

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1860 of 1989
T.A. No.

DATE OF DECISION 23.11.89

S.K. JAIN _____ Applicant (s)

Shri Shyam Moorjani _____ Advocate for the Applicant (s)

Versus

Union of India _____ Respondent (s)

Mrs. Raj Kumari Chopra _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. To be circulated to all Benches of the Tribunal ? ✓

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri S.K. Jain, Staff Officer Grade II, Engineer-in-Chief Branch, New Delhi, against the impugned order No. MES/103/89 dated 25.4.89 passed by the Engineer-in-Chief posting the applicant to the office of the Chief Engineer (Factory), Secunderabad, as Staff Officer Grade II. The case of the applicant is that this is in violation of the policy on Career Planning and Posting issued by the Engineer-in-Chief vide order dated 17.12.87. The applicant has put in more than 20 years of service and is entitled to a compassionate posting as per the policy.

2. The brief facts of the case are that the applicant had joined as Assistant Executive Engineer in 1968 in the Military Engineer Services as Class I Officer. He was promoted as Garrison Engineer (Project) Air Force, Srinagar, in January, 1970 where he worked till December, 1981 when he was transferred as Deputy Commander Works Engineer at Ramgarh (Bihar). During the period he worked as Garrison Engineer

(Project), Srinagar, he had executed civil construction work etc. which required knowledge of civil engineering. The applicant has been charged with mis-conduct and inquiries have been ordered under Rule 14 of the C.C.S. (CCA) Rules 1965 and given a charge-sheet. The charges relating to the period of 1979 to 1981 are still to be finalised. According to the applicant, he is availing the assistance for preparation of defence from the persons located at Delhi. Being a mechanical engineer, he needs assistance of persons having a degree in Civil Engineering. The case of the applicant is that if he is transferred out of Delhi where he is not getting such an assistance, it would deny him justice as services of the civil engineers posted in Delhi would not be available to him and this can mar his promotion and future prospects.

3. According to the orders dated 17th December, 1987, passed by the Engineer-in-Chief Branch on the career planning and posting policy, an M.E.S. officer is entitled to a compassionate posting after putting in 20 years of service. A copy of the Career Planning and Posting Policy is at Annexure A to the application. The case of readjustment of the seniority of the applicant is withheld because of the involvement of the applicant in disciplinary proceedings initiated after the year 1985. If the applicant is transferred out of Delhi, he would be unable to defend himself and his 20 years of Group A service will be jeopardised. It is, therefore, necessary that the applicant is not posted out of Delhi while disciplinary proceedings are continuing. It is also mentioned that there are approximately 80 posts in the grade of the applicant in Delhi and he can be easily adjusted in Delhi itself. He has pointed out that according to the regulations governing officers in M.E.S., the Engineer-in-Chief is the competent authority to decide the posting of the applicant. The applicant had applied for posting on compassionate grounds vide application dated 17.8.89 but the same has been rejected by the Directorate of the Personnel Branch of the Engineer-in-Chief's office and not by the competent authority viz. Engineer-in-Chief. As such, the transfer orders are void. Natural justice demands that his case should have been shown to the Engineer-in-Chief who must follow the directions laid down by him while enunciating the policy on Career Planning and Posting. The applicant has prayed that the court should issue orders or directions to adjust the applicant at Delhi as per policy on compa-

27

ssionate grounds.

4. The respondents in their reply have mentioned that transfer being an incident of service and the applicant having an all-India service liability, has no right whatsoever to ask for stay or cancellation of his transfer on frivolous and unrelated grounds of pursuing case of disciplinary proceedings in which the applicant is involved. It has been stated that the applicant stands transferred to Secunderabad and his request for posting to Delhi on compassionate grounds was duly considered by the competent authority and rejected as his presence in Delhi was not considered essential. It has been stated that the applicant who has been charge-sheeted and will face inquiry at Srinagar and Delhi, his continuance at Delhi is in no way essential. He can always come to Delhi for the inquiry and take assistance from the officers posted in Delhi. According to the respondents, the applicant is trying to confuse the issue by misleading the facts. The applicant has been in the Department since February 1968 and has gathered sufficient experience before he was posted as Garrison Engineer. If he had considered himself not competent to carry out the duties of Garrison Engineer, he should have represented this aspect at the relevant point of time. The post of Garrison Engineer can be held by a Civil Engineer, Electrical Engineer and Mechanical Engineer. The present case is only of his transfer and the plea of defence is wholly unrelated to this case. Whatever defence he wants to take in the case of disciplinary proceedings, he can take the same in the application for disciplinary proceedings and not in the case of transfer. Charge-sheet was served on the applicant in 1987-88. He has already stayed in Delhi for 4 years and cannot continue indefinitely as he has already completed his tenure. The plea of the applicant that his transfer should be stayed on the ground that he is involved in the disciplinary proceedings has no merit.

