

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 4th day of February 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. ASHOK BHATNAGAR, J.M.

O. A. No. 765 of 2001.

Jai Bhagwan Sharma a/a 53 years s/o Late (Shri) B.S. Shamma,  
r/o H.No.1/1, Defence Civilian Accommodation (Military  
Engineer Service Enclave), Near Sadar Bazar, Bareilly Cantt.,  
Bareilly.....

..... Applicant.

Counsel for applicant : Sri R.C. Pathak.

Versus

1. The Union of India through its Secretary, Ministry of Defence, Govt. of India, South Block, Army Hqr., New Delhi.
2. Engineer in Chief, Army Hqr., Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer Central Command, Lucknow - 2.
4. Chief Engineer, Bareilly Zone, Bareilly Cantt., Bareilly.

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..... Respondents.

Counsel for respondents : Sri R.C. Joshi.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed under section 19 of A.T. Act 1985 for direction to the respondents for setting aside the order dated 28.6.2001 and transfer order dated 30.3.2001 passed by Respondent No.2 transferring applicant from the office of the Chief Engineer of Bareilly Zone to the office of Chief Engineer, Shillong. A further direction has been sought to the respondents not to interfere in the functioning of the applicant as Addl. Chief Engineer in the office of the Chief Engineer, Bareilly Zone, Bareilly and to consider the place of posting so given as choice of the applicant in his letter dated 2.3.2001. A prayer has also been made that proposal for transfer of the applicant be sent to Ministry of Defence as required under MES Regulation 1968.

11

2. The case of the applicant is that he joined as Asstt. Executive Engineer on 29.12.1972 after his selection by UPSC. He claims to have been posted to Shillong from April 1976 to July 1978. He is presently working as Addl. Chief Engineer in the office of Chief Engineer, Bareilly Zone since 16.7.1998. The applicant claims that the posting and transfer of all the civilian officers of the Military Engineer Service are governed by the Career Planning and Posting Policy issued by the Army Hqrs. from time to time. He has annexed the policies of Dec.87, Feb.91, Sept.91 and April 2000 in which clause 15 is said to deals with posting/ transfers at the hard/tenure station. The tenure is mentioned as two to three years. The applicant was transferred vide order dated 30.3.2001 from Bareilly to Shillong. He has not been relieved from Bareilly. The applicant claims that he is posted second time to the hard/tenure station while there are a number of junior officers, who have not done a single hard/tenure postings. He also claims that he has been denied the opportunity of giving any choices of stations before issuance of order of transfer dated 30.3.2001 and his representation dated 2.3.2001 addressed to Director General (Personnel) remain unattended. It is also claimed that he comes within the zone of consideration for the next promotion to the post of Chief Engineer very shortly. He has claimed that his name is not find place in All India Seniority List and officers whose names are specified till Sl.No. 20 have already been granted promotion as Chief Engineers. He has claimed that no post of Chief Engineer is available in Shillong to accommodate him after he is promoted. It is also claimed that posting orders of officers are issued on the basis of recommendations made by the Board of Officers constituted by Engineer in Chief and the Board of Officers consider factors like eligibilities, tenure, performance etc. and recommends the transfer of the officers. It is

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claimed that no recommendation has been obtained from the Board of Officers in case of the applicant. He claims that Appendix 9(I)(i) as appended to the FRSR provides that hard/tenure postings have to be only given to an employees once in his service career. Thus, the order of transfer has been passed in violation to the instructions in FRSR Part-I.

3. We have heard the arguments of Sri R.C. Pathak for applicant and Sri R.C. Joshi for respondents.

4. We have perused the counter reply filed by the respondents. The respondents have not denied that the applicant is in zone of consideration for promotion to the post of Chief Engineer but have stated that this factor has been taken into account and that recommendations of the Chief Engineer, Central Command, were considered for posting the applicant to Shillong. Regarding his promotion, the respondents have mentioned that the only four vacancies of Chief Engineers <sup>are 1</sup> is available and the name of the applicant appears at Sl.No.8 in the list and, therefore, the posting is not likely to be affected by his promotion which is not in offing immediately. The respondents have not denied that no recommendations of the Board of Officers has been obtained in his case and have mentioned that the posting/transfer order of the applicant have been strictly made according to the rules and policies on the subject. The respondents have stated that in isolated cases of posting of Officers, not part of bulk turnover, the recommendation of Board Officers is not taken due to administrative constraints as constitution of Board Of Officers of each individual posting is not practicable. The respondents have stated that Appendix 9 (I)(ii) of FRSR pertains to duration of tenure and not to number of times an officer can be posted to North East. They have also stated that Sri M.L. Bansal at Sl.No.20 in the list and Sri K. Thiruvangadum at Sl.No.21 had <sup>been</sup> not given two simultaneous hard tenure station.

