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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.416/93

DATE OF JUDGEMENT: 18-5-1993. 1993

Between

B. Seshagiri Rao

.. Applicant

and

1. Secretary,
Ministry of Defence,
New Delhi

2. Commander Works Engineering Co
Visakhapatnam

3. The Engineer-in-Chief's Br.
ANQ New Delhi

4. Chief Engineer, Southern Command
Pune-1

.. Respondents

Counsel for the Applicant :: Mr E.Madan Mohan Rao

Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, challenging the proceedings of the 2nd respondent dated 29.3.93, transferring the applicant from Visakhapatnam to Bombay.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant at present is working as Office Superintendent in the office of the 2nd respondent i.e. 9 IRSD, Kancherapalem Post, Visakhapatnam. The applicant has ~~xxxx~~ been working in Visakhapatnam from the year 1971 after having joined as LDC and obtaining promotion as UDC and office Superintendent, Grade II.

4. The respondents organisation had issued a memorandum requesting the volunteers to move to Bhimunipatnam

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where the respondent had opened a new Project in the name of INS Kalinga. The said Bhimunipatnam is 15-20 kms away from Visakhapatnam. The applicant opted for the posting to the said place. The applicant joined INS Kalinga (Bhimunipatnam) on 8.6.90 and continued till 15.2.1992. The applicant was brought back to Visakhapatnam from I.N.S. Kalinga (Bheemunipatnam) in the month of Feb, 1992. By the impugned proceedings dated 29.3.93, the applicant is transferred from Visakhapatnam to M Bombay. The present OA is filed as already indicated, challenging the said transfer order and also for a direction ^{to the respondents} that the applicant is entitled to continue at Visakhapatnam and to pass such other orders as may deem fit in the circumstances of the case.

5. We have heard Mr E.Madan Mohan Rao, counsel for the applicant and Mr NR Devraj, Standing counsel for the respondents, in detail at the admission stage

6. The fact that the applicant has been working in Visakhapatnam since 1971 prior to his posting to INS Kalinga (Bhimunipatnam) where the respondents had opened a new project is not in dispute in this OA. According to the applicant, his posting from Visakhapatnam to INS Kalinga (Bhimunipatnam) as per proceedings dated 7.6.90 is a transfer. According to the applicant, his posting from INS Kalinga (Bhimunipatnam) to Visakhapatnam in the month of February, 1992 is also a transfer. So, it is contended on behalf of the applicant that transfer to other places in the respondent's organisation of its employees is made on seniority basis and so the applicant is not to be transferred from Visakhapatnam to Bombay as he is not senior enough to be transferred and hence, according to the applicant the transfer is bad.

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Admittedly, the distance between Visakhapatnam and Bhimunipatnam is 15-20 kms only. The respondents had treated Bhimunipatnam as part and parce ~~xx~~ of Visakhapatnam. As a matter of fact, the new Project that was started in the name of INS Kalinga had been closed long back. As ~~xxx~~ Bhimunipatnam has been considered as part and parcel of Visakhapatnam, the seniority of the applicant in his cadre for the purpose of transfer had not been changed due to the applicant's posting in the said new Project, INS Kalinga at Bhimunipatnam. So, the contention of the applicant that the applicant was not senior enough to be transferred from Visakhapatnam to Bombay due to his posting to INS Kalinga (Bhimunipatnam) and back, cannot be accepted, as in our opinion, there has been no transfer of the applicant and the case of the applicant, must be deemed to have been working at Visakhapatnam for all practical purposes.

7. It is strongly contended on behalf of the applicant, that the applicant, while he was working in INS Kalinga had not been paid CCA and HRA at the same rates paid to his counterparts working at Visakhapatnam and due to the non-payment of HRA/CCA that the applicant had been put to serious loss, and so there was no transfer of the applicant from Visakhapatnam to INS Kalinga (Bhimunipatnam) cannot be accepted.

