

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 229 of 2020

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Surendra Pal Singh, aged about 32 years, Son of Kunwar Pal Singh, At- Sridhar Colony, near Nagla Mandir, Agra Road, Aligarh, Uttar Pradesh 2-2001, at present working as Jr. Engineer Electrical, Bhubaneswar Central Electrical Division, C.P.W.D, Nirman Bhawan, Plot No. 188/623, 624, Pokhariput, Bhubaneswar, Odisha-751020.

.....Applicant.

VERSUS

1. Union of India, represented through the Director General (Works), C.P.W.D., Nirman Bhawan, New Delhi.
2. The Chief Engineer, CPWD, Southern Division, Nirman Bhawan, Pokhariput, Bhubaneswar – 20.
3. Executive Engineer (Electrical), Bhubaneswar, Central Electrical Division-I, C.P.W.D., Nirman Bhawan, Pokhariput-751020.

.....Respondents.

For the applicant : Mr. R. Beura, Advocate.

For the respondents: Mr. C. M. Singh, Advocate.

Heard & reserved on : 03.11.2020

Order on : 11.11.2020

O R D E R

Per Mr. Swarup Kumar Mihsra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To pass appropriate orders/direction quashing Annexure-A/1 i.e. order No. A/38014/9/2019 EC VI/190=91 dt/ 11/14.02.2020 passed by O.P. No. 1 rejecting the representation dt. 30.12.2019 for interregional transfer i.e. from southern region to northern region;*
- (ii) *To pass appropriate order/direction to Respondent No. 1 to pass appropriate order on the representation dt. 30.12.2019 by applying the yardstick/criterion enunciated as per O.M. No. F. No. 5/4/2017-S&D/223 dt. 18.4.2018 (Annexure A/3 series) and O. M. No. 28/5/2018 EV dt. 14.2.2020 (Annexure A/6) afresh with reasoning which may be communicated to the applicant within reasonable time.*

2. The case of the applicant as averred in brief in the OA is that the applicant had joined as Junior Engineer in office of Respondent No. 3 on 29.12.2015 and had sought for inter regional transfer from Southern Division (where he is currently posted) to Northern Region. He had

approached this Tribunal in OA No. 9/2020 seeking a direction to Respondent No. 1 to consider his representation dated 30.12.2019 (Annexure A/5). This Tribunal had disposed of OA No. 9/2020 vide order dated 10.01.2020 (Annexure A/2 series) directing competent authority to consider the representation of the applicant and pass a speaking and reasoned order copy of which is to be communicated to the applicant within a period of three months. In pursuance to the Tribunal's order dated 10.01.2020, Respondent No. 1 passed order dated 11/14.2.2020 (Annexure A/10 rejecting the request of the applicant for inter regional transfer since he had not completed 5 years of service as per/vide Directorate OM No. 28/1/A/2011 V dt. 17.10.2013 (Annexure A/3 series). The applicant further submitted that OM dated 17.10.2013 is based on notification dated 18.04.2016 (Annexure A/3 series) by CPWD which clearly reads "maximum period of stay in sensitive post is not more than three years" and while rejecting his representation reliance has been placed on OM dated 17.10.2013 and Regular Establishment and Office Procedure 2013 (Annexure A/4) which are in consonance with CPWD notification dated 18.04.2018 (Annexure A/3 series). And following the said notification dated 18.04.2016, Respondent No. 1 effected transfer of Junior Engineers vide office order dated 3.1.2019 and 15.11.2019

(Annexure A/5 series). It is further submitted by the applicant that vide office memorandum dated 14.2.2020 (Annexure A/6) issued by office of DG, CPWED requested compilation of representation of technical offices who have not completed two or three year and willing for inter-regional transfer at SDG level and CPWD vide OM dated 17.02.2020 (Annexure A/7) had called for readiness of Junior Engineers for particular region who have completed their tenure of 2 or 3 years in particular region to give their choice in the same region for transfer. The applicant further averred that CPWD had effected inter regional transfer of one Sri Ambuselan JE (E) from West Bengal i.e. from eastern region to southern region in public interest vide OM dt. 13.12.2019 (Annexure A/8). The applicant had also submitted that due to matrimonial dispute started in year 2018 he has to attend proceeding before Hon'ble High Court of Uttar Pradesh, Family Court, Agra and Court of Chief Judicial Magistrate.