5. In the counter filed by the respondents, it has been stated that the Supreme Court in the case of Shri B. Vardha Rao Vs. State of Karnataka and others - 1986(4) SCC 131 - held that "It is well understood that transfer of Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary

28

incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post." A Full Bench of the Tribunal has also decided in the case of Kamlesh Trivedi Vs. ICAR and Another - A.T.R. 1988 (2) CAT 116 - that "Government has the power and authority to transfer in the exigencies of administration and the Tribunal will not normally interfere in the matterunless it is proved and established that the transfer was made due to malafide or in colourable exercise of power." As applicant's transfer has been made in a normal way, his request should be rejected.

6. The learned counsel for the applicant laid great stress on the Career Planning and Posting Policy for MES Civilian Officers framed by the Army Headquarters and said that these are not merely guidelines but rules. These rules have been followed by the Army Headquarters all along and the respondents cannot be allowed to pick and choose and follow the rules in some cases and not follow them in the other. The learned counsel for the applicant, Shri Moorjani, pointed out that a Division Bench of this Tribunal at Cuttack in the case of K. Ram Mohan Rao Vs. Union of India - OA 258 of 1989 - decided on 8.9.1989 has examined the same set of rules-cum-guidelines framed by the Engineer-in - Chief of the Army Headquarters which were nomeclatured as Career Planning and Posting Policy of MES Civilian Officers and have held that the guidelines have the force almost akin to the rules framed and that being so, it can be said that unless the exigencies and circumstances so require, the principles laid down in the guidelines should be respected and followed. Shri Moorjani said that when Tribunal has itself found these guidelines as rules, violation of any provision of these rules cannot be allowed by the court. He said that he was not fighting the transfer order and shall also not insist on being retained on the post being held by him in Delhi, but a right has been conferred on the applicant by the Policy and he has exercised the right which is under the rules. Rule 38 specifically lays down that the system prescribed

Shri Moorjani

has to be made functional by officers and it is expected that not only the executives but also the officer community as a whole would ensure faithful implementation of the policies as enunciated in the policy letter. It is, therefore, imperative that these guidelines are to be treated as rules and followed. The applicant has asked for the extension of his tenure till the disciplinary enquiry against him was completed. Rule 22 of the Policy provides for extension of tenure to finalise disciplinary cases. Rule 23 providing for guidelines on compassionate postings lays down that officers may seek two compassionate postings of two years duration each or one posting of four years duration anytime after 20 years of service. Refusing the applicant his option for continuing at Delhi as provided in the rules can only mean colourable exercise of power. Shri Moorjani pointed out to various postings as mentioned in Annexures 'F' and 'G' to the rejoinder filed by the applicant where options of the officers have been accepted on their foregoing the last leg posting, but it is not being allowed to the applicant arbitrarily and, therefore, with malafide intention. The modalities for compassionate posting are given in para 24 of the Policy. The Chief Engineer recommended the case of the applicant, but the same was rejected earlier in spite of the fact that during the last 20 years, the applicant has had 18 postings. He went to all these postings, but now that he has exercised his option, the same was being refused. The transfer is not in public interest but merely a rotational transfer. The applicant wants to be kept in Delhi only till his enquiry is over. If the same can be completed in two months, he would have no objection to go anywhere after two months. In fact, the applicant wants to go on premature retirement. Shri Moorjani has also emphasised that the rejection has been done by the Director (Personnel) who was not competent to reject his compassionate posting. The applicant had no reason for opting under compassionate grounds until he had been transferred.

7. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, said that the Career Planning and Posting Policy for MES Civilian Officers issued by the Army Headquarters in December 1987 are only guidelines which are not mandatory. She said that the case of the applicant does not come under the compassionate posting as no compa-

ssion is involved like illness of family members. The Director of Personnel had replied as there was no compassionate ground. She said that the cases referred to by the applicant in the rejoinder are of a very different nature. The case of Shri M.N. Misra was examined on compassionate grounds as he had lost his mother and wife and there was no one to look after his daughter. Similarly, Shri N.K. Sood, who was due to retire in July 1991, his wife was a patient of cancer and was undergoing psychiatric treatment as well. So, this was a case of special compassion and not where the applicant is facing a departmental enquiry. The others mentioned at Sl. Nos. (c) to (g) on page 12 of the rejoinder were highly specialised persons and were to continue with the job of teaching. They are not to be posted on executive jobs and, therefore, having been continued in their posts. As far as Shri Kulwant Singh at Sl. No. (h) is concerned, he now stands posted to Chief Engineer, Eastern Command, Calcutta. Similarly, Shri Tilak Raj at Sl. No. (j) has been posted to Siliguri. The officers at Sl. Nos. (a) and (b) - Shri L.C. Chawla and Shri A.V. Gopalakrishna - are high officers and posted as Chief Engineers and cannot be compared with the applicant. They have, however, been transferred within Delhi itself. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, emphasised that the Cuttack Bench's judgment has not held these guidelines to be rules, and para 7 of the judgment has to be read as a whole. The facts in the two cases are totally different. The judgment held that the guidelines are "akin to rules" but not mandatory. The judgment states that "By making a provision for a person serving in a hard station to name some stations of his own choice for his posting back, were really aimed at so as to give an incentive to a person posted at a hard station to work sincerely and efficiently so that he can have the privilege of having a choice as otherwise the person serving at a hard station may feel disgruntled." Therefore, guidelines have been framed almost akin to the rules. She emphasised the word "therefore" which means that the circumstances leading to the remarks that the guidelines have the force almost akin to the rules framed has come out from the facts of the case where a person in a hard station has to be given some incentive for working sincerely and efficiently. This is not the case in the present application where the applicant has been working in Delhi for the last four years and wants to continue staying there on compa-

