

Reserved on 20.10.2020

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD**

(This the 20th Day of November, 2020)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Anand Mathur, Member (Administrative)

Original Application No.330/599/2020

Kamal Singh Rana aged about 57 years 8 months S/o Shri Chandra Singh Rana Resident of 356/3 Golden Green Park Lane 22 Bisalpur Road, Bareilly – 243006, serving as JE (QS&C), in the office of Chief Engineer Bareilly, Zone, Bareilly Cantt.

..... **Applicant**

By Advocate: Shri Swayamber Lal

Versus

1. Union of India through the Director General (Pers), Military Engineer Services, Integrated Headquarters of MOD (Army), Engineer – in – Chief Branch, Kashmir House, Rajaji Marg New Delhi – 110011.
2. The Chief Engineer, Headquarters Central Command Lucknow, Pin-908544.
3. The Chief Engineer, M E S, Bareilly Zone, Bareilly Cantt. 243001.

..... **Respondents**

By Advocate: Shri L.P. Tiwari

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

We have heard Shri Swayamber Lal, Advocate for the applicant and Shri L.P. Tiwari, Advocate for the respondents, on admission and on the prayer for interim relief and have perused the record.

2. The applicant is serving in the office of Chief Engineer, Bareilly Zone, Bareilly as J.E. (QF&C). He is aggrieved by the impugned transfer/ movement order dated 21.01.2020, whereby he has been transferred from Bareilly to Roorkee.

3. The legality and correctness of the impugned transfer/movement order has been challenged in the instant OA, by the applicant solely on the ground that the impugned transfer order is in the teeth of guidelines issued by Engineer in Chief, Army Headquarters, New Delhi, in respect of transfer of employees of military engineering services, circulated vide letter dated 18.02.2019, copy whereof has been annexed as annexure A-3 to the OA. These guidelines provide that all Group 'B' and Group 'C' employees will generally not be transferred out of complex preceding 03 years of their retirement except on their requests to stations/complexes of their choice.

4. Learned counsel for the applicant has submitted that the respondent, without considering the facts that the applicant is going to retire within 03 years and there is no request from him to post him to any other station of his choice, has passed the impugned transfer/movement order, which is liable to be quashed. As an interim relief, prayer has been made to stay the effect of impugned transfer/movement order dated 21.01.2020 (Annexure A-1).

5. To the contrary, Shri L.P. Tiwari, Advocate appearing for the respondents, has vehemently opposed the admission of the OA and the prayer for interim relief, by contending that the applicant has placed wrong factual position before this Tribunal. The facts as mentioned in the OA, itself show, that date of birth of the applicant is 06.02.1963 and he is going to retire on 28.02.2023, on reaching the age of 60 years. Hence, it is clearly evident, that the applicant had more than 03 years from his retirement, at the time when the impugned order was passed on 21.01.2020. Moreover, a perusal of the transfer policy/guidelines, *prima facie* shows that the word "generally" has been used in it, which can easily be interpreted in the sense that 'generally' those officers, having less than 03 years from their retirement, will not be transferred. However, it is not a hard and fast rule that they cannot be transferred even in the interest of State, as is mentioned in the very first line of impugned transfer/movement order.

6. It is vehemently contended by the respondents' counsel that as per well settled legal position, the transfer policies or the guidelines are merely directive in nature and are not mandatory rules. Moreover, the transfer of a government servant, being not only an incidence but a condition of service, the court should not interfere in it. On the aforesaid grounds, it has been prayed that the OA be dismissed at the admission stage.

7. Having heard learned counsel for the parties and having perused the record, we do not find any substance in the OA and it is

liable to be dismissed at the admission stage. The reasons are as follows:-

(i) The only ground on which the impugned transfer order has been challenged by the applicant is that the transfer order is against the guidelines issued by Department itself which provides that Group 'B' and Group 'C' employees will 'generally' not be transferred out of complex preceding three years of their retirement. However, according to the facts as mentioned in the OA itself, the date of birth of the applicant is 03.02.1963 and he is due for retirement on 28.02.2023, on attaining the age of 60 years. The impugned transfer order is of 21.01.2020, meaning thereby that the applicant had 03 years, 01 month and 7 days from his retirement, when the impugned transfer order was passed. Thus, it cannot be said that the applicant had less than 3 years from his retirement when the impugned transfer order was passed and therefore it is against the guidelines issued by Engineer-in-Chief, Army Headquarters, New Delhi.

(ii) It is also to be kept in mind that the transfer policy or the guidelines are only directive in nature and are not mandatory. Moreover, the use of the word 'generally' in the policy, itself shows that an effort should be made "generally" to avoid transfer of such employees having less than three years from their retirement, but they can be transferred under special circumstances, like in the interest of State, as is in the present case.

(iii) As the applicant had more than three years from his retirement, when the impugned transfer order was passed, it cannot be said that the transfer order is in teeth of the transfer policy. No other ground has been taken by the applicant to challenge the impugned transfer order.

8. In view of the aforesaid discussions, we are of the firm view, that OA is liable to be dismissed at the admission stage. Accordingly, it is dismissed. However, keeping in view that the pandemic of Covid-19, which has not yet ended, we grant a further time of 15 days from today to the applicant to join at his new place of posting.

9. There shall be no order as to costs.

(Anand Mathur)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

Sushil