

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

25

O.A. NO. 498/2003

NEW DELHI THIS15th.....DAY OF MARCH 2005

HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri U P Dandriyal
Survey Assistant (Technical Section), Dte. SVY. (Air)
R K Puram New Delhi R/o H No.950 Sector VII
Pushpvihar, Saket, New Delhi - 110017

.....Applicant

(By Advocate: Shri C M Khan)

VERSUS

1. Union of India through
The Surveyor General of India,
Ministry of Scientific & Technology,
Surveyor's General's Office, Dehradun, Uttaranchal
2. The Director,
Dte. Of Survey (AIR) R K Puram,
West Block-4,
New Delhi -110066

.....Respondents

(By Advocate: Sh. J M Mudgil)

ORDER

The applicant who is TOPO staff Grade in the Survey of India was promoted to the Grade of Survey Assistant on regular basis vide order dated 14.8.2001 and posted to SCC, Hyderabad from New Delhi. Para 3 of the posting order gives an option to refuse the offer of promotion. The applicant refused the promotion as he wanted to continue in Delhi. The applicant was again promoted vide order 20.9.2002 and once again posted to Digital Mapping Centre Hyderabad, which he again refused. After his refusal he was accommodated and retained in Delhi vide order 27.11.2002. However, vide order of 09.12.2002 the applicant was again transferred to Hyderabad. The applicant made a representation and his transfer order dated 03.3.03 was kept in abeyance.

2. The applicant is aggrieved by the transfer order dated 09.12.2002 and has prayed that impugned order be quashed and set aside and the respondents be directed to allow the applicant to work as Survey Asstt. in the Dte. Of Delhi till pendency of this O.A.

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3. The main ground of the applicant for the relief is that as per rules and directions of the DoPT persons having less than three years to retire should not be posted out of station unless at own choice on request. The applicant has less than three years to retire and in fact is left with 6-7 months only. Moreover, the applicant as the senior-most should be retained in Delhi but the respondents have retained one Mr. Mahavir Singh, Survey Assistant in Delhi and they have also retained Mr. Laxman Dass and R.P.S. Gangolia, who are junior. It is therefore apparent that respondents have adopted a policy of pick and choose. The applicant was transferred to Hyderabad within twelve days after his posting in Delhi, without assigning any reason.

4. Further the applicant argued that transfer of the applicant cannot be considered to be in public interest because it is indicated that he is required to work in Hyderabad in digitization work for which he is not trained. The applicant has relied upon respondents' OM dated 6.8.2001 annexed as R-1 to rejoinder. This OM shows that persons to be trained in digital work should not exceed 45 years of age. The applicant is nearing retirement and cannot perform the duties of digitization.

5. The respondents relied upon the judgement of the Hon'ble Supreme Court in the case of Gujarat State Electricity Board Vs. A R S Poshani (AIR 1989 (80) 1433 which reads as under:

“Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever a Public servant is transferred he must comply with the order but if there is any genuine difficulty in proceeding on transfer, it is open to him to make representation to competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer.”

Moreover, in the conditions of service of the employees of the Survey of India there is a liability to serve in any part of the India. The applicant was transferred at that time for administrative reasons for specialized work of digitization. However, after considering his representation dated 14.2.2003 the transfer order dated 09.12.2002 has been kept in abeyance.

6. I have heard the counsel for the parties and gone through the records placed before me and find that the main ground of the applicant for seeking the relief is that in line with the policy of the respondents contained in their letter dated 25.9.1980 and also

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in DoPT OM dated 09.12.2002, he should not be posted out of Delhi as he is to retire in a few months. On the other hand the respondents have argued that transfer is general conditions of service and employee has no choice in the matter. The applicant was transferred in public interest.


7. It is not contested that the respondents have the right to transfer the applicant. The only plea is that he should not be disturbed as he is nearing retirement and this would be in line with the policy of the respondents contained in their letter dated 25.9.1980.

8. The respondent's letter dated 25.9.1980, reads as under:

“ (v) The persons above 57 years of age will usually not be posted out of station unless at their own choice and request.”

9. The applicant has not contested the right of respondents' to transfer the applicant in public interest but merely pleaded that in view of the stated policy of the respondents (reproduced at para 8 above) he should be continued in Delhi. In fact the respondents after taking into consideration the representation of the applicant have kept in abeyance the impugned transfer order.

10. The Tribunal without going into the question of the respondents' right to transfer the applicant in public interest, directs ~~that~~ the respondents to consider the request of the applicant for retention in Delhi till his superannuation sympathetically, especially in view of their stated policy of not usually posting a person out of station within three years of his retirement. The OA is disposed of on the above lines.


(S.A. Singh)
Member (A)

Patwal