Ors vs State of Bihar & Ors.

Cited by the counsel of the respondents. It is not the applicant's case that in transferring him the respondents have violated any Statutory Rules, nor does he allege any malafide. As a matter of fact, it is seen from his pleadings that the respondents have tried to accommodate him in Pune Complex but due to administrative problems, they were unable to do so.

In the circumstances, I see no reason to interfere with the transfer orders which are made in public interest and for administrative reasons. The application is dismissed at the admission stage itself, with no order as to costs. The interim stay granted to the applicant stands vacated.

  
(Usha Savara) 24.2.92.  
Member(A)