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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 11/95

Date of Order : 23.3.98

BETWEEN :

1. Gattā Sambasiva Rao
2. M. Satyanarayana Reddy
3. S.A.Nageswar Rao

.. Applicants.

AND

Union of India, represented by

1. The Officer-in-Charge,
EME, Records, Trimulgherry,
Secunderabad.
2. The Director General of EME,
Directorate General of EME,
Army Headquarters, DHQ P.O.,
New Delhi.

.. Respondents.

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Counsel for the Applicant

.. Mr.N.Raghavan

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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(As per Hon'ble Shri R.Rangarajan, Member (Admn.))

Mr.N.Raghavan, learned counsel for the applicant and Mr.N.R.Devraj, learned standing counsel for the respondents.

2. There are three applicants in this OA, out of which applicant No.2 has expired. Hence the OA abates ^{so} as far as the applicant No.2 is concerned. Hence the present OA is only in regard to applicants 1 and 3, namely, S/Shri Gatta Sambasiva Rao and S.A.Nageswara Rao.

3. The main contention of the applicants in this OA is that they were promoted to Gr-II Stenographers and transferred outside Secunderabad. They submit that only the junior most should be transferred on promotion. When posts are available for accomodating them at Secunderabad they should have been posted in Secunderabad itself. They further contend that the post of Gr-II Stenographer was available when the promotion orders of the applicants 1 and 3 was issued and posted outside. Hence the transfer of the applicants 1 and 3 to outside on promotion as Stenographer Gr-II is illegal and arbitrary.

4. The second contention of the applicant is that the promotion order issued to them in February 1988 and November 1988 had been kept in abeyance and that these orders are not

cancelled. Hence when the orders are not cancelled they have to be accommodated as and when the vacancies arises in Secunderabad.

5. The third contention of the applicant is that there are 5 posts of Gr-II Stenographers, whereas the respondents had filled only 2 posts of Gr-II Stenographers in February 1988 and in November 1988. Hence the applicants should not have been transferred out of Secunderabad as there were vacancies of Gr-II Stenographers. The cancellation of the posting order posting them outside the Hyderabad by the impugned order No.3494/75/CA 3 dated 12.5.94 (pages-28 & 30) is irregular as these orders, kept in abeyance, were cancelled without application of mind.

6. This OA is filed to set aside the impugned orders No.3494/77/CA 3 dated 12.5.94 and No.3494/75/CA 3 dated 12.5.94 of the Record Officer of EME Records, Secunderabad and communicated by EME Officer (Civ) of MCEME Secunderabad vide letter No.20804/Est (Civ) dated 18.5.94 by holding them as illegal, malafide, arbitrary, unilateral and unjust and for a consequential direction to post the applicants as Stenographer Gr-II in the MCEME, Secunderabad in the existing vacancies restoring all the rights and privileges including the pay and allowances and seniority of the applicants in the post of Stenographers Gr-II from the date of their promotions.

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7. Later applicant No.1 has been posted to Delhi by order dated 21.5.96 and then to Pune in view of the judgement in OA.651/91 and applicant No.3 has been posted as Stenographer Gr-II in Secunderabad itself on 1.10.96.

8. The main contentions of the applicants are discussed that as under. Before it is pertinent to point out here that transfer is an incidence of service. These transfer orders are not liable to be challenged in a court of law unless such transfers are issued under malafide consideration. In this OA we do not find any malafide consideration for transferring them outside Secunderabad in the year 1988. However the learned counsel for the applicants submits that when vacancies are available the applicants are normally to be promoted at Secunderabad itself unless there is overwhelming reason to transfer them out. Hence the only point for consideration is whether there was vacancy at Secunderabad at the material time namely February 1988 and November 1988 to accommodate applicants in Secunderabad.

