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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12985 OF 2017

Shri Dnyaneshwar Keshav Salunke
Age 56 years,
working as Junior Engineer (QA),
office of Senior Quality Assurance
(Estt) Khadki, Pune – 411 003.
residing at Anusuya S. No.72/1B,
Samarth Nagar, Dange Hospital
Road, New Sangvi, Pune 411 061.

.. Petitioner

Vs.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block,
New Delhi 110001.

2. The Director General,
Directorate General of Quality
Assurance (Armts)
Ministry of Defence,
South Block, Nirman Bhawan,
New Delhi 110001.

3. The Controller,
Controllerate of Quality Assurance
(A), Khadki, Pune 411003.

4. The Senior Quality Assurance
Officer, Ammunition Factory Premises,
Khadki, Pune 411 003.

.. Respondents

.....
Mr. Vicky A. Nagrani, Advocate for the petitioner.

Mr. Neel Helekar along with Mr. P. Khosle, Advocate for the
respondent/UOI.

.....

**CORAM : SMT. V.K. TAHILRAMANI &
M.S.KARNIK, J.J.**

Date : 27th NOVEMBER, 2017.

ORDER (PER M.S. KARNIK, J.) :-

By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner is challenging the judgment and order dated 26/9/2017 passed by the Central Administrative Tribunal (for short 'the Tribunal') in O.A. No.24 of 2016. By the impugned order, the Tribunal was pleased to dismiss the O.A. filed by the petitioner challenging his transfer from Kirkee, Pune to Khamaria, Jabalpur.

2. The petitioner while serving as Junior Engineer, the respondents drew up a select panel for promotion on 24/7/2014 wherein the petitioner was empaneled for promotion as Assistant Engineer. The petitioner, by promotion order dated 7/8/2014 was transferred to SQAE (A), Badmal, Bolangir (Orissa) a hard station. The petitioner opted to forgo his

promotion in order to stay at Kirkee. His request was accepted and the petitioner was retained in junior position at Kirkee vide order dated 26/11/2014 on condition that the petitioner was debarred for promotion for one year from that date. The petitioner was thereafter considered for select panel for 2015 and included in the list of 12/6/2015. Anticipating his transfer, the petitioner filed a representation dated 29/10/2014 citing personal reasons and requested that he may be retained at Kirkee. On 24/11/2015, an order came to be issued transferring the petitioner to Khamaria, Jabalpur which is not a hard station. The petitioner filed a representation on 25/11/2015 for retaining him at Kirkee.

3. By the impugned order the Tribunal was pleased to dismiss the O.A. for the reasons recorded in the said order.

4. Learned Counsel for the petitioner assailing the order of the Tribunal, relied upon the transfer policy dated 25th April, 2013, more particularly Clause 16 which reads thus :-

“Clause 16 :- All orders relating to transfers on promotion will be issued only after effecting transfer on compassionate grounds. After that, if a vacancy is available at the station, the individuals on promotion are to be adjusted in-situ strictly as per the seniority in the promotion panel. Under no circumstances a senior individual will be posted out to accommodate retention of his junior in the same station.”

In the submission of the learned Counsel, the transfer order violates Clause 16. Inviting our attention to the seniority roll position as of 2015, the petitioner pointed out that he is at Serial No.6 whereas the employees mentioned at Serial No.9,10 and 11 though junior to the petitioner and who were debarred for promotion upto 23/11/2015 like petitioner have been retained. We do not find any merit in this contention of the petitioner. The Tribunal has taken into consideration that the employees who are retained at Kirkee were working in the printing press for which they have considerable experience and given its importance in the National context, they have been retained. As regards to the fourth junior to the petitioner, the junior has been trained for a new Laboratory for quality assurance started in June, 2015 and hence he was retained. In

our opinion, the Tribunal is justified in coming to the conclusion that this is entirely a matter of administrative judgment and discretion. In these circumstances, in our opinion, we find no merit in the first submission of the learned Counsel for the petitioner.

5. Learned Counsel for the petitioner further submits that he will be superannuated in June, 2020 and therefore, having regard to the policy of the respondents that residual period of service should be considered before disturbing a person for transfer, the order of transfer is bad. In this context, it would be pertinent to note that in 2014 when the petitioner was placed in select panel, he had six and half years service left and when he was again placed for select panel of 2015 and posted in November, 2015, he had five and half years service left as on 1/1/2015. The tribunal has considered that there is a compulsion on posting to a hard station on first promotion and that these requirements had to be complied within the service period if not completed initially. In his entire career the

petitioner has not been posted in a hard station. Even the present promotion is not on a post in a hard station.

6. We find that the transfer in 2014 was specifically to a hard station i.e. Badmal, Bolangir (Orissa). The respondents pointed out that the present transfer is to a prestigious establishment at Khamaria, Jabalpur, a proof establishment which is not a hard station as classified. It is further pointed out that having regard to the specific expertise of the petitioner in shop floor that he possesses in distinction to the four juniors, that necessitated the petitioner's posting at Khamaria, Jabalpur. In our opinion, the Tribunal was justified in coming to the conclusion that the said decision falls within administrative discretion and exigencies of service and therefore we do not find any merit in the submission.

7. The next contention advanced by the learned Counsel for the petitioner is that the respondents were not justified in considering his case for promotion within a period of

one year from the date he has refused promotion. Learned Counsel for the petitioner has relied upon the order dated 1st October, 1981 which mentions that no fresh offer of promotion would be issued to him for a period of one year from the date of refusal of promotion. Admittedly, the promotion is effected one year after the petitioner refused promotion. The OM does not in any manner support the contention of the petitioner that he cannot even be considered for the promotion within the period one year. We, therefore, do not find any merit in this contention of the learned Counsel for the petitioner.

8. Learned Counsel for the petitioner further submits that he has some personal difficulties in as much as he has arranged the marriage of his daughter aged 29 years and son aged 26 years. The petitioner can always make a representation in this regard but the order of transfer cannot be interfered with on this ground.

9. Learned Counsel for the petitioner further submitted

that he should have been retained on compassionate ground at Kirkee as he is suffering from hearing impairment in both the ears. We, however, find that this ground was not raised before the Tribunal. As observed by the Tribunal, considerable indulgence has been shown in retaining the petitioner in Kirkee for a very long period of time. In these circumstances, we do not find any reason to interfere with the well reasoned judgment and order passed by the Tribunal.

10. The petition is accordingly dismissed with no order as to costs.

11. Needless to mention that the petitioner is always at a liberty to make a representation to the respondents after he reports at the place of posting and if such representation is made, obviously the respondents will consider the same on its own merits.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)