

Central Administrative Tribunal
Principal Bench, New Delhi.

D.A.2222/1993

New Delhi, This the 25th Day of March 1994

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Hon'ble Shri P.T. Thiruvengadam, Member(A)

Shri Surjit Singh MES No. -312905
S/O Late Shri Sardar Jaswant Singh
Aged about 49 years
R/o 187-B, Pocket- J &K,
Dilshad Garden, Delhi - working as
Draughtsman Grade II under GE(R&D)
Lucknow Road, Delhi.

...Applicant

By Advocate Shri S S Tiwari

Versus

1. Union of India, through
Secretary, Ministry of Defence
South Block, New Delhi.
2. Chief Engineer(Delhi Zone)
Delhi Cantt. Delhi.
3. Chief Engineer,
Western Command, Chandimandir.
4. Garrison Engineer(R&D)
Lucknow Road, Delhi -110 054.

...Respondents

By Advocate Shri George Parickan

ORDER

Hon'ble Shri P.T. Thiruvengadam, Member(A)

1. The applicant joined the respondents as draughtsman Grade II on 23.6.77. This post is in group C. The applicant had done one tenure posting at Bhatinda and is posted in Delhi since 1984. The applicant was transferred in March 1993 and subsequently an amended transfer order was issued on June 93.(6.6.1993). The transfer from Delhi to Ganga Nagar was to have been completed by July 1993. The applicant gave a representation dated 12.7.93 for cancellation of his transfer. The applicant was issued a movement order dated 11.9.93 showing him struck off strength(SOS) with effect from 30.9.93. which was on him on 14.9.93. The applicant again submitted a further representation^{served} dated 14.9.93 for cancellation of this transfer order. On 18.9.93

the earlier movement order dated 11.9.93 was directed to be deferred against the movement and SOS order (with effect from 30.9.93) ^{which} was served on him. This OA has been filed praying for the following reliefs:-

- " (a) Set aside and quash the impugned order of transfer and rejection of the applicant's representation.
- (b) Direct the respondents to give the applicant the same treatment has been given to women employees and two of the male employees.
- (c) Pass any other order(s) as may be deemed just and proper in the facts of the case; and
- (d) Award costs. "

2. The learned counsel for the applicant advanced the following grounds:-

- (a) The applicant was on medical leave since 28.9.93 and serving movement order dated ³⁰ 11.9.93 which was received by him while he was still on medical leave is irregular. In a similar case where the employee on medical leave was served with movement order such order was cancelled by E-in-C's branch stating that posting orders issued while the individual is on medical leave is not proper (Order No. A1 20060/847/EIC(I) dated 23.10.86.)
- (b) The applicant is suffering from Bronchial Asthma and posting him to Ganga Nagar which is a desert and sandy area can aggravate the applicant's disease and Asthmatic attack may be severe.
- (c) The transfer has been ordered only to post those persons who have completed their tenure in tenure stations in places of their choice. Transferring the applicant who is in bad health will not in any way serve administrative interest since the applicant ^{will be} in a far worse condition in the new place of posting
- (d) Representations against postings are to be

considered by the Headquarters, Western Command. (15)
as per para 28 of circular relating to the posting/
transfer policy of civilians in MES(No.30203/744/
EIC(I) dated 20.12.91). In the case of the applicant
the representation of the applicant dated 14.9.93
was rejected at the zonal level and not at the
command level.

(e) The policy on transfer which has been invoked
by the respondents is under review and the Bangalore
Bench of this Tribunal has directed in a similar
transfer case in the same Ministry that the particular
transfer should be regulated in ~~the~~ terms of the
new policy to be framed by the respondents.

(f) Women employees are being given preferential
treatment and they are exempted from tenure postings.
There are also instances of two male employees whose
tenure stations postings were cancelled.

3. The learned counsel for the respondents countered
the above arguments as under:-

(a) The applicant was present in the office upto
26.9.93. On 27.9.93 he was on leave due to some
urgent work. From 28.9.93 onwards he was absent
from duty without sanction of leave. He sent
leave application dated 4.10.93 which was received
in the office of the respondents on 7.10.93 while
he had already been struck off strength from 30.9.93.

(b) The applicant had ^{/never} informed them about medical
treatment for Bronchial Asthma earlier and had
never taken medical leave on this account. Only
after the issue of movement order the applicant
has started raising this ground.

(c) The applicant had submitted a representation
in July 93 against the transfer order issued in
June 93. This representation was duly forwarded to
Chief Engineer, Western Command in August 93

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by Delhi Zone Chief Engineer. The representation was considered at the command level and was rejected only in Sep 93 vide communication from Command to Zonal Chief Engineer in 30323/THD/EIC(I) dated 16.9.93. In the meantime further movement order was issued on 11.9.93 and the same was deferred on 18.9.93. As regards the second representation of the applicant dated 14.9.93, rejection letter was given at the zonal level since by that time the rejection of the first representation from the Headquarters had been received. (Relevant file in this regard was produced in the court at the time of argument).

d) As regards the transfer policy the learned counsel for the respondents mentioned that some consideration/review of the policy can not result in all transfers being pended. Pending revision in the posting/transfer policy the existing instructions have to be followed.

(e) As regards women employees the transfer of tenure stations has been directed to be frozen for the time being by the Ministry of Defence. The few cases of cancellation of transfer orders in the case of male employees to tenure stations has occurred purely based on the merits of each case and as per consideration given at the appropriate level.

4. Having heard the counsels for both sides I ^{direct} note that

(a) As regards the orders passed by Bangalore Bench of this Tribunal in OA 523/93 on 8.7.93 ~~note that~~ this order has been passed at the admission stage itself. The employee therein belong to the clerical grade and the entire circumstances of that case ^{are} not similar to this OA.

(b) The movement order/SOS order effective from

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30.9.93 was issued when the employee was on medical leave. The contention of the employee that the medical ^{leave} certificate ^{can} ~~are~~ ^{be} not sent in advance has to be accepted. Hence the movement order dated 30.9.93 should be cancelled and fresh movement order be issued after the employee rejoins duty. It is left to the department to treat the period of absence as per rules. But the employee should be permitted to report back in Delhi Office and fresh movement order be served on him.

(c) The other grounds raised by the applicant have been answered satisfactorily by the respondents.

5. In view of the facts and circumstances of the case, the only direction that could be given is as per para 4(b) above. The OA is disposed of accordingly. No costs.

P. T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member (A)

LCP