

(30)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 887 of 1989

Date of Decision :

~~P.A. No.~~

Mr. Hardev Ram

Petitioner.

Mr. M.Vijayaprakash

Advocate for the
petitioner (s).

Versus

Union of India and 2 others

Respondent.

Mr. N.Bhaskar Rao, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

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 Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

31

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

ORIGINAL APPLICATION NO.887 of 1989

DATE OF JUDGMENT: 25-4-1991

BETWEEN:

✓ Mr. Hardev Ram

...

Applicant

AND

1. Union of India,
represented by its Secretary,
Ministry of Agriculture & Rural
Development,
Govt. of India,
New Delhi.
2. Chief Administrative Officer,
Directorate of Plant Protection,
Quarantine & Storage,
Faridabad, Haryana.
3. Director,
Central Plant Protection Training
Institute,
Hyderabad.

..

Respondents

COUNSEL FOR THE APPLICANT: Mr. M.Vijaya Prakash

COUNSEL FOR THE RESPONDENTS: Mr. Naram Bhaskar Rao, Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)



32

.. 2 ..

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner for a relief to set-aside the impugned order of the 2nd respondent bearing No.17-6/89-Admn.III, dated 27.10.1989. The facts of the case are briefly as follows:-

The petitioner joined duty at Hyderabad consequent upon his promotion to the post of Upper Division Clerk at Central Plant Protection Training Institute, Hyderabad, in pursuance of the order of the 2nd respondent dated 31.8.1967. At present, he is working as an Accountant, Central Plant Protection Training Institute, Rajendra Nagar, Hyderabad. A post of Office Supervisor fell vacant at Plant Quarantine and Fumigation Station, Calcutta. The 2nd respondent by his memo dated 9.8.1989, asked the petitioner to send his willingness if he is interest^{-ed} for promotion as Office Supervisor at Plant Quarantine and Fumigation Station, Calcutta latest by 31.8.89. The petitioner sent his willingness for the post of Office Supervisor by his letter dated 25.8.1989 to the 2nd respondent. On the recommendation of the Departmental Promotion Committee (Group 'C'), the petitioner was promoted to the post of Office Supervisor at Plant Quarantine and Fumigation Station, Calcutta by the order of the 2nd respondent dated 4.10.1989. While the matter stood thus, the petitioner by his letter dated 18.10.89 sent through proper channel expressing his regret that due to domestic problems he is not in a position to join duty to the post of Office Supervisor at Calcutta and thereby requested the 2nd respondent to cancel the order of promotion. But



.. 3 ..

curiously on receipt of the telegram from the 3rd respondent intimating refusal of promotion by the petitioner, the 2nd respondent got annoyed and passed the impugned order dated 27.10.1989 directing the 3rd respondent to relieve the petitioner even from the post of Accountant, even if the petitioner is not willing to accept promotion to the post of Office Supervisor, ^{and} transferring the petitioner in the same capacity to Plant Quarantine and Fumigation Station, Calcutta and directed him to report compliance by 10.11.1989. The impugned order of the 2nd respondent dated 27.10.1989 is illegal, without jurisdiction, unconstitutional and against the principles of natural justice, apart from malafide inasmuch as there is no Accountant post vacant at Plant Quarantine and Fumigation Station, Calcutta. The petitioner expressed his unwillingness to accept the promotion due to the changed circumstances inasmuch as his wife underwent a major eye operation and the last son of the petitioner is studying at the Educational Institution at Hyderabad and there is no one, except the petitioner, to look after his wife and family. The petitioner is at the end of his service as only 4 years service is left for his superannuation. The impugned order of the 2nd respondent is by way of punishment and it shows the vindictive attitude of the 2nd respondent and therefore the impugned order is arbitrary and violative of Articles 14 and 16 of the Constitution of India. Hence, the petitioner filed this petition for the above said relief.

2. The respondents filed a counter with the following contentions:-

The petitioner has been working as Accountant in the Central Plant Protection Training Institute, Hyderabad



(34)

.. 4 ..

since 6.7.1984. One post of Office Supervisor in the grade of Rs.1640-2900 was to be filled up at Plant Quarantine and Fumigation Station, Calcutta. According to the Recruitment Rules, for the post of Office Supervisor, the method of recruitment is by promotion from the grade of Store Supervisor/ Head Clerk/Accountant (Sub Offices) and Accountant-cum-Store Supervisor with five years regular service in the respective grades. The petitioner submitted his willingness for promotion to the post and on the recommendations of the Departmental Promotion Committee (Group 'C'), he was promoted to the post of Office Supervisor vide Office Order dated 4.10.1989. The petitioner remained silent for two months and on 18.10.1989 he submitted a representation dated 18.10.1989 stating that due to some domestic problems, he is not in a position to join duty at PQFS, Calcutta and the orders of promotion be cancelled. As the promotion orders in respect of another candidate for posting at CPPTI, Hyderabad vice the petitioner had already been issued, it was not considered administratively desirable to cancel the promotion and posting order of the petitioner and retain him at CPPTI, Hyderabad.

3. The sanctioned administrative staff component in respect of the PQFS, Calcutta is 7. To take care of new additional burden, the Government have in principle approved creation of 90 additional posts comprising both administrative and technical components for the five Plant Quarantine Stations in lieu of surrendering 90 posts vacant in other stations under the control of the Directorate. The administrative component includes inter-alia the posts of ~~xxx~~ one Administrative Officer, One Cashier and one Accountant.

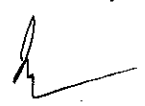


35

... 5 ...

