

Central Administrative Tribunal
HYDERABAD BENCH : AT HYDERABAD

O.A. No.1004 of 1990 Adm A-86/91 Date of Decision : 20.2.1991
~~Ex No~~

<u>Mr. M.A. Tamhankar</u>	Petitioner.
<u>--</u>	Advocate for the petitioner (s)
Versus	
<u>The Engineer-in-Chief, AHQ, N. Delhi</u> and another	Respondent.
<u>Mr. N. Bhaskar Rao, Addl. CGSC</u>	Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR. B.N. Jayasimha, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement? no
2. To be referred to the Reporter or not? no
3. Whether their Lordships wish to see the fair copy of the Judgment? no
4. Whether it needs to be circulated to other Benches of the Tribunal? no
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)

B.N.J.
HBNJ
VC

H.N.M.
HJNM
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1004 of 1990 and MAND-86/91.

DATE OF JUDGMENT: 20.2.1991.

BETWEEN:

Mr. M.A.Tamhankar

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Applicant

AND

1. Engineer-in-Chief,
Army Headquarters,
DHQ PO, New Delhi-11.

2. The Garrison Engineer,
Air Force Academy,
Hyderabad-43.

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Respondents

FOR APPLICANT: Mr. M.A.Tamhankar, Applicant-in-person

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

CORAM: Hon'ble Shri B.N.Jayasimha, Vice Chairman

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

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 post him to his home station, Pune for a tenure of four years by forgoing his claim on the last leg posting. The contents of the petition are as follows:-



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On 23.4.1990 a request was made to the Engineer-in-Chief, Army Headquarters, New Delhi through proper channel for his posting of the applicant to home station on compassionate ground by foregoing claim on the last leg posting. The request was duly recommended for favourable consideration by the GE (AFA), Hyderabad, CWE (AF) Secunderabad, CE(P) FY Secunderabad and GESG Pune and forwarded to the addressee by due date i.e., by 31.7.1990.


2. As per the provisions of career planning and posting policy for MES civilian officers in vogue, such applications are to be received by the Engineer-in-Chief's branch, New Delhi twice in a year i.e., on 31st July and 31st December and are required to be processed by considering the merits and demerits of the case. It is not known whether the medical board to consider the cases was held in August/September 1990 or not. In case the Board is held, the applicant states that the outcome of the same may be obtained from the administration. If not, the explanation of the authorities may be asked for violation of the provisions of the present posting policy. By discarding this provision, and without assigning any reasons to the representations and by completely neglecting the recommendations of the four engineer officers, the authorities at New Delhi issued a posting order No.MES/246/90 dated 8.10.1990. This posting order contains disturbance for 11 officers wherein cancellations are made in case of 5 officers by the methods best known to the authorities. These amendments speak themselves for the erroneous actions taken previously by the particular section of the administration who deals with postings/transfers of officers and the section is expected to take correct actions at the first instance only. This

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was brought by the Garrison Engineer on 31.10.1990 and served on the applicant on 1.11.1990 and on the same day the applicant represented on the subject by giving additional facts and medical reports in support of his case. There was no reply to the same upto 2.12.1990. A copy of the Signal No.391293/E1B dated 27.11.1990 issued by the Engineer-in-Chief's branch rejecting the request of the applicant for his posting to ^{his} home station Pune was given to the applicant on 3.12.1990 by the GE (AFA), Hyderabad. No reasons for rejection are intimated. The Respondents used outright powers thus doubting the modus operandi and the competency of the authorities to neglect the qualified Doctor's advice. The administration has taken a unilateral decision in rejecting the case by the negative attitude without taking the advice of the expert medical opinion. There were lot of vacancies at the home town of the applicant and he is ready to go anywhere in India during his last tenure after serving for four years in his home station from now onwards as per the provisions of the career planning and posting policy for MES civilian officers which is the basic rule book available at present. Hence, the applicant filed this application for the above said reliefs.

3. The respondents filed a counter stating that the applicant has not alleged any malafide against the respondents and he is liable for posting anywhere in the country and the administration has posted him to Visakhapatnam keeping in view the organisational and functional requirement. A transfer on public interest should not be interfered with unless there are strong and pressing grounds of malafides. The transfer is an ordinary incident of service and as such



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the Court should not normally interfere unless malafide is proved and in the present case no malafide has been alleged. The application is based on misrepresentation of facts, irrelevant grounds and unsustainable allegations and hence it deserves to be dismissed. Out of a total 25 years 6 months service rendered by the applicant, he has put more than 19 years service in Pune complex. The applicant has concealed the material facts before the Court. The applicant already was struck off from the stands relieved and his name / strength with effect from 5.12.1990 whereas he stated before the Court on 10.12.1990 that he has not been relieved so far and obtained interim orders by misrepresentation of facts. The applicant submitted a representation for posting on compassionate grounds on 23.4.1990 but submission of a representation does not confer any legal right to the individual to be posted to his choice station alone, as all the postings are ordered keeping in view the sector profile of the officer and organisation and functional requirement. His application was considered at appropriate level duly examining the various aspects like genuineness of the case, organisational and functional requirements and suitability of the post etc. The provisions of the "career planning and posting policy" as mentioned by the applicant were fully taken into consideration while examining the case. Para 15 of the Posting Policy clearly stipulates that organisational and functional requirements will be an overriding consideration of posting. The allegation of the applicant about discarding the provision without assigning any reason is frivolous and hence cannot be accepted. His case was decided on merits. The other cases referred by the applicant are irrelevant as the applicant has failed to provide any particulars in support of his contention. He also failed to bring out any legal/

