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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.1436/95

Between:

Date of Order: 12.2.96.

P.S.R.Sharma

...Applicant.

And

1. The Director General, E.M.E.,
Army Head Quarters, DHQ - P.O.,
New Delhi - 110 001
2. The Commandant, HQrs.,
1, E.M.E. Centre,
Secunderabad - 500 587.

...Respondents.

Counsel for the Applicant : Mr.V.Venkateswar Rao

Counsel for the Respondents : Mr.N.V.Ramana, Addl.CGSC.

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

contd...

O.A.No.1436/95.

Date: 12.2.1996.

J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

The applicant in this OA is working as Senior Technical Training Instructor (STTI) under R-2. It is stated for the respondents that the post of STTI in 1, EME Centre, Secunderabad under R-2 has become surplus and hence he was transferred to Bhopal in the same capacity. The seniority unit of the STTIs and JTTIs both at Secunderabad and Bhopal is maintained as a common seniority unit. The impugned posting order posting the applicant to 3, EME Centre, Bhopal was issued as per office order No.20921/EST/CIV dt. 11.3.1995. This office order was challenged in OA 663/95 on the file of this Tribunal which was disposed of by order dt. 25.9.1995 directing R-1 therein to consider the case of the applicant for retention at 1, EME Centre, Secunderabad either in the category of STTI and if it is not possible to retain him in that post, to consider his case for reversion as JTTI and posting him in the vacancy at 1, EME Centre, Secunderabad as it was stated that vacancy of JTTI exists at Secunderabad. But, the representation of the applicant was rejected by R-1 stating that retention of the applicant in the higher post of STTI is not feasible as there is no vacancy at 1, EME Centre, Secunderabad and he cannot also be retained on reversion to lower post of JTTI as the only vacancy of JTTI at 1, EME Centre, Secunderabad has been reserved for SC/ST category under special recruitment drive.

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2. Aggrieved by the above, the applicant has filed this OA praying for setting aside the order No. 506/PSRS/EST/CIV dt. 30.10.1995 declaring the same as illegal, arbitrary, malafide and unconstitutional and retaining him at 1, EME Centre, Secunderabad either as STTI or JTTI on reversion.

3. The applicant while working as STTI under R-2 met with an accident and hence he became an handicapped person. Osmania General Hospital authorities also issued certificate to the above effect. Further, he has a family of two children who are studying in the school and in the 2nd year Intermediate at Secunderabad. In view of the above circumstances, he requested for his retention at Secunderabad as STTI. He further submitted that in case he cannot be accommodated as STTI as the post has become surplus and has to be surrendered, he requested the concerned authorities for retaining him at Secunderabad even on reversion as JTTI as one post of JTTI is vacant at Secunderabad EME Centre under R-2. But, even that request for reversion has not been conceded on the plea that the vacant post of JTTI is kept reserved for accommodating a reserved community candidate whose selection has been finalised and posting order has to be issued shortly. Under the above circumstances, he has approached this Tribunal for the relief as indicated above.

4. The contention of the respondents in not retaining him as STTI at Secunderabad or to consider his request to post him as JTTI at Secunderabad on reversion are three-fold.

5. The first contention is that as the post of STTI has become surplus the applicant cannot be continued in that post as this post has to be surrendered. His request for reversion as JTTI cannot also be acceded to as the vacant post of JTTI is meant to be filled by reserved community candidate and hence he cannot be accommodated against this post even on reversion. It is also the case of the respondents that the selection for inducting a reserved community candidate as JTTI is completed and the said incumbent has not so far been posted due to ban on filling up the vacancies and as the ban had been lifted, the selected reserved community candidate will be posted against this post very shortly and hence the applicant's request for reversion cannot be acceded.

6. The plea of the respondents that the applicant cannot be continued as STTI as the post of STTI has become surplus has to be acceded to as a surplus post cannot be operated indefinitely and the incumbent of the surplus post may have to be necessarily be shifted in accordance with the rules. Hence, the contention that the applicant cannot be retained as STTI in the surplus post at 1, EME Centre, Secunderabad has force.

7. But the applicant himself has asked for reversion as JTTI and there is a post of JTTI vacant under R-2 presently. It was further intimated that the said post is vacant for a very considerable period. The only reason for not filling up the said post is due to ban on fresh recruitment. But, at the same time it is also stated for the respondents that this post has to be

filled by a reserved community candidate as quota for reservation has to be fulfilled. When there is a roster point for filling up there can be no restriction to fill up that post even if there is ban for fresh recruitment. No rule or instruction has been produced to show that there is ban even for filling up posts reserved for SC/ST against roster points. In the absence of production of any such rule, it has to be held that no such rule is in existence and hence there can be no objection to fill up this post by the applicant and the reserved community candidate is fitted against the same grade post elsewhere in the same seniority unit.

8. The second point for consideration is whether the reserved community candidate who is reported to have been selected is to be posted only at Secunderabad as JTTI. The cadre of STTI/JTTI is born on a common seniority unit of the establishment at 3, EME Centre, Bhopal and 1, EME Centre, Secunderabad. Hence, the roster point will be consumed even if reserved community candidate is posted at Bhopal. It is not necessary that the reserved community candidate is necessarily be posted at Secunderabad to consume the roster point when the seniority unit at Bhopal and Secunderabad are born on a common seniority unit. Even if reserved community candidate is posted at Bhopal the rules for reservation will be fulfilled. The only reason for the respondents to post him at Secunderabad is that he has been selected for posting in the post at Secunderabad. It is not clear why such a preferential treatment should be given to a newly recruited candidate when an employee already in service who is in need of retention at Secunderabad on

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account of his physical condition and family circumstances requests for retention at Secunderabad. The fact that the applicant is a handicapped person and the family circumstances compels him to stay at Secunderabad though not accepted by respondents cannot be taken on the face value as the same is not backed by details for such denial.

