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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.466 of 1996

DATE OF ORDER: 20th August, 1998

BETWEEN:

T.S.R.SASTRY

.. APPLICANT

and

1. Union of India rep. by
the Secretary, Ministry of Defence,
New Delhi,

2. The Flag Officer Commanding-in-Chief,
Headquarters,
Eastern Naval Command,
Visakhapatnam 530 014.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.K.SUDHAKAR REDDY

COUNSEL FOR THE RESPONDENTS: Mr.K.BHASKAR RAO, ADDL.CGSC

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)

JUDGEMENT

(ORAL ORDER PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDL.)

Heard Mr.K.Sudhakar Reddy, learned counsel for the applicant and Mr.K.Bhaskar Rao, learned standing counsel for the respondents.

2. The applicant herein retired as Civilian Educational Instructor from INS Circars, Visakhapatnam in the month of August 1994 on attaining the age of superannuation. At that time he was drawing a pay of Rs.2660/- after granting stagnation increments.

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3. It is stated that his junior Mr.Ch.Veer Raju was stagnated and hence his pay was fixed in the In-Situ promotion scale by the office order No.CEO/35/95 dated 25.10.95.

4. When the applicant came to know of this, he submitted a representation and his representation was considered and rejected by the impugned order No.CE/2700 dated 14.2.96.

5. Hence the applicant has filed this OA for a direction to the respondents to consider his case for In-situ promotion scale i.e, Rs.1640-2900 with effect from June 1993 and pay all the terminal benefits after fixing his pay and further direct the respondents to fix his pension and pay the arrears of pay.

6. The respondents have filed a reply stating that Govt. of India had issued criteria for giving In-situ promotion after one year of reaching maximum of the pay scale vide Ministry of Defence (Department of Expenditure) OM No.10-1-EIII/88 dated 13.9.91. As per the provisions contained therein, the scheme shall be applied to (i) employees who are directly recruited to a Group 'C' or 'D' post; (ii) employees whose pay on appointment to such a post is fixed at the minimum of the pay scale; and (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post. Subsequently, on a point of doubt raised by certain Ministries/Departments it has been clarified by the

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Ministry of Finance in their letter dated 13.1.93 that the In-situ promotions have been provided for those who do not have promotional grade at all and also for those who have promotional grade but do not have vacancies for promotion even after one year of stagnation at the maximum of the scale. When vacancies are available and the incumbents who refused to accept regular promotion, such incumbents cannot be considered for In-situ promotion.

7. The respondent-authorities considered the representation of the applicant in accordance with the rules and instructions issued by the Department and sent a suitable reply. It is stated that the applicant was offered regular promotion in INS Chilka outside Visakhapatnam. Hence the applicant's representation for his retention at Visakhapatnam on promotion on compassionate grounds was not acceded to by the competent authority since there was no sanctioned post/vacancy of Civilian Educational Officer at Visakhapatnam. The applicant finally submitted a representation on 8.4.95. His representation was categorically and very clearly replied stating that he did submit his unwillingness and refused to take up the promotion. Based on the above and keeping in view the existing Govt. of India orders on the subject, the applicant was not entitled for In-situ promotion scale.

8. The applicant was informed by the impugned order dated 14.2.96 giving facts as above and his case was rejected.

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9. Shri K.Sudhakar Reddy, learned counsel for the applicant strenuously argued that the applicant had to forego his promotion by going to Andaman as he was left with only 1½ years of service and he had plenty of family problems to carry out the transfer. Hence some relaxation had to be shown in his case and he should be provided with In-situ promotion scale as was done to his junior as the OM itself was issued later than his retirement. It was also strenuously argued by the learned counsel for the applicant that the OM dated 30.9.91 was not known to him and hence he was not aware of the full contents of the OM. Had he known the full contents of the OM, he would have challenged the same or he would have carried out his transfer.

