

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 653/92

198

xxxxxxx

DATE OF DECISION 3 JULY 1992

M. S. Ghodeswar

Petitioner

Mr. Y R Singh

Advocate for the Petitioner(s)

Versus

Chief Engineer, MES, Pune

Respondent

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Advocate for the Respondent(s)

CORAM :

The Hon'ble

Ms. USHA SAVARA, MEMBER (A)

The Hon'ble

Mr. J P Sharma, MEMBER (J)

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?

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

b. Lavane
M(A) 3.7.92

(3)

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

OA No. 653/92

Madhukar Shivram Ghodeswar
Upper Division Clerk
R/o. 107 Near Dagdi Park
Ramdaspath
Nagpur

..Applicant

V/s.

1. Military Engineering Services
Southern Command Pune
through its Chief Engineer

2. Garrison Engineer (AF)
Military Engineering Services,
Wayusena Nagar; Nagpur 440007.

..Respondents

Coram: Hon.Ms. Usha Savara, Member (A)
Hon.Mr. J P Sharma, Member (J)

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

DATED: 3 JULY 1992

This application has been filed against the Transfer order dated 1.5.92 issued by Respondent no.2 posting the applicant from E-4 section to E-5 section with the respondents. Mr. Y R Singh, learned counsel for the applicant submitted that there are eight sections with the Respondent no.2 and some of its sections are considered to be sensitive posts and were identified as such by the letter dated 18.5.1987 issued by the Respondent no.1. The applicant who is a UDC is working on a Sensitive post from September 1991 onwards and therefore his appointment there could have been continued till he completes the period of three years as per communication dated 1.5.92. He has been posted from E-4 to E-5 and in his place on Smt. Cherian, LDC has been brought from E-2 section. Smt. Cherian has already worked on sensitive post for 9 years in breach of policy decision and was given non-sensitive post in E-2 section since last five months. It is the applicant's grievance that he has been transferred (in) place of

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Though malafide has been alleged in the posting of Smt. Cherian, but no officer has been identified by name nor has any body been impleaded to answer the charges of mala fide which are made in a routine way/manner.

The letter of Chief Engineer (Southern Command) dated 18.5.87 which lays down the guide lines for turning over of the personnel from sensitive appointments. It is laid down in sub-section 'e' that UDC ^{should} be turned over within the same division three years from sensitive to non-sensitive appointments. In para 'h' it has been laid down that there is no embargo in turning over any individual holding executive or sensitive appointment to a staff or non-sensitive appointment even before completion of 3 years or lesser period if the Zonal CE/Command CE so desires on administrative grounds. However, shifting from staff/non-sensitive appointments to executive/sensitive appointments within the minimum period laid down is totally prohibited even on attachment. ^{Southern} CE/Command only can relax this condition.

It is seen from this that as a rule UDCs should be turned over only after 3 years lapse from sensitive to non-sensitive appointments. However, para 'h' lays down there is no embargo in turning over any individual holding sensitive appointment to a non-sensitive appointment even before completion of three years or lesser period if the Zonal Chief Engineer or

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Shri Khobraghade in E5 section and Shri Khobraghade is a LDC whereas Smt. Cherian who is an LDC has been posted in the place of the applicant who is a UDC. Since Smt. Cherian has not completed 3 years on a non-sensitive post this order is in violation of sub-clause 'h' of clause 4 which totally prohibits shifting from non-sensitive posts to sensitive posts within a specified period. Smt. Cherian is being favoured because she is a south Indian, and the transfer is made with mala fide intentions. The applicant also submitted his representation to the Respondent no.2 on 8.5.92 and requested him to cancel the posting of the applicant from E-4 to E-5 section. It is further submitted that the Akhil Bharat Anusuchit Jati Parishad has also made a representation on 12.5.92. On the same day resolution was also passed and the applicant being Branch Secretary of All India M.E.S. Clerical Cadre Association appraised the respondents about the resolution passed by the Clerical Cadre Association of Garrison Engineer (A.F. Branch) Nagpur. For these reasons the applicant has prayed that the order dated 1.5.92 be quashed and set aside, and a declaration be made that the posting order is arbitrary and in breach of decision.

We have heard the learned counsel and perused the Annexures filed. In view of the immediate nature of the case, the application is being disposed of at the admission stage itself.

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Command CE so desires on Administrative Grounds.

It is clear that there is no mandate ^{against} posting individuals holding sensitive appointments to non-sensitive appointments even before they have completed the period of 3 years. As in all cases of transfer it is the exigency of service which are paramount. Even shifting of staff from non-sensitive appointments to sensitive appointments, though generally prohibited, can be done if the CE Command relaxes the condition on administrative grounds.

The case of the applicant that he should not have been transferred from his post in E-4 section to E-5 section cannot be accepted in view of the above clarification so long as it does not adversely alters the service conditions in terms of rank, pay and emoluments. So far as his grievance that he was made to hold the post which was originally held by a LDC, it is an acceptable fact that the administration can ask the employee to work at any table as they know best who is well suited for a particular job.

It is seen that the applicant has made a representation on 8.5.92. He has rushed to the court without waiting for the mandatory period of six months to lapse. On this ground also the application is liable to be dismissed as being premature.

It is mandatory for the applicant to wait for a period of six months before he could file an application. In the meantime as the Supreme Court has observed time and again the Central Government employees who opt for a transferable post has no option but to carry out the transfer, except when the order is contrary to the statutory rules.

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In case he has a particular difficulty he may make representation and wait its decision. This position has again been reiterated in the latest Supre Court decision cited in L.J. Dec. 91 Vol.III MRS. SHILPI BOSE &ORS. V. STATE OF BIHAR & ORS.

In the circumstances we see no reason to interfere with the transfer order which is made in public interest and for administrative reasons. The application is dismissed at the admission stage itself as being totally devoid of merit with no order as to costs.

J. P. Sharma

(J P SHARMA)
M(J)

U. Savara

(Ms. USHA SAVARA) 37.92.
M(A)