

(103)

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A. No.80/99

DATE OF ORDER : 23-4-1999.

BETWEEN :

G. GURUMURTHY

.. APPLICANT

A N D

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

2. Chief of Personnel,
Naval Head Quarters,
New Delhi.

3. Chief of Naval Staff,
Naval Headquarters,
New Delhi.

4. Controller of Naval Armanent Inspection,
Controllerate of N.A.I., NAD,
Visakhapatnam.

.. RESPONDENTS

Counsel for Applicant : Mr.P.B. Vijayakumar.

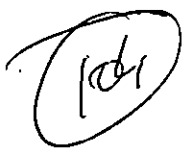
Counsel for Respondents : Mr.B.N.Sharma,Sr.CGSC

CORAM :

THE HONOURABLE MR.JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

... Contd...



O R D E R.

Justice D.H. Nasir, VC :

1. The applicant is working as Senior Chargeman (Ammunition) under respondent No.4. He was transferred on promotion from Naval Armament Inspectorate, Visakhapatnam to N.A.I. Mumbai by letter dated 29.11.1996 by respondent No.2. The applicant did not feel inclined to go on transfer and therefore, made a representation for his retention at Visakhapatnam even by forgoing promotions, if so warranted, on the ground that impediments would be created in the education of his children and in the treatment of his wife who was sick. However, the same was not acceded to by the respondents.

2. Earlier, the applicant filed OA 1507/98 before this Tribunal seeking intervention in the matter. The Tribunal disposed of the same by an order dated 13.11.1998 with following directions :

- (a) The respondent No.2 shall consider the alternatives submitted by the applicant and take a suitable decision. Till such time the impugned movement order dated 18.9.1998 is suspended. The respondent no.4 shall take a decision as per rules within four weeks from the date of receipt of a copy of this order;
- (b) Till the respondent No.2 takes a decision on the representation of the applicant dated 9.10.1997, the respondent No.4 is directed to permit the applicant to continue in the post which was holding prior to his promotion;
- (c) The period of absence of the applicant from 11.4.1998 onwards shall be regularised as per rules.

3. However, the applicant was not taken on duty in spite of the Tribunal's directions as stated above and his absence from 11.4.1998 was also not regularised.

4. The applicant further pleads that he had not given any unconditional waiver for promotion. The vacancy of Foreman at Visakhapatnam was still there against which the applicant's case could have been considered. His offer for waiver of promotion and retention at Visakhapatnam was only on health grounds and the respondents should have sympathetically considered his case, according to the applicant. Even otherwise, according to the applicant, he was due for promotion as he had completed 24 years of service at Visakhapatnam. This, the applicant said, clearly spoke of the respondents' intention being mala fide.

5. It is also urged by the applicant that one Mr. A.S.S.R. Murthy who had volunteered to go to Mumbai in his place could have been adjusted in his vacancy but even this was not agreed to on the ground that Mr. Murthy was due to retire in August, 1998 and therefore, it was against the administrative convenience and transfer policy. Eventually Mr. Murthy was transferred elsewhere and the vacancy was still there where the applicant was to be posted.

6. The respondents oppose the applicant's case by counter affidavit dated 24.2.1999. According to the respondents, since all the representations made by the applicant were considered and rejected, the movement order dated 11.4.1998 was attempted to be served, but the applicant refused to accept the same. It was, therefore, decided to deliver the movement order in the presence of three officers of the Controllorate but the applicant avoided the service; and therefore, the applicant's name

was struck off the strength of the said Controllerate with effect from 11.4.1998 and the applicant was expected to report at C.N.A.I., Mumbai either immediately or after availing joining time.

7. Further, according to the respondents, all medical certificates relating to his wife or his orthopedic problem were issued by the same doctor Dr.B.D.Naidu of Ortho IIIrd Unit at King George's Hospital at Visakhapatnam. The disease described in the medical certificate for both, applicant, and his wife, is Disc Prolapse with Sciatica for which the wife was bed-ridden (as per claim of the applicant) but he was permitted to move only 20 Km per day. This peculiar certificate restricting the movement is a certified true copy and does not bear the signature of a doctor. Even the name of the officer certifying is also not mentioned and does not bear the office seal of KGH Hospital, as stated in para-7(b) of the counter.

8. It is further contended by the respondents that the past record of the applicant did not indicate that the applicant availed of any leave on medical grounds and the applicant's sole intention was to avoid the transfer under one pretext or another. The applicant also did not claim any medical expenses on account of the aforementioned ailments since 1995 either for himself or for his wife. Further, according to the respondents, the medical claims of the applicant were received for other ailments such as Bronchitis, Dyspepsia, Pharyngitis, Amoebiasis, Dysentery, colic, Lumbago and Urinary tract infection etc. for himself and his wife.

9. It is further pointed out by the respondents that there is no vacancy in the post of Senior Chargeman at

Controllerate at N.A.I. Visakhapatnam. There was no possibility to consider and continue the applicant at Visakhapatnam. His request for consideration as Foreman at Controllerate of N.A.I. Visakhapatnam was also not possible.