9. The grade of the Stenographers is decided on the basis of the officers under whom they are to be attached. It is stated that the Lt. General and Major General are entitled for Gr-I Stenographer, Brigadiers are entitled for Gr-II Stenographers and those who are below, namely, Colonels and Lt. Colonels are entitled for Gr-III Stenographers. Further

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even if the vacancies are there in the Stenographers grade II category and promotions are involved, such promotions can be given only when the appropriate officer is available under whom the Stenographer can work. Hence we ask for the chart of officers who were holding the office in MCEME Secunderabad in February 1988 when the applicant No.1 was transferred and in November 1988 when the applicant No.3 was posted outside Secunderabad. There were 14 posts of Stenographers in various grades. In February 1988 there are only 12 officers in the rank of Lt. Gen to Lt. Colonel. The chart produced today shows that all the officers were having the Stenographers admissible to their rank in February 1988. Hence there were no officers in the rank of Brigadier to whom Stenographer Gr-II in MCEME Secunderabad had to be posted. In November 1988 also the same position existed. The number of Stenographers were shown as 14 in November 1988 as one Major was included in that list for whom Stenographer Gr-III was eligible to be posted.

10. In view of the above position existing at the relevant time the applicants cannot be posted as Stenographer Gr-II even if vacancies were available as no officer under whom they have to work were available. They can be posted only in a post where they can be accommodated under the appropriate cadre officers. Hence we do not find any irregularity in transferring the applicants outside the Secunderabad in February 1988 and November 1988.

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11. The next contention of the applicants is that the promotion orders issued to applicants 1 and 3 in February 1988 and November 1988 were kept in abeyance and they are not cancelled. But the order challenged by them dated 12.5.94 itself clearly shows that those orders had been cancelled. We are not sure the reasons for challenging the impugned orders if their posting orders outside Secunderabad are still kept in abeyance. Hence this contention has no substance and has to be rejected. Further it is also to be noted that the cancellations by the impugned order were issued after giving them proper notice. Both the applicants ^{/ 183 had} replied to those show cause notices and on that basis the cancellation orders were issued. Hence it has to be observed that the impugned orders were issued after due notice to the applicants and after hearing them.

12. We have already stated above that the posting of Stenographers depends on the availability of the appropriate grade officers in the MCEME at Secunderabad to post them as Stenographer Gr-II. In the list it is shown that there were 3 Brigadiers in February 1988 and November 1988. They are only entitled for Gr-II Stenographers. They were given the Stenographers of Gr-II by the incumbent shown in the list. Hence even if the vacancies are available the applicants cannot demand to post them when there are no officers available in the rank of Brigadier in February 1988 and November 1988. The higher grade Stenographer cannot be asked to work under those who

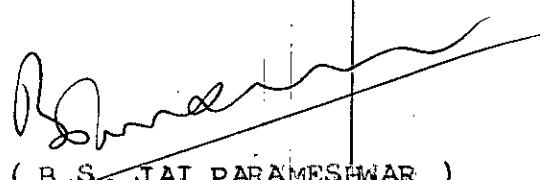
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are not in the rank of Brigadier as that will cause extra expenditure to the Government. Hence this contention also fails.

13. In view of what is stated above, we find that there are no merits in this OA. Hence the OA is liable only to be dismissed. However, we will observe here that the applicants can apply for transfer to Secunderabad as Stenographer Gr-II in future vacancies. In that case their names have to be registered and considered sympathetically for transfer to Secunderabad.

14. ^{With} In view of the above observation the OA is dismissed. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Adm.)

Dated : 23rd March, 1998

(Dictated in Open Court)


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Copy to:

1. The Officer in Charge, EME, Records, Trimulgherry, Secunderabad.
2. The Director of General of EME, Directorate General of EME, Army Head Quarters, DHQ P.O., New Delhi.
3. One copy to Mr. N. Raghavan, Advocate, CAT, Hyderabad.
4. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

A.D.

THE HON'BLE MR. B. S. JAI PARAMESHWAR :
M(J)

DATED: 23/3/98

ORDER/JUDGMENT

M.A./R.A/C.A.NO.

in

D.A.NO. 11/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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