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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

ORIGINAL APPLICATION No.915 of 1996.
DATE OF DECISION : 31-07-96.

Posa Veera Linganna .. Applicant.

Vs

1. The Deputy General Manager(Personnel)
Naval Dockyard, Visakhapatnam.
2. The Manager (Personnel Service),
Naval Dockyard, Visakhapatnam.
3. The Admiral Supreintendent,
Naval Dockyard, Visakhapatnam.
4. The Flag Officer
Commanding-in-Chief,
Naval Dockyard, Visakhapatnam.

5. D.Ranga Rao .. Respondents.

Counsel for the Applicant : Mr.D.Chandra Sekhar

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

CORAM:-

THE HON'BLE SHRI JUSTICE M.G.CHAUDHARI : VICE CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.)

ORDER

ORAL ORDER

(Per Hon'ble SHRI JUSTICE M.G.CHAUDHARI : VICE CHAIRMAN)

Heard Mr.D.Chandra Sekar, learned counsel for the applicant.

2. By general order dated 27-02-1996 issued by the personnel Department Naval Dockyard the applicant is promoted as Foreman (ICE) with posting at Calcutta. The applicant is presently working as Senior Chargeman, at Naval Dockyard, Visakhapatnam. He is aggrieved by his posting at Calcutta and desires to be retained at Visakhapatnam. The reason stated is to be personal grounds. He was offered promotion earlier as Chargeman in 1992 but he had refused to accept the same as he desired

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to be retained at Visakhapatnam since the promotion was coupled with transfer.

3. In pursuance of the above mentioned order by further order dated 07-09-1996 willingness of the applicant was called for to take up promotion at Calcutta. The applicant had not exercised that option. The learned counsel for the applicant submits that the transfer order has not yet been given effect to.

4. Against the posting at Calcutta by order dated 27-02-1996 the applicant submitted representations to the respondents. The last representation was filed on 05-03-1996 followed by a further representation dated 28-03-1996. It is stated by the applicant that no reply has been received. Transfer is a matter which lies within the administrative powers of the department. The Tribunal would not interfere with the departmental transfers and all grievances are to be made to the authorities concerned. A transfer can be interfered with if it is shown that it is ^{tainted} ~~tendered~~ with malafides or ^{is} in breach of any rules or instructions ^{or} is discriminatory. Doubtless in sub-para-E of para-4 of the OA some facts have been stated and it is sought to be contended that though the name of the applicant in the seniority list of roster makes ^{him} it seniormost in the trade. One Mr.D.Ranga Rao, R-5 who is presently working as Foreman (ICE), WOT, Calcutta has been transferred to Visakhapatnam where ~~thre~~ applicant could have been easily posted and although it is not so stated in the said paragraph that it amounts to discrimination, the ^{learned} counsel submitted that this is a

[Signature]

discrimination. Even assuming that the ground of discrimination is raised on these facts we cannot appreciate the ground at all, as the respondent No.5 is already holding the post of Foreman and seniority in the grade has to be looked at for which he will be senior as the applicant is yet to be promoted as Foreman, ~~and taken~~. Therefore it cannot be said that between two equals differential treatment has been given. In para-6.3 of the OA, it is alleged that the action of the respondents is arbitrary and discriminatory in asking to go to Calcutta although he is seniormost in the panel of ICE Trade and in offering the posting at Visakhapatnam to respondent No.5.

✓ We ^{have} already referred ^{to} these contentions above. There is not even prema-facie a case of discrimination disclosed, as

✓ There is no allegation^{made} that the order is malafide. The order is general order of transfer relating to 36 officers in Enclosure-I and 24 officers in Enclosure-II to the list. It is difficult to read any malafides ~~in effect~~ in this order ^{relating to the applicant}.

✓ 5. It is true that in the year 1992 the applicant had even foregone the promotion. On that occasion he was transferred as Foreman to Port Blair. On the ground of sickness of his wife and also of his children he represented that he may be retained at Visakhapatnam. He could be retained in the existing post and therefore he had lost the promotion at that time. It may appear that for the very same reasons if he desires to ^{be} retain^{ed} at Visakhapatnam the respondents should have sympathetically considered those circumstances. In the representation now

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filed also he has made a reference to the sickness of his wife stating that he has to provide medical assistance to her. We do not know as to why the applicant feels that medical assistants will not be available at Calcutta. ✓ Whatever ~~that~~ it is those are the grounds ^{for} ~~by~~ the respondents to examine.

6. The applicant in our view should have exercised his willingness and he could have joined the post at Calcutta on promotion and then could have requested the authorities to consider his transfer back to Visakhapatnam. ✓ ^{because of} But ^{his} insistence that he should not be transferred out of Visakhapatnam, he did not exercise the willingness as was required to be done by order dated 07-06-1996 on or before 12-06-1996. ✓ ~~as~~ That order stipulated that in the event of failure to submit the willingness by then the candidature will be debarred for a period of one year and casualty to that effect ~~he~~ will be promulgated in the CE order. ✓ The learned counsel for the applicant submits that neither the promotion ^{has} ~~have~~ been effected so far nor any action is taken under the order dated 07-06-1996. We wish that the applicant does not stand debarred by failure to exercise his willingness on the terms of that order.

7. Whatever it may be, we have no legal grounds to interfere in the transfer. Since it is stated that the representations of the applicant have not been replied, we leave it open to the applicant to submit immediately a further reminder along with the copy of this order and we hope that the concerned authorities will consider the

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matter in sympathetic manner trying to understand the genuine difficulty of the applicant and reply to the applicant suitably. We ~~have to~~ make it clear that the matter will be entirely within the powers of the authorities concerned and it should not be understood ^{that we} ~~we~~ ^{one way or the other} ~~will~~ ^{we have} given any direction except that ^a ~~the~~ sympathetic consideration deserves to be bestowed on the representation of the applicant. We also express no opinion about the consequences of the order dated 07-06-96 and it is left to the authorities concerned to consider the same while deciding the representation. All that we would say is that the authorities concerned should consider the representation after the reminder is filed expeditiously and convey their decision to the applicant so that he knows ^{his} ~~that~~ position finally.


8. The OA is rejected subject to the observations made above.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(M.G. CHAUDHARI)
VICE CHAIRMAN

Dated : The 31st July 1996.
(Dictation in the Open Court)

SPR


Deputy Registrar (D) CC

O.A.915/96.

To

1. The Deputy General Manager(Personnel)
Naval Dockyard, Visakhapatnam.
2. The Manager(Personnel Service)
Naval Dockyard, Visakhapatnam.
3. The Admiral Superintendent,
Naval Dockyard, Visakhapatnam.
4. The Flag Officer,
Commanding-in-Chief,
Naval Dockyard, Visakhapatnam.
5. One copy to Mr.D.Chandrasekhar, Advocate, CAT.Hyd.
6. One copy to Mr.V.Bhimanna, Addl.CGSC.CAT Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 31-7-1996

~~ORDER~~/JUDGMENT

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

in

O.A.No. ~~395/96~~ 915/96.

T.A.No. (W.P.)

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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