

Central Administrative Tribunal
Principal Bench

O.A.No.1317/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 8th day of May, 2003

Sh. Mahesh Chander
No.MES 360915
Garrison Engineer (North)
Air Force, Palam
Delhi Cantt. - 110 010. .. Applicant

(By Advocate: Sh. Vimal Roy Verma)

Vs.

1. Secretary
Ministry of Defence
New Delhi.

2. Engineer in Chief
Army Headquarter
Kashmir House
New Delhi.

3. Chief Engineer
Air Force (WAC)
Chandi Mandir.

.. Respondents

(By Advocate: Sh. R.V.Sinha)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns transfer order dated 27.8.2001 by which applicant has been transferred, on promotion, from Palam, New Delhi to Bhatinda. He has sought quashment of the aforesaid order with retention as UDC in the same or nearby station.

2. Applicant was appointed as Lower Division Clerk and by an order dated 27.8.2001, along with 49 LDC candidates, was promoted as UDC, out of which 28 LDCs have been transferred and posted on promotion to other stations. Applicant made representation which was turned down by respondents on 29.10.2001. His second request against transfer was also rejected by an order dated 15.4.2002.

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3. Sh. Vimal Roy Verma, learned counsel for applicant assailed the impugned order on the ground that despite availability of post of UDC at Delhi as reflected from the surplus deficiency report, 20 posts of UDCs are available in Delhi and for the quarter ending September, 2001, the number was 11. By referring to the posting policy, for the purposes of transfer of Group 'C' and 'D' personnel working in MES and referring to Para 23 which stipulates as under:

"Staff on promotion be adjusted in the same station (Not necessarily in the same unit) provided vacancies are available. However if no vacancies are available in the same station may be considered for posting to nearby station. Individual due for tenure station as per seniority list in promoted category be posted to tenure station."

4. In view of the above posting policy, it is contended that in case the staff is promoted, is to be adjusted in same station on availability of vacancies and as the applicant was not due for tenure station, he cannot be posted to a tenure station.

5. Having regard to the above, it is stated that as the transfer has been resorted to in violation of policy guide-lines in vogue, the same cannot be sustained in law.

6. On the other hand, Shri R.V.Sinha, learned counsel appearing on behalf of respondents, contested the OA and stated that the transfer has been resorted to on administrative exigency and public interest. The earlier request of applicant against his transfer is effective on the study of his son, who is BE (Electrical), cannot be a valid ground for

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interference in the transfer order. Moreover, the transfer is in accordance with posting policy, the same cannot be interfered, and as no post of LDC is available in nearby station, the transfer in the light of the decision of the Apex Court in State Bank of India v. Anjan Sanyal, 2001(3) SLJ SC 270 is followed.

7. I have carefully considered the rival contentions of the parties and perused the material on record. As per Clause 23 of the posting policy, on promotion, the staff is to be adjusted not necessarily in the same unit, but in the same station provided vacancies are available. However, vacancies are not available in the same station, is to be considered for posting to nearby station.

8. In the light of the monthly progress report on surplus and deficiency strength, in quarter ending September, 2001, 11 vacancies of UDC are shown available at Delhi. In this view of the matter, the policy guide-lines should have been adhered to by respondents while affecting the transfer of the applicant. As held by the Apex Court in Anjan Sanyal's case supra, any transfer which has been made, in violation of the policy guide-lines, can be interfered in judicial review by this Court.

9. Having regard to the reasons recorded above, ends of justice would be met if the present OA is disposed of with direction to respondents in the light of their surplus deficiency report on 22.10.2001, ^kto reconsider the request of applicant for

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retention at Delhi as UDC, having regard to the position of vacancies as reflected in their own order after verification. The same should be done by passing a detailed and speaking order within one month from the date of receipt of a copy of this order. Till then, as the applicant is still working as LDC with the respondents, statusquo be maintained till then. No costs.

S. Raju

(Shanker Raju)
Member(J)

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Forwards for Ret & COO