3. The Respondents in their counter inter alia averred that the applicant had submitted representation dated 23.05.2019 (Annexure R/2) for inter region transfer from ER to NR after completion of only 03 years and 05 months of service and competent authority i.e. DG, CPWD did not accept it because as per policy/guidelines vide OM dated 17.10.2013 (Annexure R/3) any

representation for change of region will be considered only after completion of minimum of 5 years service in the region of recruitment. The respondents also submitted that wife of applicant, Smt. Priyanka Singh had filed PG case vide Annexure R/4 had requested the authority that the applicant had threatened her that on his transfer to Delhi he will kill her and her family. The respondents in response to the order dated 10.01.2020 of this Tribunal in OA No. 9/2020, filed by the applicant, speaking order was passed by the Respondent No. 1 vide letter dated 11/14.02.2020 (Annexure R/5). The respondents further averred that OM dated 18.04.2018 (Annexure A/3) of the OA relates only to revised transfer/posting guidelines for posting of officials and staff on sensitive posts in CPWD within the region and as such it does not relate to inter region transfer policy/guidelines of JEs in CPWD. The OM dated 14.02.2020 (Annexure R/6) too relates to inter region transfer in the grade of Technical Officer and it does not relate to inter region transfer policy in respect of JEs cadre. The OM dated 17.02.2020 (Annexure R/7) too does not relate to inter region transfer policy in respect of JE cadre but relates to readiness list for transfers in respect of Junior Engineers(Electrical) working under the administrative control of Project Region, Chennai subsequent to completion of their station tenures. The

respondents further submitted that Shri P. Anbuselvan initially joined as Wiremen in CPWD on 28.11.2005 and allotted Southern Region and posted at Coimbatore, thereafter on basis of LDCE 2015 he was appointed as JE (E) and posted in NER in public interest. His request for inter region transfer was considered on medical ground of his parents after completion of three years in the present region i.e. second region and his request was acceded to for change of region by the competent authority as per prescribed transfer policy of the department.

4. The applicant in his rejoinder pointed out that as per policy guidelines dated 17.10.2013 in para 1 the staff recruited in one region can be transfer to other region on a very medical or compassionate ground. Special Director General (HQ) may consider the request of an employee for change of region only when the circumstances of an employee are substantially changes since time of his/her recruitment and any representation will be considered only after completion of minimum of 5 year service in the region of recruitment. Applicant submitted that because of legal proceeding both civil and criminal initiated by the estranged wife he is undergoing physical and mental torture and his situation calls for compensation treatment and consideration by the respondents. It is further submitted by the applicant that to deny transfer on the plea of estranged wife's

petition is based on human caprice or extra legal overtones and as per the guideline of Department of Administrative and public grievances (Annexure A/11) matter like personal and family disputes, subjudice cases cannot be entertained under public grievance. The applicant further submitted that OM dated 18.04.2018 and 14.02.2020 are not directly related to the JEs, still then, they have certain persuasive effects in cases of inter region transfer of JEs.

5. In the policy decision for the purpose of transfer vide Annexure R/3 at para 1 (a) any representation for change of region will be considered only after completion of minimum of 5 years service in the region of recruitment. The present applicant has not completed the said period of 5 years but has completed period of four years in Bhubaneswar. He is seeking transfer from Southern Region to Northern Region on the ground that criminal case and matrimonial dispute are pending between him and his wife as the said case has been instituted at instance of his wife. It was strenuously urged by learned counsel for the applicant that due to filing of such cases at Aligarh by his wife, the applicant is mentally harassed and therefore he has requested for his transfer from Southern Region to Northern Region but the said grounds do not come within the special circumstances for considering transfer on compassionate ground and life

threatening medical ground as mentioned in Annexure R/3. Therefore we are satisfied that no illegality or irregularity has been committed by rejecting the application of the applicant by the competent authority. No violation of any rule or circulars has been shown to the satisfaction of this Tribunal in this case. Therefore this Tribunal is not satisfied that there is any justification for interference by this Tribunal in this case. His representation has been rejected by the competent authority of the respondent department vide Annexure R/5 after the direction was given by this Tribunal in the earlier OA filed by the applicant. After going through materials on record and hearing learned counsel for both sides, we are not satisfied that there has been any non-application of mind by the competent authority while considering the said representation of the applicant.

6. It was further submitted by learned counsel for the applicant that representation regarding transfer made by similarly placed employees have been allowed by the respondents and the same having not been extended in favour of the applicant by the respondent department there has been discrimination by violating article 14 of the constitution. In this regard learned counsel for the respondents have submitted that they have mentioned at para 18 of the counter regarding transfer of another employee who had made out case of medical ground of

parents. No such grounds has been made out by the applicant in order to come within the scope of policy decision as made vide Annexure R/3. Therefore we are not satisfied that this Tribunal is required to interfere in the matter.

7. Accordingly the OA being devoid of any merit is disposed of but in the circumstances of this case we give liberty to applicant to make fresh representation to competent authority of respondent department after he completes period of 5 years in his place of posting at Bhubaneswar and thereafter the grounds as taken in the said representation, if filed, will be considered by the respondent department in accordance with law by issuing a speaking and reasoned order to the applicant within a period of two months from the date of filing of such a representation.

8. With the said observation the OA is disposed of but in the circumstance there shall be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)