10. Further, according to the respondents, no vacancy of Chargeman 'A' was ^{also} available at Visakhapatnam due to increased indigenous activities at Mumbai, Jabalpur and Kirkee necessitating the positioning of additional man power in these stations. The applicant was transferred to Visakhapatnam in May, 1990 on compassionate grounds by transferring a vacancy from Jabalpur to Visakhapatnam and that the benefit of compassionate grounds cannot indefinitely be continued to be extended to the applicant and that the 'vacancy' had to be transferred back to the aforesaid stations. Time and again the applicant requested for retention at N.A.I. Visakhapatnam on health grounds. The genuineness of the medical certificates issued to the applicant was ^{also} in question. The report of the Medical Board regarding medical check up carried out on 6.6.1998 had not been made available to the authorities.

11. Further, according to the respondents, the order No. AI/1341 dated 29.12.1998 had been issued keeping in view all the facts of the case since beginning as well as the exigencies of administrative requirements and that the transfer was made in accordance with the general policy followed in the Department.

12. It is further pointed out by the respondents that due to change in Government policy, the retirement age of Government servants had been raised by two years and therefore, A.S.S.R. Murthy was due for retirement only in

August, 2000. About the availability of vacancy of Foreman 'A' at NAI Visakhapatnam, it is stated in the counter that no vacancy either of Foreman (Ammn) or of Senior Chargeman (Ammn) was available at Visakhapatnam as on 11.4.1998, and that the indigenous activity had increased at Mumbai, Jabalpur and Kirkee necessitating additional staff at those stations.

13. The applicant expressed his inability to proceed on transfer even at the cost of his promotion so that he may be retained at Naval Armament Inspectorate at Visakhapatnam. However, the Naval Headquarters did not accept the request of the applicant on the ground of exigencies of work. On 11.4.1998 when movement order was delivered to the applicant, he refused to accept the same. The ground advanced by the respondents that the applicant never projected his medical problems prior to the issue of the transfer order is borne out of official records. The applicant also did not indicate that he had availed any leave on medical ground. There is also no vacancy according to the respondents, in the post of Senior Chargeman at Controllorate at Naval Armament Inspectorate, Visakhapatnam and there was no possibility to consider and continue the applicant at Visakhapatnam even if promotion was waived by him. The general policy followed by the respondents in cases of transfers is stated in para-7 of the reply affidavit which is reproduced below :

"(i) Transfer preferably on promotions.

(ii) Transfer to adhere to following criteria.

(aa) Number of years in station. If transfer is inevitable then First in First out policy would be adopted.

(ab) Total number of transfers undergone.

(ac) Specialisation.

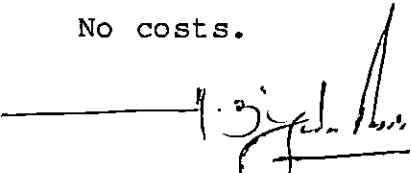
(ad) Number of years of remaining service."


In paragraph-15 of the reply affidavit it is pointed out by the respondents that in view of disintegration of Soviet Union there had been no supply of critical spares and in order to keep the aging inventory operational, there was a national need to undertake rapid indigenisation and that it was for the applicant to raise to the occasion and move to Mumbai. Ground of children's education also does not appeal to us because children are understood to have grown up.

14. It need hardly be stated that 'transfer' is an incidence of service and the presumption is that it is resorted to for administrative convenience, unless it is rebutted by the concerned public servant by satisfying the Tribunal that the transfer was vindictive or punitive or was tarnished by any extraneous consideration. It is a well settled proposition of law that no more than three years' stay in any particular post be encouraged lest any vested interest maybe created leading to ill-gotten advantages of public post for over a long period of time at one place. We are, therefore, not inclined to interfere with the order of transfer of the applicant to Mumbai.

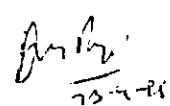
15. In the result, therefore, the O.A. is dismissed.

No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D. H. NASIR)
VICE-CHAIRMAN.

DATED THE 23rd APRIL, 1999.


23-4-99

COPY TO:-

1. HDHND

2. HHRP M(A)

3. HBSJP M(J)

4. B.R.(A)

5. SPARE

1ST AND 11ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE - CHAIRMAN

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 23.4.99

ORDER / JUDGEMENT

MA./R.A./C.P.No. —

IN

C.A. No. 80/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

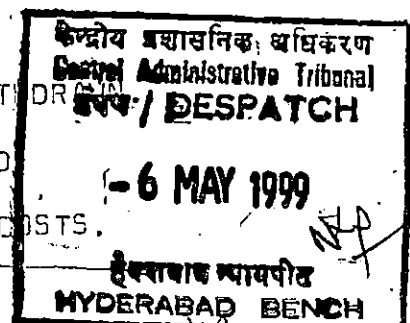
DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED/REJECTED.

NO ORDER AS TO COSTS.

SRR



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