

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 237 of 1994.
XAX XX.

DATE OF DECISION 28-7-1995.

Sri Rameswar Talukdar.

(PETITIONER(S))

Mr N.Dhar

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (s)

Mr G.Sarma, Addl.C.G.S.C.

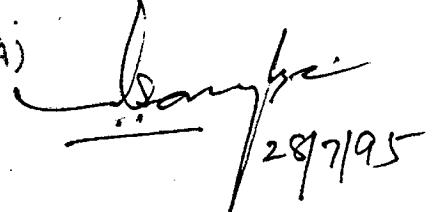
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

NO.

Judgment delivered by Hon'ble Member (A)


28/7/95

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 237 of 1994.

Date of Decision : This the 28th Day of July, 1995.

Shri G.L.Sanglyine, Member (Administrative)

Sri Rameswar Talukdar ,
Office of the Garrison Engineer,
Satgaon, Narengi,
P.O. Guwahati-781027.

... Applicant.

By Advocate Shri N.Dhar.

- Versus -

1. Union of India
represented by the Secretary
to the Govt. of India,
Ministry of Defence, New Delhi-11.
2. The Chief Engineer,
Eastern Command, Fort William,
Calcutta-21.
3. The Garrison Engineer,
Satgaon, Guwahati-27.

... Respondents.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, MEMBER(A)

The applicant is a civilian employee in the Military Engineering Services. He joined as Grade IV staff in Borjhar in 1968 and was promoted as Lower Division Clerk in Rangiya in 1979. He was transferred to Narengi (Satgaon) in 1988. In the MES Borjhar, Rangiya, Digaru, Guwahati and Satgaon (Narengi) are taken as one complex known as Guwahati complex. The applicant has been transferred out of this complex to Agartala vide letter No.131322/2/94/70 109/Engrs/EIC(1) dated 26.10.1994 issued by the Chief Engineer, Eastern Command, Calcutta wherein his name appears at serial No.12.

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This order was intimated to the applicant by the Respondent No.3, Garrison Engineer, Satgaon vide his letter No.1001/5/7131/EIE dated 2.11.1994. The applicant submitted a representation dated 7.11.1994 (Annexure 4) to the Chief Engineer, Eastern Command, Calcutta (Respondent No.2) through proper channel. In this representation he has stated about his personal problems and requested for humanitarian consideration and to post him in the Guwahati complex. This representation was however prevented from reaching the addressee, the Chief Engineer, Eastern Command, by his subordinate officers. The Garrison Engineer, Satgaon (Narengi) Respondent No.3 instead issued a movement order dated 9.11.1994. Hence this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has submitted that he has submitted representation against his transfer order to Agartala only because of unsurmountable personal problems. His home is in a village which is 5 Km. away from Borjhar. He has old parents and an insane wife, who has to be kept confined in his home in the village, to be looked after in addition to his children. His wife has become insane since the tragic death of their 9 year old son in 1985 in a Motor accident. He has to look after her in particular. He has no interest in staying on in Narengi (Satgaon) and in order to ease his personal problems he has represented to Chief Engineer, Eastern Command for his sympathetic and humanitarian consideration to post him in other nearby places. Now in this application also he prays for a direction to the respondents ^{No.2} to dispose of his representation dated 7.11.1994 and also to consider posting him in the places nearby Borjhar. Referring to para 8 of the written statement of the respondents, the

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learned counsel for the applicant wondered how a letter or a representation addressed to a particular person or authority can be withheld by another. In his view the authorities lower than the Chief Engineer, Eastern Command, in this case, could have forwarded the representation to the Chief Engineer with their comments or remarks but it is upto the Chief Engineer, Eastern Command to decide whether to accept or to reject the prayer of the applicant. In this representation the applicant had not challenged the transfer policy or even the transfer order but simply made his prayer for humanitarian consideration of his case as he believes that the respondents are anxious for the well being of their employees. He further submitted that in fact transfer orders can be changed or modified on humanitarian consideration and in this regard he relies on the decision of the Hon'ble Supreme Court in Sreemathi Devi Vs. U.O.I & Ors. reported in 1992 Supple.(2) SCC 433. In that case the widow was offered appointment at Dehradun but the Hon'ble Supreme Court had directed the respondents to give her a suitable post at Agra or at a nearby place on consideration of her personal difficulties. The learned counsel submitted that the case of the applicant is genuine and deserves sympathetic consideration by the respondents.

3. The facts of the case relied on by the learned counsel for the applicant are not similar with the facts of the present case inasmuch as in that case it was a case of first appointment whereas in the present case it is a case of transfer of an existing employee. The main grievance in the present application is non-disposal of the representation dated 7.11.1994. The respondents in their written statement

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verified by respondent No.3, Garrison Engineer, justify their action in not allowing the representation of the applicant to reach the Chief Engineer, Eastern Command in the following words :

"but the grounds put forth in the application were examined by the department subordinate to Chief Engineer Eastern Command and not considered for processing further in the true spirit of the posting transfer policy."

This is a strange and unreasonable stand taken by the respondents for the transfer policy of the Military Engineering Services (MES) No.131306/1/2/Engrs/EIC(1) dated 7.9.91 (Annexure A to written statement) provides in para 33 under the head "REPRESENTATION" that representations to the Chief Engineer ~~Eastern~~ Command can be made by the affected employees within 15 days of the receipt of the posting order. It also provides for further representation to the E-in-C. The applicant in this case had made representation through proper channel within 5 days from the date of receipt of intimation of his transfer to Agartala. It is true that he has been posted continuously in Guwahati complex as LDC since 1979 till date, which means that the respondents have all along acted contrary to their own transfer policy in the case of the applicant. There is no justifying reason therefore in preventing the Chief Engineer Eastern Command from perusing the representation of the applicant and from considering whether in this occasion the applicant could still be shown the same sympathy that had been ~~fairly~~ shown to him earlier. The learned Addl.C.G.S.C fairly stated during the course of his submission that the respondents have an open mind.

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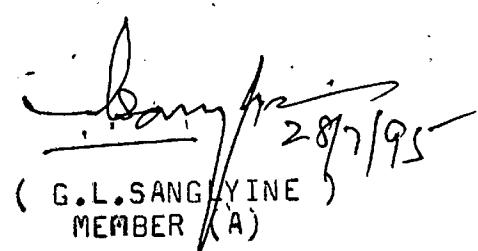
4. In para 6(v) of the application there is an allegation of malafide but the respondents have explained in para 7 of their written statement the reasons why the persons cited as instances by the applicant had not been transferred. Their contention is satisfactory.

5. In the result, this application is disposed of with the following directions :

i) The applicant will submit a fresh representation to the Chief Engineer, Eastern Command, Calcutta (Respondent No.2) through proper channel within 15 days from the date of receipt of this order and the respondent No.2 will communicate his order on the representation within 45 days of the receipt of such representation by him.

ii) The interim order dated 3.1.1995 directing the respondents not to implement the movement order dated 9.11.1994 till disposal of this application will remain operative till receipt of the order of the Respondent No.2 at (i) above by the applicant.

The application is disposed of in terms of the above directions. There will be no order as to costs.


28/7/95
(G.L.SANGULYINE)
MEMBER (A)