8. As already pointed out, the fact that Bhimunipatnam and Visakhapatnam had been treated as one unit by the respondents is not in doubt. There may or may not be justification on the part of the respondents in not paying HRA/CCA to the applicant while he was working in INS Kalinga (Bhimunipatnam) on par with his counterparts working at Visakhapatnam. But, the question confronted in this OA is whether there has been "transfer" in the real sense of term from Visakhapatnam to Bhimunipatnam and back in the case of

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this applicant. As the respondents have rightly treated both Visakhapatnam and Bhimunipatnam as one unit, the fact that there was transfer of the applicant from Visakhapatnam to Bhimunipatnam and back cannot be accepted. The seniority of the applicant in his cadre for the purpose of transfer of the applicant, had not at all been changed at Visakhapatnam. So, the applicant being senior enough, had been transferred to Bombay as per the impugned proceedings dated 29.3.93. So, in view of this position, the transfer of the applicant is valid and legal.

9. The learned counsel appearing for the applicant relied on the instructions of the Ministry of Defence OM dated 21.5.75 and argued that the transfer is violative of the guidelines relating to transfer of Class III employees. Strong reliance is placed by the counsel for the applicant on clause (c) of para 5 of the instruction which is extracted hereunder:

"Persons reaching the age of 55 years or over should not be transferred except at their own request and to station of their choice unless the transfer is necessitated by promotion....."

According to the applicant, as on today, he is said to be 54 years 9 months. So, it is the contention of the learned counsel for the applicant, that the applicant has reached the age of 55 years and so, a person of the applicant's age can not be transferred as it is violative of the instructions of the Ministry of Defence OM referred to above.

10. A similar contention had been raised before the Madras Bench of the Central Administrative Tribunal in OA 317/87 wherein the Madras Bench held as follows:

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The argument of the counsel for the applicant is that since the applicant is 54 years as on today, it is to be held that he has reached the age of 55 years.

On the face of it, the submission cannot deserve

acceptance. A person can be said to have reached the

Copy to:-

1. Secretary, Ministry, ...
2. Commander Works Engineers(P) 9 IRSD Area, Kancherapalem PO, Visakhapatnam.
3. The Engineer-in-Chief's Br, ANQ New Delhi.
4. Chief Engineer, Southern Command, Pune-1.
5. One copy to Sri. E. Madan Mohan Rao, advocate, 1-1-650/17, Gandhinagar, Hyd.
6. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
7. One copy to Deputy Registrar(Judl.), CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. Copy to Reporters as per standard list of CAT, Hyd.
10. One spare copy.

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age of 55 years only from the actual date on which he reaches that age."

Admittedly, the applicant herein has not reached his 55th year. Persons who are said to have reached 55 years are those who have completed 55 years. So, as the applicant has not reached 55 years and as he is aged only 54 years 9 months he is not entitled to the benefit of the said instruction. We have referred to the Chambers Dictionary to ascertain the meaning of "reach". The meanings to the word "reach" are "to attain to", etc. There cannot be any doubt about the fact a person or a Govt. employee will be entitled for the benefit of the said OM only after passing of his 55th year of age. Admittedly, in this case, the applicant had not passed 55 years of age yet. So, we do not have any doubt in our mind to come to the conclusion that the applicant is not entitled to the benefit of the said OM dated 21.5.79. No malafides, ill will or malice are attributed to the respondents by the applicant in transferring him from Visakhapatnam to Bombay. As the applicant fails in both of his contentions raised before us, the impugned order of the respondents dated 29.3.93 transferring the applicant from Visakhapatnam to Bombay is liable to be upheld and is accordingly upheld. The OA is rejected under the Provisions of §19(3) of the Central Administrative Tribunals Act. Parties are to bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 18-5-1993

18/5/93
DY Registrar (Judl.)

Can B. --- 6/-

5th 1993

A. H/6/93

In the C.A.T Hyd Bench.
at Hyd.

Mem. No. H.T.C.S.R J.00.

Judgement dt. 18/5/93.

O.A. H/6/93.

Dismissed with no
order as to costs.

June 15/93

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7.6.93

