

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 493 OF 2019

Pradeep D. Signapurkar,
son of late Dhananjay Signapurkar,
aged 57 years, occupation service,
residing at House No.266,
Aquem Alto-Toleband,
Margao, Goa 403 601.

..... Petitioner.

Versus.

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

2. The Chief Engineer,
Headquarters,
Southern Command,
Pune 411 001

3. Commander Works Engineer (Navy)
Military Engineering Services (MES)
Vasco da Gama, Goa 403 802

4. Garrison Engineer (Naval Works)
Military Engineering Services (MES)
Vasco da Gama, Goa 403 802

..... Respondents.

Mr. Shashikant Joshi, with Ms. Vishal Sawant, Advocate for the
Petitioner.

Mr. M. Amonkar, Central Government Standing Counsel for the
Respondents.

CORAM : PRADEEP NANDRAJOG, CJ.,
M.S. SONAK, J.

OCTOBER 09, 2019

ORAL JUDGMENT :- (Per Pradeep Nandrajog, CJ.)

Rule. Rule is made returnable forthwith. Heard learned Counsel for the parties.

2. The Petitioner joined service in the clerical department of Military Engineering Services and was working as an Upper Division Clerk when he was promoted as an Assistant Administrative Officer vide Order dated 30th August, 2018 and was required in terms of the Promotion-cum-Posting Order dated 30th September, 2018 to join the Office of Garrison Engineering (Army) at Gandhinagar. The Petitioner made a representation to retain him at Goa on the plea that he is a cancer survivor having suffered carcinoma pelvis. He informed that his treatment was at Kasturba Medical College Hospital at Manipal, State of Karnataka, but follow up treatment was at Goa Medical College Hospital. The request of the Petitioner to be retained in Goa or somewhere nearby being rejected, he filed Original Application No.375/2019 before the Central Administrative Tribunal requesting that if not to be posted at Goa, he could be posted at a nearby station such as Ratnagiri for that would enable him to take follow up treatment at the Goa Medical College Hospital. The Department justified their stand on the plea of administrative

exigencies and produced data showing 64% vacancies in the cadre of Assistant Administrative Officer. The Tribunal dismissed the Original Application on 12th June, 2019 recording exigencies of service in favour of the Department, plus the fact that the medical papers produced by the Petitioner showed that he was detected with carcinoma 18 years ago when he was aged 36 years. The Petitioner challenges said order dated 12th June, 2019.

3. As recorded in the order dated 11th September 2019 passed in the present Petition, the Petitioner is ready to forgo his promotion provided he is retained at Goa or posted at Belgavi, Karwar or Ratnagiri. Deferring hearing, the Respondents were granted four weeks time to reconsider the posting of the Petitioner treating him as having foregone the promotion.

4. Today an order dated 21st September, 2019 has been produced which once again records that in the promotional cadre of Assistant Administrative Officer 58 % posts are lying vacant and thus, in the interest of the organization, the Petitioner has to be sent to Gandhinagar on promotion.

5. Suffice it to state an employee can forgo promotion and thus a promotion cannot be forced on an employee. The order dated 21st September, 2019 does not deal with the request of the Petitioner to be retained in Goa as Upper Division Clerk. Whilst it may be true

that forgoing a promotion does not confer an absolute right on an individual not to be transferred, but exigencies of service have to be humanized keeping in view the problems faced by an individual.

6. The record produced by the Petitioner shows that he was detected with cancer when he was aged 36 years. He underwent chemotherapy, followed by surgery. His condition is being constantly monitored at Goa Medical College Hospital and if he has to undergo any procedure he has to visit Kasturba Medical College at Manipal. What is relevant to note is that follow up investigations and medical superintendence is at the hands of the doctors at Goa Medical College Hospital. The Petitioner is today left with a residual service of 3 years and one month. The Petitioner has already intimated the Respondents that he is willing to forgo his promotion and continue to work as an Upper Division Clerk.

7. Under the circumstances, exercising equitable jurisdiction, we dispose of the Petition declaring that the promotional order *qua* the Petitioner shall not be given effect to since the Petitioner has forgone promotion. Treating the Petitioner in last leg of service, he would not be transferred from Goa.

8. No costs.

M.S. SONAK, J.

CHIEF JUSTICE.