

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

7

Original Application No. 193/95

Transfer Application No.

Date of Decision

19/9/95

Shri C.S.Jain

Petitioner/s

Shri G.K.Masand

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri M.I.Sethna for R-1&3

Advocate for
the Respondents

Shri R.K.Shetty for R-2

Shri I.J.Naik for R-4.

CORAM :

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

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

No

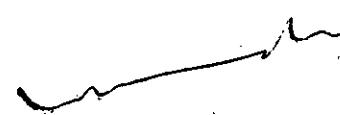
(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

No



(P.P.SRIVASTAVA)

MEMBER (A)



(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 193/95

Shri C.S.Jain
V/S.

... Applicant

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri G.K.Masand
Advocate
for the Applicant.

Shri M.I.Sethna
Counsel for Respondents 1 & 3.

Shri R.K.Shetty
Counsel for Respondents No. 2.

Shri I.J.Naik
Counsel for Respondent No. 4.

JUDGEMENT

(PER: P.P.SRIVASTAVA, MEMBER (A))

Dated: 19/9/95

The applicant was appointed as Assistant Engineer in the composite Union Territory of Goa, Daman & Diu in its Public Works Department. He was further promoted to the post of Executive Engineer and was working as Executive Engineer on 29.5.1987 when the Union Territory of Goa, Daman and Diu was bifurcated with the creation of State of Goa and Union Territory of Daman & Diu in accordance with the Goa, Daman & Diu Re-organisation Act 1987. On bifurcation the Administration sought option from all the staff for opting either for the State of Goa or to the Union Territory of Daman & Diu in terms of their letter dated 14.5.1987 placed at Ex.'E'. In this letter, it was mentioned that this option is being called for to facilitate advance planning and would not confer any right to the employees in this regard in any manner. The respondent administration

P.P.Srivastava

(d)

again invited options vide their Circular dated 23.2.1989 refering therein Section 60 of the Goa, Daman & Diu Re-organisation Act, 1987 to either continue in the State of Goa or get allotted to the Union Terriroty of Daman & Diu. In response to this Circular the applicant submitted his final option to serve in the Union Territory of Daman & Diu vide his letter dated 28.2.1989. The option given by the applicant is placed at EX.'G'.

2. The applicant has further submitted that though he was senior to the Respondents No. 4 & 5, Shri Jamnadas Rana and I.M.Desai, yet the respondent ~~had~~ transferred the Respondents No. 4 & 5 to Union Territory of Daman & Diu in preference to the applicant. The applicant has further submitted that the Re-organisation ~~Act~~ 1987 provided for establishment of Advisory Committee by the Central Government for the purpose of assisting the Central Government for dividing the State of Goa and Union Territory of Daman & Diu. In accordance with this provision, the Govt. of India constituted an Advisory Committee vide their Notification dated 16.8.1988 for assisting the Central Government for dividing the service between the State of Goa and the Union Territory of Daman & Diu in a fair and equitable manner. In pursuance of recommendations made by this Committee, the Ministry of Home Affairs, Govt. of India issued order dated 31.5.1990 allotting the service to the Union Territory of Daman & Diu. This order was published in the Official Gazette issued on 26.7.1990 and is placed at Ex.'I'. The applicant states that his name did not appear in this list for the Cadre of Union Territory of Daman & Diu, although the names of Respondents No. 4 & 5 who were junior to the applicant appeared in this Notification.

Thereupon the applicant submitted representations dated 20.9.1990 and 19.4.1991 stating that he has not been given fair and equitable treatment in the allocation of his services to the Union Territory of Daman & Diu and junior officers of his cadre who were not all eligible for absorption to the post of Executive Engineer and Superintending Engineer were allotted to the Union Territory of Daman & Diu. When no response was received by the applicant on his various representations, the applicant filed OA.NO. 217/92 praying that the applicant be allotted to the cadre of Union Territory of Daman & Diu with all consequential benefits as provided in the Re-organisation Act, 1987 and Ministry of Home Affairs, Govt. of India 's order dated 31.5.1990 be quashed. This OA. was decided by the Tribunal with the order that the rejection of the applicant's representations by the respondents was not proper and the matter was referred to the Central Govt. and the Central Govt. was directed to grant a personal hearing to the applicant and pass a speaking order with reference to the applicant's representation dated 20.9.1990. The operative portion of the order in OA.NO. 217/92 reads as below :-

"We are, therefore, constrained to refer the matter "Fresh" to the Central Government. The Central Government shall grant a personal hearing to the applicant and then pass a speaking order with reference to his representation dated 20.9.1990 within two months from the date of receipt of a copy of the order. The Central Government would pay due regard to the words of the Statute that it is its duty to pass any appropriate order and it has to show that it is satisfied that it is necessary to do so, in order to prevent any mis-carriage of justice to any effected employee. The communication dated 8.10.1992(Ex.'C') is quashed.

In view of the directions we are making we dispose of the application with liberty to the applicant to approach the Tribunal a fresh should he feel aggrieved by the decision taken hereafter by the Central Government."