10. We heard with patience the long and extensive arguments of Mr.Sudhakar Reddy, learned counsel for the applicant. If the applicant had some problem to carry out the promotion on transfer to Andaman, he should have approached a proper judicial forum in case his request for cancellation of the transfer on promotion was not agreed to by the Deparment-authorities. But unfortunately, he gave his unwillingness without any hesitation to stay at Visakhapatnam. Hence it has to be held that the applicant was not willing to move out of Visahapatnam even on promotion transfer and hence he gave his unwillingness without probably knowing the repercussions later. Though it is said that the applicant could not foresee the repurcussions, we do not think such attitute on the part of the applicant may not be appropriate. Government employee would foresee what will happen if promotion is declined. He could have also foresee how his unwillingness would

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affect him especially so when the Department had issued the letter dated 30.9.91 on the basis of the OM dated 13.9.91. The contention of the applicant that the OM was not brought to his notice is no reason to give him the relief. An employee especially a higher grade employee cannot say that he is not aware of the instructions issued by the Government. He has to look into the Gazette and other journals to know the various instructions issued by the Government from time to time. Hence think that the applicant had not applied his mind while giving his unwillingness to the respondents.

11. The second point is that the cause of action arose in 1995 when his junior was given the In-situ promotion accordingly he is also eligible and hence he immediately filed this OA. The case of his junior is entirely different. Comparing his case to that of his junior does not arise as his junior was never given promotion nor had he refused any promotion. The applicant was given promotion which he refused. Hence comparing his case with that of his junior will not arise and challenging the notification of 1995 on that ground is invalid.

12. We could have actually given some relief to the applicant had there been any vacancy in the Department at Visakhapatnam. It has been clearly stated in the reply that there was no vacancy at Visakhapatnam to promote the applicant. Govt. cannot spend money on philanthropic way at the cost of the public exchequer. Hence when there was no post vacant, it is proper for the Govt. not to promote an employee against a non-existing post.

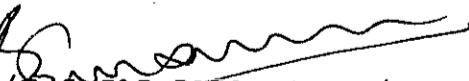
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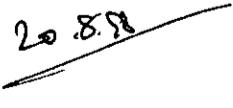
13. The applicant submits that the post at Andaman to which he was transferred was never filled and hence Govt. could not deny him the In-situ promotion and even his junior was not promoted against that post at Andaman. It is not for the applicant to state who should be promoted and when. Govt. could have made some alternative arrangement to look after the duties at Andaman. It may be possible that some ad hoc promotion for looking after duties at Andaman could have been arranged. But these details need not be gone into in this case as the Department has to run the administration some how and on the basis of the unwillingness of the applicant, the Department cannot be allowed to suffer.

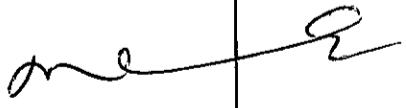
14. In view of what is stated above, the applicant cannot get any relief in this OA. We feel sorry that a retired employee could not get the financial benefits and the Bench is unable to give him any relief on humanitarian considerations.

15. In view of the above, we do not find any illegality in the impugned order. Hence we have no other alternative except to dismiss this OA.

16. The OA is accordingly dismissed. No order as to costs.

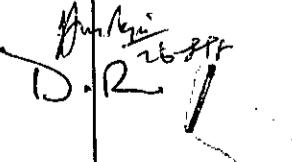

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)


20.8.98


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 20th August, 1998

Dictated in the open court.


D.R.

DA.466/96

Copy to:-

1. The Secretary, Ministry of Defence, New Delhi.
2. The Flag Officer, Commanding-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam.
3. One copy to Mr. K. Sudhakar Reddy, Advocate, CAT., Hyd.
4. One copy to Mr. K. Shaskar Rao, Addl. CGSC., CAT., Hyd.
5. One copy to BGJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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11/11/98 (7)

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARMESHWARI :
M(J)

DATED: 20/8/98

~~ORDER/JUDGMENT~~

~~M.A/R.A/C.P.NO.~~

in
C.A.NO. 466/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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केन्द्रीय व्यापासनिक अधिकरण Central Administrative Tribunal प्रेषण / DESPATCH
31 AUG 1998
हैदराबाद न्यायालय HYDERABAD BENCH