

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1171/97

Date of Decision: 21/4/98

Brij Mohan Joshi

.. Applicant

Shri S.P.Saxena

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty.

.. Advocate for
Respondent(s)

CORAM:

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


The Hon'ble

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1171/1997.

Pronounced, this the 24th day of April 1998.

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

Brij Mohan Joshi,
Asstt. Engineer (B/R),
Office of Garrison Engineer
(Ind.), Field Investigation
Division, College of Military
Engineering,
Pune - 411 031.

... Applicant.

(By Advocate Shri S.P.Saxena)

V/s.

1. Union of India
Through the Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Army Headquarters,
DHQ P.O.,
New Delhi-110 011.
3. The Chief Engineer
Design & Consultancy,
College of Military Engineering,
Pune - 411 031.
4. The Garrison Engineer (Ind.)
Field Investigation Division,
College of Military Engineering,
Pune - 411 031.

... Respondents.

(By Advocate Shri R.K.Shetty).

O R D E R

¶ Per Shri P.P.Srivastava, Member(A) ¶

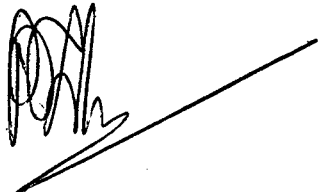
The applicant had joined service as Superintendent Gr.I in M.E.S. Organisation and was posted at Nagpur in 1963. He was transferred in 1969 to Itarsi. Thereafter, to Bhandara in 1972. The applicant was further transferred in 1975 to Jabalpur. The applicant was promoted as Assistant Engineer in 1983 and was transferred to Sagar in Madhya Pradesh and in 1987 to Faridakot. The applicant

...2.

came to Bombay on transfer in 1990 and in 1993 from Bombay to Pune where he is working at present. The applicant has brought out that since originally he belongs to Nagpur, he requested the Respondent No.2 to consider his posting at Nagpur. The last application given by the applicant for his request transfer to Nagpur was in 1994, but the same was not accepted. The applicant wanted to go to Nagpur as his son was studying there, but now he has completed his studies. The respondent administration have in 1997 transferred the applicant to Nagpur, the **Movement Order dt. 15.12.1997**(placed at Annexure A-1) was issued. Aggrieved by the transfer order the applicant has approached this Tribunal through this O.A. and has sought the relief that the transfer order dt. 15.12.1997 and 17.3.1997 be quashed.

2. The applicant has brought out that he is due for superannuation on 31.8.1998 and only few months are left for his superannuation. The applicant has further brought out that he had requested for a transfer to Nagpur in 1994 due to his son's education, but now, that reason no longer survives and the applicant would be put to great hardship if he is now required to go on transfer to Nagpur just a few months before his superannuation. The applicant has further brought out that his son is getting employment at Pune and the applicant would like to settle down in Pune itself and live with his son after retirement.

3. The applicant has further brought out that the **respondents** order to transfer him was issued on 19.3.1997 but he was not relieved as no reliever was available and there was acute deficiency of officers at Pune. The




applicant has further brought out that nobody has been posted in his place at Pune. The applicant has further submitted that he had made a representation against his transfer and his relieving order to the Chief Engineer on 16.12.1997 and his representation is (at Annexure A-4). In his representation also the applicant has brought out that his retirement date is in August, 1998 and therefore at this stage he is not willing and the transfer would be of a great hardship to him and that he is planning to settle down at Pune as his children are settling here.

4. The respondents have brought out that they have transferred the applicant as per his own request and therefore the applicant has no case for refusing to go on transfer. The respondents have further brought out that the applicant is liable to be posted anywhere in the Union of India on account of his having All India Service liability. The respondents have also brought out that there are numerous ruling of the Hon'ble Supreme Court on the ruling of transfer and since the applicant's transfer has been issued taking into account the request of the applicant, the applicant has no case to refuse the transfer order. The respondents have also brought out that the applicant has declared Nagpur as his home town as per his service record. The respondents have further brought out that the applicant is not able to do certain work at Pune and therefore his continued presence will not be in the interest of administration.

5. After hearing both the parties and perusing the record, I am of the view, that the applicant has made out a case for his being retained at Pune in view of the fact that he is retiring in August, 1998. It is seen from the record that nowhere the respondents have brought out that



the applicant's services are required in the interest of administration at Nagpur and that by not relieving him immediately the administration will suffer at Nagpur. The only ground which the respondents have brought out is that since the applicant had requested for transfer to go to Nagpur, he cannot refuse now. It is seen that the applicant had requested for transfer in 1994, but the transfer has materialised in 1997. In 1994, the applicant had four years of service left with and now in 1998 the applicant has hardly a few months of service left. Therefore, the insistence of the respondent administration in saying that the applicant cannot change his mind now once having requested to go to Nagpur is not understood. It is a policy of the Government that at the time of retirement the employee should not be disturbed unless it becomes absolutely essential in the administrative interest and exigency. That is not the case here. Considering the overall facts and circumstances of this case, I am of the view that the transfer order dt. 15.12.1997 and 17.3.1997 are required to be quashed and set aside. I therefore, accordingly, quash the transfer orders dt. 17.3.1997 and 15.12.1997. In the facts and circumstances of the case there will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER(A).

B.