Hence, the Directorate ordered the Director, CPPTI, Hyderabad to relieve the petitioner by 10.11.1989 positively vide O.M. dated 27.10.1989. It was also mentioned in the said order that in case the petitioner is not willing ^{to come} on promotion as Office Supervisor at PQFS, Calcutta, he stands transferred in the same capacity at PQFS, Calcutta against the vacant post of Office Supervisor having due regard to the administrative exigencies. The petitioner intimated his willingness to accept promotion at PQFS, Calcutta despite the fact that his youngest son is studying at Educational Institute at Hyderabad. Moreover, one of his sons is employed at Central Plant Protection Training Institute at Hyderabad itself and as such the statement of the petitioner that there is nobody except the petitioner to look after his wife and family, is factually incorrect. The petitioner expressed his willingness to accept promotion knowing fully well that only four years of service is left for his superannuation. The posts of Accountant under the control of the Directorate have got all-india transfer liability and there is no bar to transfer any incumbents of those posts, even if he is left with four years of service for superannuation. The petitioner has been staying at Hyderabad since more than 22 years and his case cannot be stated ^{be} to a case of frequent transfers. The petitioner failed to make out any case for grant of relief prayed for. Hence the petition is liable to be dismissed.

4. Shri M.Vijaya Prakash, learned counsel for the petitioner and Shri N.Bhaskar Rao, learned Additional Standing Counsel for the Central Government/Respondents, argued the matter. It is an admitted fact that the petitioner was working



....6

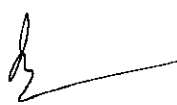
(36)

.. 6 ..

at Hyderabad from 1967 and it is also an admitted fact that the Department asked him to give his opinion to go to Calcutta on promotion as Office Supervisor and he gave his willingness on 25.8.1989 knowing fully well about his family difficulties and hardships. As per his willingness, orders were issued on 4.10.1989 promoting the petitioner as Office Supervisor at Calcutta. Subsequently, on 18.10.1989 he sent a representation stating that he does not want promotion because of the changed circumstances in his family. After willingness was given by the petitioner, the Department made arrangements to post another man in his place at Hyderabad.

When the petitioner ~~refused his promotion and transferred to Calcutta~~ expressed his unwillingness for promotion, the respondents refused to give him promotion and transferred him to Calcutta on his original post of Accountant.

5. The changed circumstances that the petitioner is ^{pleading} ~~feeling~~ so are only that his wife underwent a major ^{eye} operation and his son is studying at Hyderabad. When the petitioner gave his willingness, he very well knew that his son is studying and his wife might be undergoing a major operation. Knowing fully well all these things, he accepted the promotion on transfer to Calcutta. Moreover, one of his sons is working in the same Institute at Hyderabad itself and he pleads that there is none to look after his family which is not correct. The petitioner being an experienced Accountant, on the administrative grounds, he was transferred and through out his career, he worked at Hyderabad and he was never transferred to any place. It is not a case of frequent transfers to attribute any malafide against the respondents. The transfer of the



....7

To

1. The Secretary, Union of India,
Ministry of Agriculture & Rural Development,
Govt. of India, New Delhi.
2. The Chief Administrative Officer,
Directorate of Plant Protection,
Quarantine & Storage, Faridabad, Haryana.
3. The Director, Central Plant Protection Training
Institute, Hyderabad.
4. One copy to Mr. M. Vijaya Prakash, Advocate
1-8-423, Chikkadapalli, Hyderabad.
5. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd. Bench
6. One copy to Hon'ble Mr. J. Narasimha Murthy, Member (J) CAT. Hyd.
7. One spare copy.

pvm

37

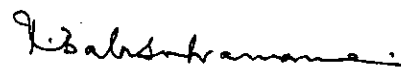
.. 7 ..

petitioner is not made with any malafide intention. Moreover, on administrative grounds, the Department can transfer from place to place and because he is an experienced official, and his services are required at Calcutta, the petitioner was posted on promotion as Office Supervisor at Calcutta and there are no malafides on the part of the respondents in transferring the petition^{-er} to Calcutta. When the petitioner asked the respondents that he does not want promotion, then only they withheld promotion. Otherwise, he is entitled to get his promotion if he asks for promotion at ^{this} ~~that~~ stage. We, therefore, hold that there are no malafides on the part of the respondents in transferring the petitioner to Calcutta and there are no merits in the petition and the petition is liable to be dismissed. If the petitioner makes a representation requesting for promotion to the post of Office Supervisor, the respondents are directed to give him promotion as they did earlier.

6. With the above directions, the petition is dismissed. No order as to costs.

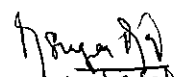


(J. NARASIMHA MURTHY)
Member (Judl.)



(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 25th April, 1991.


Deputy Registrar (S)

⑧

TYPED BY

YASR
Tang

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.

AND

THE HON'BLE MR. D. SURYA RAO: M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 25.4.1991.

~~ORDER~~ JUDGMENT.

M.A./R.A./C.A.No.

in

T.A.No.

W.P.No.

O.A.No.

887/89

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

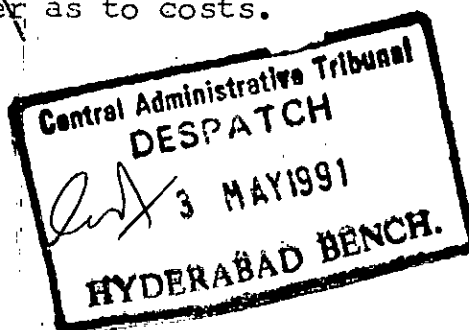
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



Dist
26