rule position under which the respondents are required to communicate the rejection of the application in a reasoned order. The contention that the amendments in case of five officers speaks for the erroneous action is without any legal or factual support whatsoever and denied as totally baseless. It is upto the management to consider the representation and decide on their merits. Consideration of representation of any particular officer do not grant him legal right that his representation should also be considered in the same way as of others because each case is decided on individual merit. The availability of vacancy in a no way confers any legal right to the applicant for posting in a particular place. The applicant is not entitled for any relief or interim relief as prayed for as no legal right of the applicant has been infringed. The applicant failed to establish any prima facie case. The applicant already stands relieved and struck off strength with effect from 5.12.1990 vide Movement Order No.1011-2/1748/E1A, dated 27.11.1990 as amended vide No.1011-2/1758/E1A, dated 3.12.90 and the interim orders are liable to be vacated as the same had become infructuous. The applicant has not been able to make his case which warrants cancellation of his posting to Visakhapatnam and the balance of convenience is in favour of the respondents and the application is liable to be dismissed with exemplary costs.

4. The petitioner himself represented his case personally and argued the matter. Shri Naram Bhaskar Rao, learned Additional Central Govt. Standing Counsel argued the matter on behalf of the respondents. In this case, the petitioner is working in the MES and put up more than 25 years and 6 months service in Pune. Ofcourse, there is a career planning and posting policy to the MES Civilian

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officers. According to the policy, on compassionate grounds, an employee can be transferred and posted to a place where he requires after he completes 20 years of service. In the present case, the petitioner contends that on account of his family difficulties and ill-health of his family members, he wants posting to Pune for four years. In case he is posted to Pune as per his request, he is prepared to lose the last leg posting to his home town. On this ground he made a representation to the Engineer-in-Chief, Army Headquarters, New Delhi through proper channel and the same was duly recommended for favourable consideration by the GE (AFA), Hyderabad; CWE (AF), Secunderabad; CE(P) FY, Secunderabad and GESC Pune and forwarded to the addressee by due date i.e., by 31.7.1990 but the Engineer-in-Chief's Branch, Army Headquarters, DHQ PO, New Delhi without assigning any reasons and completely neglecting the recommendations of the four engineer officers, issued posting order No.MES/246/90 dated 8.10.1990 posting him to Visakhapatnam. The contention of the respondents is that out of 25 years and 6 months service, for more than 19 years, the applicant worked in Pune complex and he is now claiming to go to Pune again. He overstayed at Pune for more than 19 years. The ~~px~~ applicant was relieved from his station and his name was struck off from the strength with effect from 5.12.1990 whereas he stated before the Court on 10.12.1990 that he has not been relieved so far and obtained interim orders by misrepresentation of the facts. Moreover, his representation does not confer any legal right to the applicant to be posted to his choice station alone. The respondents have gone through all the aspects and posted the applicant to Visakhapatnam and the applicant was relieved from the old station. As the application of the applicant was considered at appropriate level duly examining various

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aspects like genuineness of the case, organisational and functional requirements and the suitability of the post etc., and after taking into consideration the provisions of the career planning and posting policy the applicant was posted to Visakhapatnam and so there are no merits in the claim of the petitioner.

5. The petitioner though he put up 25½ years service, he did not involve in any disciplinary action or face any inquiries till now. Now, he has to take care of his mother aged 73 years who is suffering from eye disease and she has to undergo operation and his daughter aged 18 years is also a patient and he lost his father and his family burdens are heavy. So in these circumstances, his presence is required at Pune where his family members are residing. On this ground alone he filed this petition for a relief to post him to Pune and he is prepared to forgo the last leg transfer to his home town and all the concerned Engineers recommended his case for transfer but the Engineer-in-Chief's Branch, Army Headquarters, DHQ BO, New Delhi without assigning any reasons and completely neglecting the recommendations and advice of the Doctors, issued posting orders posting him to Visakhapatnam. Ofcourse, the facts that he narrated appears to be pitiable and so the 4 Engineers might have recommended his case for transfer to Pune but on administrative grounds or in public interest, the higher authorities did not post him to Pune. The respondents stated that the matter of transfer can be considered in the course of time after verifying all the facts that the applicant mentioned in the representation. So the petitioner as a matter of right cannot claim any transfer to the place he requires. Transfers can be made

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only on administrative grounds and also in the public interest. The higher authorities at New Delhi might have felt that on both the grounds the transfer of the applicant cannot be made. Ofcourse, the applicant never faced any enquiry nor any disciplinary action was taken against him all these 25½ years of his service and it appears that the petitioner is discharging his duties properly to the satisfaction of his superiors but he is facing a pitiable condition of his family members and hence, the Engineering officers recommended his case for transfer to Pune. As a matter of right he cannot claim transfer but taking into consideration ~~the~~ pitiable family conditions now the petitioner is facing, we direct the respondents to consider his case on humanitarian grounds and give his posting to the place he requires if rules permit.

6. With the above directions, the application is disposed of. There is no order as to costs. ^{in view of this}

judgment MA 86(91) also stands disposed off.

B.N. Jayasimha

(B.N.JAYASIMHA)
Vice Chairman

MS

(J.NARASIMHA MURTHY)
Member(Judl.)

Dated: 20th February, 1991. *Deputy Registrar(J)*

To

1. The Engineer-in-Chief, Army Headquarters, DHQ PO, New Delhi-11.
2. The Garrison Engineer, Air Force Academy, Hyderabad-43.
3. One copy to Mr.M.A.Tamhankar, Party-in-person
C/O GE(AFA), Hyderabad.
4. One copy to Mr.N.Bhaskar Rao, Addl. CGSC. CAT.Hyd. Bench.
5. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT .Hyd.
6. One spare copy.

vsn

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*85 p. 10/11/91
22/2/91*