ssionate grounds when there are no compassionate grounds. She said that para 15 of the guidelines clearly indicates that guidelines will generally be followed, but organisational and functional requirements will be an overriding consideration for posting and these are best decided by the competent executive authority. She said that the applicant cannot build up a case on the basis of a rejoinder where a lot of new facts and names have been added. She cited the cases of **Union of India Vs. H.N. Kirtania - Judgments Today 1989 (3) S.C. 131** - and **Gujarat Electricity Board and Another Vs. Atma Ram Sungomal Poshani - Judgments Today 1989 SC 20** - and **N.K. Maheshwari Vs. Union of India - Judgments Today 1989 (2) SC 338**. In the last case it has been held by the Supreme Court that guidelines being not statutory in character are not judicially enforceable. In the earlier two cases, the Supreme Court has held that a Central Government officer with a transferable post has no option and must proceed on transfer unless the transfer is violative of some statutory rules or is malafide. It has also been held that an applicant can only make a representation against his transfer, but cannot refuse to go on transfer.

8. Shri S. Moorjani, counsel for the applicant, emphasised that Delhi was not the home town of the applicant. He belongs to Jallandhar. He was not fighting against his transfer order as such, but against the rejection of his application on compassionate posting to which he has a right. His compassionate posting was rejected by an officer who was not competent to do so. He said that the Additional D.G. is of the same rank as the Chief Engineer who had accepted and recommended his compassionate posting. He said that in the case of Shri N.K. Sood the case of compassionate posting was granted by the Engineer-in-Chief, but the applicant's case was not put up to him. He also vehemently opposed the interpretation of compassionate posting. He said that it was nowhere defined that compassionate posting can only be considered when somebody is seriously sick. The rejection of his option has not been explained by any order giving reasons. He said that the applicant had put in 20 years of service and had done several hard postings and had a right to exercise his option. The applicant is not challenging the merit of any transfer, but he has a legal right to request

Byom

12

for compassionate posting which overrides the authority of the respondents to transfer a person under para 15(d)(v) of the guidelines. He said that in the case of Shri C.S. Narayan Rao (Annexure 'I' to the rejoinder) the transfer order was cancelled as he was involved in a disciplinary case just like the applicant. There is no good reason for discriminating against him. He made a plea that the applicant should be retained in Delhi till April and the respondents requested to complete the enquiry by that time. If he is not kept in Delhi, the education of the children would be affected and his old father aged 70 years would also suffer. He cited the case of Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab - AIR 1975 SC 984 - where it has been held that even where a Government order may not have the force of law, there must be proper rationalisation in not following the same and unless there are very strong reasons or rationale for doing so, it would amount to violation of Articles 14 and 16 of the Constitution.

9. I have gone through the pleadings and given careful consideration to the arguments by the learned counsel on both the sides. The guidelines issued by the respondents do provide certain privileges and normally these guidelines should be followed, but it cannot be said that these guidelines are statutory in character and cannot be equated with mandatory rules. Even the judgment of the Cuttack Bench of the Tribunal, cited by the learned counsel for the applicant, has not held that these guidelines are mandatory, but have stated that these have the force almost akin to rules. The judgment in the Cuttack Bench's case was based on entirely different considerations. However, the fact still remains that guidelines should be applied in a rational way. It was argued by the applicant that if he is transferred out of Delhi at this stage, it will seriously affect the studies of his children and create a lot of problem for his aged father. It was also said that his departmental enquiry has already been delayed considerably and if he moves out of Delhi, it would affect his entire career and it is a matter for great compassion because his entire future will be jeopardized if he is moved without completing the departmental proceedings in Delhi.

Sh. Ar.

10. As has been held by the Supreme Court in the case of N.K. Maheshwari Vs. Union of India - 1989 (2) Judgments Today - 388 - guidelines are not statutory in character and as such not enforceable judicially. In the circumstances, I shall not like to interfere with the impugned orders and no relief can be provided in the present application by the court. Respondent No. 2, namely, the Engineer-in-Chief, Army Headquarters, may, however, examine the representation of the applicant regarding his exercising the option on compassionate grounds under the policy on Career Planning and Posting and pass suitable orders. The matter is, however, left entirely to the Engineer-in-chief to decide. With these observations, the application is dismissed. There will be no orders as to cost.


25.11.89
(B.C. Mathur)
Vice-Chairman