

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00187/2017

DATED THIS THE 24TH DAY OF OCTOBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Niyaz Ahmed Mulla,
S/o Aslam Mulla,
Aged 29 years,
Office Address:
L.D.C, A.S.C. Record (AT),
Bangalore 560 007.
Residential Address:
No.1, Ground Floor,
3rd Cross, Laksmipuram,
Ulsoor
Bangalore – 560 008.

.....Applicant

(By Advocate Shri B. Veerabhadra)

Vs.

1. Union of India
Represented by Secretary,
Ministry of Defence,
South Block, Central Secretariat,
New Delhi – 110 011.
2. Integrated HQ of MoD (Army)
Addl. Dte Gen of MP / MP-8 (I of R),
Adjutant General's Branch,
West Block-III, R.K. Puram
New Delhi – 110 066.
3. The Chief Record Officer,
ASC Records (AT),
Bangalore – 560 007.

....Respondents

(By Shri M. Rajakumar, Senior Central Government Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The issue is in a very very small compass. The applicant wants to go to his hometown. Apparently the respondents are unable to allow him to go since according to them there is a huge deficiency of manpower but the applicant relies on an order passed by the Adjutant General's Branch Additional Director General Manpower No. 15902/MP-4(Civ)(b) dated 28.04.2017 which is recorded as below:

- "1. Further to our letter of even No. Dated 21 Apr 2014.*
- 2. As reiterated earlier, all applications in respect of individuals seeking posting/transfer on compassionate grounds, even though, "NOT RECOMMENDED BY THE OC Unit" including conditional applications giving various reasons like suitable/prior relief, existing deficiency in trades etc. are required to be forwarded to this office. No such applications will be withheld at the unit level for whatsoever reason. All such applications received in this office will be thoroughly scrutinized and put up to AG for approval/directions. Applications which get approval of AG will be registered for posting.*
- 3. The contents of this letter may please be disseminated to all concerned units/estts for information and necessary action."*

It would say that this takes away the jurisdiction of the local authorities and whatever be the reason any application for compassion has to be forwarded to the Additional Director General Manpower. Without any doubt, this reasoning is without substance, it cannot lie under law as, under the rules available under Army Act, it is the duty and function of the concerned local Commanding Officer to recommend or not recommend as the jurisdiction to utilize the manpower is with him. Therefore this letter issued by the officiating DDG (CP) has no force of law. It is hereby quashed.

2. We had also examined the reasons for the transfer with an anxious eye. We had perused the medical records available in Annexure-A2 issued by the Department of Cardio Thoracic & Vascular Surgery for the applicant's father issued in the year 2001 when he was 50 years old. It shows a history of two episodes of Angina two months back coupled with burning sensation in abdomen and spells of giddiness and now it is this Angina which is being characterized as a heart attack. The learned counsel for the applicant would also say that somehow or another the open heart surgery was performed on him. Therefore again with anxious eyes we had examined the medical records and found that apparently he may have had a bypass surgery even though the internal findings are LAD – Eccentric plaque + above anastomosis – 1.5mm – thin wall – No distal block – small infarct with bulge + near apex extending on to lateral wall, Cannulation in Aorta is stated 22 Fr DLP and Venous 2 stages Sarns. One cannot understand from the examination as to whether stent has been put in or bypass surgery has been performed on him as normally, going by the cardioplegia, subsidiary capillaries would have developed by then which would have rendered this irrelevant. However the case of the applicant now seems to be that for this operation he had to take a bank loan of Rs. 3 lakhs from SBI at 14.5 % interest and he is even now repaying it. He would also say as a supportive domestic problem that his elder brother had to have a divorce and he had to have a second wife also. For the reason that he should not be having one more divorce, they would say that he is now staying separate. The applicant's counsel would also say that the sisters of the applicant are also staying elsewhere and that leaves his father and mother as the victim of

circumstances. We had examined the medical records of the applicant's father and he is taking Clopidogrel which is a blood thinner and Atorva at 10 mg which is a usual dosage to prevent cholesterol block formation which by itself is not a serious disease at all. There is no question of any heart attack. Utmost the applicant's father is inflicted with a circulatory disease which is normal at his age.

3. The next ground raised by the applicant is that the quarters has not been provided to civilian defence servants and therefore they are at disadvantage in an expensive city like Bangalore. But then that is neither here nor there as thousands of government servants exist in Bangalore without the facility of quarters and having house on rent. It becomes a problem only when you need much more facility than can be canvassed by your income otherwise anybody who stays in a rented house in Bangalore is possible to exist and we take judicial notice of it.