3. The applicant was given a personal hearing by the Central Government on 10.8.1994. The applicant represented his case to the Joint Secretary, Govt. of India on 10.8.1994 and sent a letter to him dated 28.9.1994 detailing the various points made by the applicant at the hearing. This letter is placed at EX.'P' to the OA. The Central Government rejected the applicant's claim for allotment to Union Territory of Daman & Diu on the ground vide their letter dated 11.11.1994 placed at EX.'A' to the present OA. Aggrieved by the rejection of the applicant's claim by Respondent No. 1, the applicant has approached the Tribunal in the present OA. and has sought the relief that the decision of the Government of India as contained in their letter dated 11.11.1994 at Ex.'A' be quashed and that the applicant is entitled to be allotted to the Union Territory of Daman & Diu as Executive Engineer on his first date of appointment namely 29.5.1987 and thereafter entitled to be promoted as Superintendent Engineer in Union Territory of Daman & Diu with retrospective effect from the date Shri J.Rana was promoted as Supdt. Engineer with all consequential benefits.

4. The applicant has submitted that the authorities concerned have not applied their mind while considering the applicant's representation and they have also shown un-deserved bias in favour of Respondent No. 4 which is to the detriment of the applicant and has thus violated Articles 14 & 16 of the Constitution of India.

5. The counsel for the applicant has argued that the applicant was a substantive holder/while Respondents No. 4 & 5 were only adhoc Executive and therefore he had a better claim for being transferred to Union Territory of Daman & Diu on his option/ The counsel for the applicant



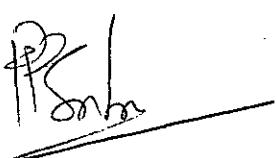
has also argued that although Respondent No. 4 Mr. Rana was working in the Union Territory of Daman & Diu and was a native of Daman and yet he was a substantive holder of the post of Assistant Engineer and not that of Executive Engineer. Shri Rana was only officiating on adhoc basis ^{as Executive Engineer} and therefore he could not have been allotted to the Union Territory of Daman as Executive Engineer and he could only be allotted the post of Assistant Engineer and the applicant being the only regular Executive Engineer was entitled for allotment to the post of Executive Engineer in the Union Territory of Daman & Diu. The counsel for the applicant has also argued that Respondent No. 5 Shri Desai was neither working in the Union Territory of Daman nor he was a native of Daman and he was Assistant Engineer in substantive capacity and was working on adhoc basis as Executive Engineer with the Municipal Administration at Vasco at Goa but the respondents preferred to transfer Shri Desai to the Union Territory of Daman & Diu ignoring the claim of the applicant. The counsel for the applicant has argued that all these submissions made by the applicant to the Joint Secretary, Govt. of India at the time of personal hearing had not been given due weightage while rejecting his representation vide letter dated 11.11.1994 and therefore there has not been proper application of mind while rejecting the claim of the applicant vide above letter.

6. On the other hand, the counsel for respondents has brought out that the applicant was working in the Irrigation Department from 2.4.1984 when the P.W.D. and Irrigation Department were constituted as separate cadres.

PPS/

(B)

The Notification in this regard was issued vide letter No. 7/17/1/80-WET dated 2.4.1984 which is placed at Ex.R-1. It is seen that the name of the applicant appears under the heading of Executive Engineer Group 'A' post at Sr.No. 4 who had been allotted to the Irrigation Department while the name of Shri Jamna Das Rana, Respondent No. 4 appears at Sr.No. 27 in the list of Executive Engineer who had been allotted to the P.W.D. The name of Shri I.M.Desai, Respondent No. 5 appears in the list of Assistant Engineer Group 'D' at Sr.No. 2 who had been allotted to P.W.D. on bifurcation. The main argument of the counsel for the respondents is that since the applicant was working in the Irrigation Department and Union Territory of Daman & Diu did not have any post of Executive Engineer or above in the Irrigation Department and had post only in the P.W.D., therefore the case of the applicant was not considered by the Advisory Committee. The counsel for the respondents has also argued that the case of Respondent No. 4 Shri Rana was considered by the Advisory Committee on the ground that he was a domicile of Daman and was working there. The counsel for the respondents has also argued that the case of Shri I.M.Desai was also covered by the guidelines which were framed to decide the claims of the optees for being posted to Union Territory of Daman & Diu in as much as he was transferred in public interest for administrative convenience and that he was working in the Department of P.W.D. as Executive Engineer on adhoc basis and was transferred in the same department to Daman before the bifurcation was finalised.

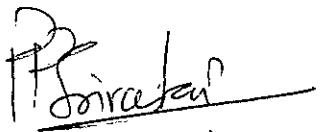


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(4)

7. We have considered the order dated 11.11.1994. After going through the letter, it cannot be said that this order has been passed without application of mind. The applicant has advanced the arguments before the Joint Secretary, Govt. of India which have been considered and have been rejected by the above order. We are of the opinion that there is enough justification for the Central Government to come to the conclusion that the claim of the applicant for being transferred to the Union Territory of Daman & Diu was rightly rejected. We are, therefore, of the opinion that the order dated 11.11.1994 cannot be faulted as being arbitrary and without application of mind and therefore we see no reason to interfere with this order.

8. In the result, the OA. is dismissed with no order as to costs.


(P.P. SRIVASTAVA)

MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

mrj.