

\$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2394/2016, CM APPL. 10240-10242/2016**

UNION OF INDIA AND ORS

..... Petitioner

Through: Mr. Rajesh Gogna, CGSC

versus

RAVI SHANKER

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

21.03.2016

The impugned order dated 25th August, 2015 by the Central Administrative Tribunal directs the petitioner to consider waiving off the qualifying period of two years of field experience in the case of Ravi Shanker and that he should be considered for grant of non-functional up-gradation from 24.5.2010, the date from which his immediate juniors were granted the said benefit.

Ravi Shankar had written a letter, requesting for field posting in 2002 and followed by requests 2007 and thereafter. This fact assertion is accepted and undisputed. The Secretary of the Central Water Commission in his letter dated 15.10.2012 had accepted that Ravi Shankar had been asking for field posting. For the sake of

convenience, we reproduce the said letter, which reads:-

“3, Shri Ravi Shanker, the then SJC-I (Ganga) applied for field posting in January, 2007 during rotational transfer, 2007. However, the then Commissioner (Ganga) recorded on the same date that this would be considered only next year and returned the application to Shri Ravi Shanker (Cp.13). Thereafter, he again submitted application for field posting during November, 2007. The then Commissioner (Ganga) recorded in the file “at this stage he cannot be spared due to 11th Plan proposals/schemes (not yet approved)” and his application was filed (Cp.15).

4. Thereafter, during January, 2008 his application was forwarded to CWC for transfer vide MoWR letter dated 24.01.2008 (Cp.16). However, a D.O. letter dated 18.6.2008 was also received in CWC from the then Commissioner (Ganga) where he requested that the transfer request of Shri Ravi Shanker may be deferred for one year due to exigency of work and he may be considered next year at the time of rotational transfers (Cp.17).

5. During rotational transfer, 2009, Shri Ravi Shanker was posted to M&A Dte., CWC, Guwahati vide order dated 23.04.2009 (Cp.18) and he joined there on 27.7.2009 (Cp.19). Therefore, he could complete 2 years field experience only on 26.7.2011.

6. In view of the above, on the crucial date i.e.01.01,2010, he could only complete the field experience of about 5 months and therefore, he could not be granted NFU from the due date i.e. 24.05.2010 along with his other batch-mates as field experience of 2 years was required as on 01.01.2010.

7. From the above, it is observed that non-completion of the field experience by Shri Ravi

Shanker, Director, CWC on the crucial date of 01.01.2010 is purely due to exigency of work in the O/o Commissioner (Ganga), MoWR at that time and he could not be transferred, despite his willingness for transfer. Therefore, he could not be held responsible for non completion of the field experience on the crucial date and it would be against the natural justice not to grant him NFU w.e.f 24.05.2010 along with his batch-mates.

In view of above, we may request MoWR to take up the matter with DoPT for getting the relaxation of 1 year and 7 months in the eligibility criteria of two years field experience as on 01.01.2010 in case of Shri Ravi Shanker so that he can be considered for granting NFU w.e.f 24.05.2010 along, with his other batch-mates.”

The petitioner submits that Ravi Shankar had remained in Delhi from 1995 to 2002 and during this period he had not opted and had deliberately avoided field duty. This stand of the petitioner is unacceptable as there is no document or material to support the said submission. Ravi Shankar might have been posted in Delhi between 1995 and 2002, but this fact alone does not justify failure of the petitioner to give a field posting to Ravi Shankar after specific requests were made in the year 2002 and 2007. It is noticeable that the requirement of field experience was introduced for the first time in the year 2009. As noted above, Ravi Shankar had made written requests much earlier. Ravi Shankar was not granted field posting between 2002 till 24.05.2008. It was for the petitioner to give a field posting and not deny benefit of non-functional upgradation if they had failed to give a field posting. In case, Ravi Shankar had not requested

or expressed his desire to join field posting, adverse consequences as stipulated could have followed. The present case is one of inaction and failure of the petitioner, which has deprived and denied Ravi Shankar consideration for grant of non-functional upgradation.

In these circumstances, there is no merit in the present writ petition. The same is dismissed in limine.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 21, 2016/acm