

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.375/2019

, this the 12th day of June 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Pradeep D.Signapurkar, Age 57 years, working as Senior Administrative Assistant, GE (NW) Vasco Da Gama, residing at 266, Aqueem Alto Tolabandh, Margaon, Goa-403601. **...Applicant**

(By Advocate Shri Vicky Nagrani)

Versus

1. Union of India, Through the Secretary, Ministry of Defence, South Block New Delhi-110001.
2. The Chief Engineer, Southern Command, Pune-411001.
3. The Chief Engineer, Military Engineering Services-HQ, Chief Engineer (Navy) Mumbai 26, Assaye Building, Colaba, Mumbai-400005.
4. Commander Works Engineer (Navy), MES Vasco Da Gama, Goa-403802.
5. Garrison Engineer (NW), MES Vasco Da Gama, Goa-403802. **...Respondent**

(By Advocate Shri V.B.Joshi)

Reserved on :- 03.06.2019

Pronounced on:- 12.06.2019

O R D E R

R. Vijaykumar, Member (A)

This application was filed on 28.5.2019 under section 19 of the Administrative Tribunals Act,

1985 seeking the following reliefs and was heard at length at the admission stage itself:

Reliefs

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the order dated 24.09.2018; only to the extent that it seeks to transfer the Applicant from Vasco to Gandhinagar (Gujarat) and direct the Respondents to grant retention to the Applicant at Vasco on his promotion to the post of Assistant Administrative Officer; well as the order dated 01.12.2018, 29.01,2019 & 03.05.2019 be quashed and set aside.

b) This Hon'ble Tribunal be further pleased to direct that the Applicant is promoted to the post of Assistant Administrative Officer w.e.f. 24.09.2018 and accordingly direct the Respondents to post him on his promotion to Vasco or any other nearby station i.e. Ratnagiri in pursuance of policy dated 22.08.2007.

c) Alternatively, this Hon'ble Tribunal may be pleased to direct the Respondents that in case it is not possible to retain the Applicant or accommodate him at any nearby station on promotion then in that case, to consider his request for refusal of promotion to the post of Asst. AAO and allow him to work on the post of Sr. Administrative Asst. (SAA) GE(NW) Vasco by holding that the rejecting the request vide order dated 03.05.2019 is absolutely illegal and arbitrary.

d) Costs of the application be provided for.

e) Any other and further order as this

Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The applicant has challenged the promotion-cum-posting orders issued to him in PPO No.62/2018 dt. 24.09.2018 (Annexure A1) by which he has been promoted and transferred from his present station at GE (NW) Vasco, Goa to CE Bhopal Zone GE(A) Gandhinagar. He had previously filed an OA No.144/2019 on the same grounds and in the course of those proceedings, he had followed up his previous response, offering a conditional request for foregoing promotion, and stated that he had subsequently presented a letter dt. 23.2.2019 revising the said request in unconditional terms for which no orders had been issued. That OA was concluded with directions to the respondents to consider his unconditional refusal of promotion and the respondents have passed the reasoned and speaking order in their reference No.132402/24/500/E1B(S)/A1 dt. 3.5.2019 in which they have noted the reliefs originally sought by the applicant in that OA for quashing the transfer and for promoting him and posting him at his present station or any nearby station such as Ratnagiri. They note that the

Tribunal had directed in its orders dt. 5.3.2019 to consider the pending representation of the applicant on foregoing promotion and to retain him at the present station. In these speaking orders, the respondents have noted that the applicant joined service on 7.8.1987 and was posted at Vasco and has protested the movement on promotion to Gandhinagar on grounds of medical problems in respect of himself and also for enabling the treatment of his nephew. The respondents thereafter, passed the following orders on the grounds stated by him:

"6. WHEREAS, this Headquarters had also intimated extent Government Rule (promulgated vide Government of India, Ministry of Home Affairs, Department of Pers & Adm letter No.22034/3/R-1-Estt(D) dated 01 Oct 1981 & E-in-C's Branch Posting policy issued vide letter No.B/20148/PP/E1C(1) dated 18 Feb 2019) that "**Foregoing promotion does not confer a right to the individual against transfer, if due, on other grounds in his/her present rank**" and failing to obey the same may lead to initiation of disciplinary action by the department vide letter No.132402/24/ 442/E1B(S)A1 dt 14 Feb 2019.

7. NOW THEREFORE, after due consideration of the facts and circumstances of the entire case the competent authority has decided that the representation of MES-124918 Shri Pradeep D.Signapurkar, SAA is devoid of merit for the following reasons:-

(a) As per extant Govt Rules,

"nephew" of an employee, is not considered as dependent (In terms of Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training Office Memorandum dated 08 Oct 2018).

(b) The applicant submitted old medical documents which were not found relevant to accept his plea for foregoing of promotion due to 64% deficiency in the category of Assistant Administrative Officer in the area of jurisdiction of Chief Engineer Southern Command purely in the organization interest without any prejudice to one another".

