

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1090/98

Date of Decision: 14.1.1999

Ashok Kumar Bag Petitioner/s

Shri S.P. Kulkarni Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri R.K. Shetty. Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 1090/98

Thursday the 14th day of January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Ashok Kumar Bag

Residing at :

Suraj Apartment,

Plot No.225, Kansai Section

Near A.M.P. Railway

Gate, P.O. Ambarnath (East)

District - Thane.

... Applicant.

By Advocate Shri S.P.Kulkarni.

V/s.

Union of India through

Chairman-cum-Director General

Ordnance Factory Board,

Indian Ordnance Factories,

Department of Defence Production

Ministry of Defence,

Government of India, 10-A

Khudiram Bose Road,

P.O. Calcutta.

The General Manager

Ordnance Factory,

Ambarnath I.O.F.

(Department of Defence Production)

P.O. Ordnance Estate

Ambarnath.

The Deputy General Manager(A)

Ordnance Factory (Ministry of

Defence, P.O. O.E. Ambarnath.

... Respondents.

By Advocate Shri R.K. Shetty.

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant challenging the order of transfer on promotion. The respondents have filed reply. I have heard counsel for both sides.

2. The applicant is working as Assistant Foreman (Metallurgy) In Ordnance Factory, Ambarnath. The applicant has been transferred on promotion as Junior Works Manager (Metallurgy) by impugned order dated 6.1.1998 to Field Gun Factory Kanpur.

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The applicant states that due to health reasons of himself and his wife, he could not take up the promotional post at Kanpur. Therefore he wants that the order of transfer on promotion to be quashed and he may be allowed on promotional post at Ambarnath. The applicant has also stated that he is willin to give up the promotional post in case the request of retention in the promotional post at Ambarnath is not granted by the Government. The respondents have rejected the claim. Therefore the applicant has approached this Tribunal for quashing the order of transfer on promotion and other consequential reliefs.

3. The respondents in their reply have justified the action taken by them. They have pleaded that this is a purely administrative order done in public interest. It is also pleaded that proper medical facilities are available at Kanpur. Personal problems cannot stand in the way of transfer.

4. It is well settled that the Court or Tribunal cannot interfere on the administrative order of transfer, unless the order is malafide or contrary to any statutory rule.

In the present case there is no allegation of malafides against the respondents or any officials. The order of transfer on promotion is also not contrary to any statutory rules. Therefore strictly speaking the applicant has no legal ground to challenge the order of transfer.

5. The learned counsel for the applicant submits that due to health reason of the applicant and his wife, he cannot take up the promotional post on transfer. It is well settled in a number

of decisions of the Apex Court that personal grounds are not a matter for the Court or Tribunal to interfere. These grounds are to be urged before the administration or before the higher officer in the department. It is open to the applicant to make representation regarding the health problem and the administration to consider the same and pass an appropriate order. It is now brought to my notice that the applicant had made such an application which has been rejected by the respondents.

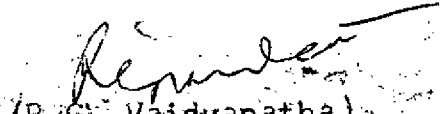
6. Alternatively the learned counsel for the applicant submitted that the applicant has already given declaration that he is not interested in the promotion and therefore he cannot be forced to accept the promotion. He has also submitted that in case an official declines promotion, the only consequence is that he will have to wait for promotion for one year as provided under Swamy's Seniority and Promotion at page 99 (page 28 of the paper book). Government of India order dated 1.10.1981 referred to by the counsel for the applicant states that a Government employee should make a written request that he may not be promoted. It is for the administration to accept the same. There is a note in the Government of India order that in case reasons given by the official for refusing the promotion are not acceptable to the appointing authority, then he should enforce promotion.

7. Therefore the applicant's unilateral declining of promotion is not sufficient unless it is accepted by the competent authority. But by a recent order dated 11.1.1999 (now shown to me) the department has refused the request of the applicant declining promotion.

In the facts and circumstances of the case I do not find any merit in the application. It is for the administration to do whatever they want according to the rules. Since the request of the applicant has been rejected by the department, in the normal course the applicant has to proceed to the place of transfer. But he does not want to go. Since present order is purely an administrative order issued in the interest of public, the prayer for quashing the transfer on personal grounds is not a ground to interfere by a Court or Tribunal. I do not find that this is a fit case where a Tribunal can interfere with the impugned order of transfer on promotion.

8. The applicant has given health reasons for not going to Kanpur on promotion. I feel that in the circumstances some more time should be given to the applicant to join in the new post. If he complies with the order of the respondents within 15 days then they are directed not to take any disciplinary action against the applicant for non compliance of the order of transfer.

9. In the result the O.A. is rejected at the admission stage. However it is made clear that the applicant should obey the order of transfer on promotion and join the new place within 15 days from today. In such a case the respondents are directed not to take any disciplinary action on the ground of non-compliance of order of transfer on promotion. If the applicant does not report for duty within 15 days from today, then it is left open to the administration to take whatever action they deem fit according to law.


(R.G. Vaidyanatha)
Vice Chairman