4. The respondents have found that out of 27 staff available with them, 17 are from outside the state and they all want transfers therefore there is no special merit on the part of the applicant to get a compassionate transfer to his hometown. In Annexure-R10 the applicant had given the reason for his refusal. He would say that if he is to choose then he will have to choose any of the 3 places as provided under rules but then apparently he is sure of winning his case in the Court therefore he had rejected that offer of the respondents also.

5. After having heard the learned counsel for the applicant in great detail, we are of the view that the ground proposed by the applicant is completely

irrelevant and non-existent. We also find that the ground raised by the respondents that there is a serious staff shortage and applicant cannot be accommodated other than on a mutual basis is correct. The reliance placed by the applicant on the letter issued by the Adjutant General's office have already been quashed as improper and questioning the jurisdiction of the local authorities and therefore will have no relevance.

6. There is no merit in the OA. The OA is dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00187/2017

Annexure A1: Copy of the appointment letter of the applicant dated 18.12.2012

Annexure A2: Copy of the applicant's father's discharge summary issued by KLES Hospital, Belgaum in 2001.

Annexure A3: Copy of the applicant's father's discharge summary issued by

KIMS Hospital, Hubli in 2015.

Annexure A4: Copy of the letter dated 17.04.2015 submitted by the applicant to the 3rd respondent requesting for a transfer on compassionate ground.

Annexure A5: Copy of the letter dated 11.08.2015 issued by 3rd respondent's office to Karnataka Medical Council requesting for verification of the documents submitted by the applicant.

Annexure A6: Copy of the letter dated 26.09.2015 issued by the Karnataka Medical Council regarding verification of medical certificate.

Annexure A7: Copy of the representation dated 27.01.2016 submitted by the applicant to the 3rd respondent.

Annexure A8: Copy of the letter dated 30.01.2016 issued by the 3rd respondent's office stating that the applicant's request will be considered only on mutual posting basis.

Annexure A9: Copy of the representation dated 04.04.2016 submitted by the applicant to the 3rd respondent.

Annexure A10: Copy of the letter dated 25.04.2016 issued by the 3rd respondent in reply to the representation of the applicant.

Annexure A11: Copy of the representation dated 20.07.2016 submitted by the applicant.

Annexure A12: Copy of the representation dated 29.07.2016 submitted by the applicant.

Annexure A13: Copy of the warning letter dated 06.08.2016 issued by the 3rd respondent to the applicant.

Annexure A14: Copy of the representation dated 12.08.2016 submitted by the applicant.

Annexure A15: Copy of the representation dated 06.01.2017 submitted by the applicant's lawyer to the 2nd and 3rd respondents.

Annexure A16: Copy of the letter No.7707/3/POST/LA/P3(PC) dated 14.02.2017.

Annexures with reply statement:

Annexure R1: Copy of the representation of the applicant dated 17.04.2015

Annexure R2: The details of Civilian Clerks employed in Army Records Offices

Annexure R3: Copy of the letter No.7707/3/POST/LA/P3 dated 25.04.2016

Annexure R4: Copy of the Minutes of the Civilian Welfare Committee Meeting held on 30.11.2015

Annexure R5: Copy of the letter No.7707/3/POST/LA/P3 dated 06.08.2016

Annexure R6: Copy of the RTI Application dated 27.05.2016

Annexure R7: Copy of List of other State Staffs.

Annexures with Rejoinder:

Annexure A17: Copy of Ministry of Defence, Directorate General of Aeronautical Quality Assurance S.R.O. 10 dated 03.02.2017

Annexure A18: Copy of Monthly state of Civilian Clerks employed in Army Records Offices

Annexure A19: Copy of Letter No. 15994/Regn/Gen/2017/MP-4(Civ) (b) dated 31.05.2017.

Annexures with Additional Reply:

Annexure R8: Copy of Attestation Form of the applicant

Annexure R9: Copy of Minutes of the Civilian Welfare Committee Meeting held on 25.09.2017

Annexure R10: Copy of letter No. 7707/5/CWC/LA/P3 dated 14.10.2017.

Annexures with Additional Rejoinder:

Annexure A20: Copy of Talaq Deed of applicant's brother

Annexure A21: Copy of Rental Agreement

Annexure A22: Copy of certificate of physically handicapped of the son of applicant's sister

Annexure A23: Copy of letter No.7701/5/Gen/LA/P3 dated 26.09.2017

Annexure A24: Copy of letter No. 7707/3/Post/LA/P3 dated 25.02.2017 regarding posting on extreme medical compassionate grounds.