3. The applicant urges that he commenced service at Vasco on 7.8.1987 as LDC and in the capacity of UDC was posted at Karwar from 11.2.2006 to 29.12.2009 and thereafter, he has continued to serve at Vasco in the re-designated post of Senior Administrative Assistant. In the circumstance, he asserts that the respondents have not passed a reasoned and speaking order on his specific and elaborate representation. The learned counsel for the applicant was invited to express his views on the validity of these orders.

4. The learned counsel for the applicant submits that the applicant had provided a recent medical certificate dt. 26.9.2018 which was not

considered by the respondents who had instead remarked that he had produced only old medical records. This certificate reads as under:

"

**Redkar
Hospital & Research Center**

Date: 26/09/2018

To whom so ever it may concerned,

This is to certify that, Mr.Pradeep D. Signapurkar 56 Yrs/M is a case of severe lumbar spondylosis with left sciatica. He is advised to refrain from hard work. He has been advised to take regular follow-up ever month.

Sd/-
DR.SAGAR V.REDKAR)
(M.B.B.S., M.D.)
GMC. REG.nO.3479"

5. Learned counsel for the applicant also refers to the grounds taken by respondents that there is 64% vacancy in the category of Assistant Administrative Officer in the jurisdiction of Chief Engineer, Southern Command and states that out of 87 individuals promoted, 10 individuals had refused promotion and 9 of them had been retained whereas, his case alone had been treated differently. He pleads that the respondents could have considered his medical condition instead of a mechanical

consideration which he alleges had been made and could have retained him at the present station or posted him to some nearby location especially since two vacant posts are available at Vasco itself.

6. The learned counsel also submits that the transfers do not accord with the transfer policy guidelines of the respondents (Annexure-A-14), especially since he has only three years left for retirement.

7. The learned counsel was carefully heard at the admission stage of this second stage proceedings and the pleadings on record have been carefully examined. The policy guidelines provide at para 58 that "Group 'C' & 'D' employees will generally not be transferred within three years of their retirement except on request". However, the para also requires that if they were to move on promotion and there was no clear vacancy in their existing station, they can still be moved. In the present case, the orders were passed in September, 2018 when the applicant was 56 years of age and therefore, this condition does not apply. Since the applicant has been considered for posting and transfer on promotion the relevant paras

of the transfer policy guidelines are paras 48 to 50, which read as follows:

"48. Staff on promotion will be adjusted in the same station/complex (not necessary the same unit) provided vacancies are available. However, if no vacancy is available the same station/complex, the promotees will be adjusted in one of the three choice stations/complexes as far as possible except for those due for tenure turnover postin. However the individuals who have been repatriated from tenure stations/complexes and have not completed three year stay in the stations/complexes will not be moved on promotion and will be adjusted by posting out the other senior most stayee in the station/complex. If vacancy is not available at any of the choice stations/complexes, the individual will be posted as per organizational requirement.

49. The representations, if any should be submitted with in 15 days of receipt of posting order with an advance copy endorsed to CE Command. The acceptance of refusal of promotion is subject to the exigencies of service and is not a matter of right.

50. The acceptance of refusal of promotion by the competent authority also does not confer a right of protection to the individual against a transfer, if due, on the grounds in his/her present rank".

8. With regard to such postings on promotion, these paras emphasize the primacy of organizational requirements and exigencies of service. As speaking orders clearly point out, there is 64% deficiency in this cadre and it is not within the realm of this Tribunal to

step into the shoes of the administration to decide their organizational needs in a different manner. Even the acceptance of refusal of promotion is subject to service exigency and even if such refusal is accepted, the applicant is not protected from transfer. Therefore, there is no apparent violation of the transfer guidelines. The applicant has urged that he had given an updated medical certificate following the previous certificate dt. 18.10.2001, 18 years ago, in which he had been diagnosed with squamous cell carcinoma at the age of 36 years. He also refers to certain fractures suffered in 2005 and to lumbar spondylosis diagnosed in 2018-2019 as in the recent certificate, which has been reproduced above which specifically refer to lumbar spondylosis. Reference to this certificate also shows that he has been advised regular follow up every month and this should certainly be possible at his new location at Gandhinagar located in the capital city of Gujarat. A mere perusal of this certificate shows that it has no relevance to his previous medical condition in 2001 and his previous injury in 2005 and therefore, it cannot be argued that the most serious aspects of his condition have been duly considered while passing the aforesaid speaking orders by the respondents.

9. With reference to the applicants contention that

some persons have been allowed to refuse promotion while he has been vindictively denied the privilege and that there are enough people to fill up the vacancy for which the respondents have stated that there is an existing 64% deficiency, it is noted that the orders of transfers have been issued by the Chief Engineer, Southern Command, Pune its headquarters who has been cited as R-2. Although mention is made of alleged vindictiveness, no specific aspect to support the claim of mala fide has been brought out in the OA nor have specific persons been named as respondents with mala fides. In these circumstances, these objections also fail to find any support in the Application.

10. In the aforesaid circumstances the grounds adduced in support of the reliefs claimed are clearly without any valid basis and the OA fails accordingly and is dismissed at the admission stage. In the stated circumstances, we do not wish to impose costs.

(RAVINDER KAUR)
MEMBER (J)

(R.VIJAYKUMAR)
MEMBER (A)

B.

JP
18/16