9. The seniority unit of Bhopal and Secunderabad for the post of JTTI is one and the same is accepted. Posting reserved community candidate at Bhopal will meet the requirement as provided for in the reservation request on rules. Hence, the applicants on the basis of his willingness for reversion to the post of JTTI has to be accepted and on that basis he has to be posted at JTTI at Secunderabad against the vacant post.

10. The learned Standing Counsel submitted that the post vacant at Bhopal is STTI and hence the reserved community candidate who is selected for JTTI cannot be posted against higher post. The post of STTI at Bhopal has to be filled by some JTTI on promotion. As it has not been indicated by the respondents that the post of STTI at Bhopal is not to be filled and the very fact that the applicant has been transferred as STTI to Bhopal, it clearly indicates that there is need to fill up the post of STTI at Bhopal. If that be the case any other JTTI due for promotion to STTI has to be promoted and posted against that vacant post of STTI at Bhopal and the resultant vacancy of JTTI has to be filled by reserved community candidate who is reported to have been selected and waiting for posting.

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11. The learned Standing Counsel further submitted that there may not be a JTTI who fulfilled all conditions for promotion to the post of STTI and hence a vacancy of JTTI may not arise. In that event the post of STTI at Bhopal may be downgraded and temporarily operated as JTTI/and the selected reserved community candidate accommodated against the downgraded post. Hence, this contention also is not sustainable.

12. The next contention of the respondents is that it is a prerogative of the administrative head of the department to order transfers on merits of each case and hence the transfer orders cannot be challenged. I fully endorse the view of the learned Standing Counsel for the respondents that the transfer orders cannot be interfered with/as it is an executive act. But, there is no bar for the court/Tribunal to interfere with such orders when there is a prima facie and case to interfere/when such orders are issued without proper understanding of the case. I have already said in the previous paragraphs that in view of the circumstances in which the applicant is placed his case for transfer to Bhopal has to be reconsidered. I have also said already that in case he cannot be retained as STTI at Secunderabad he should be considered for a post of JTTI on reversion, for which the applicant has given his willingness.

13. Para-5 of the Army Instructions at page-22 of the material papers (A-10) clearly states that the absorption in a lower appointment when there is a surplus

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in the higher post is permitted if the individual concerned has given his willingness in writing to accept such an appointment. As the applicant herein has given his willingness to accept a lower appointment as JTTI, I see no reason for not accepting the same as instruction to that effect is already existing. In view of this also the transfer orders issued to the applicant on administrative ground can be reconsidered and posted as JTTI at Secunderabad.

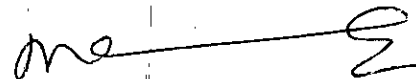
14. The next contention of the respondents ^{is} that the applicant may ask for protecting his pay which he was drawing as STTI if he is posted as JTTI. The rule in this connection is very explicit. Whenever any employee is posted to a lower grade on his own volition he is entitled for protection of his pay which he is drawing in higher grade only to the extent that such protection of pay does not exceed beyond the maximum of the scale of pay in the lower grade in which he is absorbed. In this case, as the applicant has to be posted as JTTI, his basic pay after his posting as JTTI can be protected only to the maximum of the scale of pay of JTTI.

15. Interim direction had already been given to the effect that the applicant should take leave till the OA is disposed of. The applicant should present a copy of this order to R-2 by 1.3.1996 for posting as JTTI. If he presents the same by 1.3.1996 the period from the date of relief till 29.2.1996 should be treated as leave due to him. If he fails to present a copy of

this order by 1.3.1996, the period beyond 1.3.1996 till he presents this order will be treated as dies-non.

16. In the result the impugned order dt. 30.10.1995 bearing No.506/PSRS/EST/CIV is set aside and the applicant has to be posted as JTTI on reversion at Secunderabad under R-2 after getting his willingness letter for reversion. His absence from the date of relief till he is posted as JTTI in pursuance of this direction should be regularised as indicated in para-15 supra.

17. No costs.


(R.Rangarajan)
Member (Admn.)

Dated 12th Feb., 1996.
open court dictation.

Grh./Sd.


15246
DEPUTY REGISTRAR(J)

To

1. The Director General, E.M.E., Army Head Quarters, DHQ - P.O., New Delhi - 110 011.
2. The Commandant, Hqrs., 1, E.M.E. Centre, Secunderabad - 500 587.
3. One copy to Mr.V.Venkateswar Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr.N.V.Ramana, Addl.CGSC, CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One spare copy.

YLKR

11/7/96
TYPED BY
COMPARED BY

C.C. by 19.2.96
CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

HON'BLE SHRI A.B. GORTHI: MEMBER(A)

HON'BLE SHRI R. Ranga Rao

DATED: 12-2-96

ORDER/JUDGMENT

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

IN

D.A.NO. 1436/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

* * *

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Central Administrative Tribunal
दस्तावेज/DESPATCH

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