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5. We have perused the order dated 28.6.01 which is impugned in the O.A. It has been stated in the order, which is the reply to representation of the applicant that the guidelines in posting of Career Planning for MES officers issued in Sept.99 permit an individual to be posted to a tenure station at each rank. Therefore, the applicant, who was posted from April 76 to July 78 at Shillong in the rank of Asstt. Executive Engineer could be posted when he <sup>was considered for a</sup> ~~went~~ <sup>in another rank</sup> ~~to~~ subsequent transfer. It has also been mentioned that the officers are posted to tenure station as per vacancies available at that moment of time and that some tenure/hard station during their career. It has also been mentioned that the applicant was posted in ~~area~~ and around ~~area~~ Delhi for 14 years and this facility had not been available ~~to~~ availed to all the other officers listed in the re-presentation. The applicant was advised to join duties as Addl. Chief Engineer, Shillong.

6. The applicant has annexed Annexure A-3 to this O.A., the career planning and guidelines for MES Civilian officers. The instructions regarding tenure and hard stations are given in para 15 of the State guidelines which reads as follows :-

"A list of tenure and hard stations is given at Appendix 'B'. A tenure at such stations will generally be of two to three years (excluding absence on leave, training or otherwise). An officer is liable to serve in one tenure station in each rank. However, officers beyond 56 years of age are not liable for tenure postings. An officer on completion of a tenure in these stations can opt for three choice stations for posting located in more than one Command. The officer's request will be accommodated subject to availability of a suitable post/appointment. However, it is not mandatory to ask for choice stations where officers are in the promotion zone or are being considered for executive appointments. The organisational interest and requirements will be paramount. An officer who applies for change of tenure posting on medical grounds will also not be considered for executive tenure."

7. We thus, find that the tenure/hard stations was to be of 2 to 3 years and an officer was liable to serve in one tenure station in each rank. The officers beyond

56 of age were not liable to tenure postings. On completion of tenure, the officer so posted was allowed to give three options for posting <sup>or places</sup> located in more than one command. It has also been mentioned that the requirement was not mandatory regarding choice stations where officers were in promotion <sup>Zone 1</sup> or were being considered for appointments <sup>Executive</sup>.

8. The counsel for the applicant has placed before us a copy of circular letter dated 24.1.02 of Coordination and Personnel Directorate addressed to Chief Engineers of various Commands and organisations. It makes certain additions in Career Plannings and posting guidelines for MES civilian officers 1999. It has been added to para 15 which states that officer who has served in a hard station becomes eligible for next posting to one of three choice stations (in two commands). The officer can subsequently be posted to a tenure/hard station. Counsel for applicant contention is that the second posting to a hard station was brought into affect by the said addition. However, we find that it was already provided that a personnel can be transferred to a hard station once in each rank. Therefore, this amendment does not affect the applicant who had initially done his tenure posting between 1976 to 1978 in the rank of Assistant Executive Engineer and is now being posted in the rank of Addl. Chief Engineer.

9. Counsel for applicant has stated that the statutory provisions of FRSR has been violated. He has, in this connection, placed before us Appendix 9 which consists of Govt. of India, MoF CM No.20014/E/83-E dated 14.12.83 and deals with the need for attracting and retaining the services of competent officers for service in the North Eastern region. It has been mentioned in Appendix 9 that there was to be a fixed tenure of three years at a time <sup>when</sup> <sup>was</sup> <sub>of service less than</sub> ten years and two years at a time when officers <sup>had completed</sup> <sub>more than</sub> ten years of service. It deals with other incentives given

to the officers posted in the North East Region. The conclusion drawn by the counsel for applicant that the provisions of Appendix 9 provides for only one posting at hard tenure stations during life time is not borne out by the provisions of Appendix 9. It merely provides for duration of posting to North East region in case an officer had done less than ten years of service and a separate and shorter period in case the officer has done more than ten years of service.

10. Counsel for applicant has urged before us that transfer was not in public interest because immediate supervisor had recommended for his stay at Bareilly on account of important projects which the applicant was handling. He has also mentioned that his transfer to North East region would place unnecessary burden on the exchecker, as he was due promotion shortly and would have been shifted to North East as there was no vacancy of Chief Engineer. These are the issues which have to be considered by the respondents at the time of transfer of an official and they would not be subject to judicial review in case of transfers as has been laid down by the Apex Court.

11. Lastly, counsel for applicant has stated that his transfer was not recommended by Board of Officers as was required in case of such transfers. The respondents have mentioned that in isolated cases, the Board of Officers could not be constituted ~~and~~ to deal with the question of transfer of officers. The learned counsel has also contended that an authority below transferring authority had taken the decision in the case of the applicant's transfer. We have seen Annexure A-I which is the order of transfer of the applicant dated 30.3.01. The order of transfer has been signed by Lt. Colonel of coordination and personnel Directorate, Engineer-in Chief's Branch, Army Hqrs, New Delhi. However, the authority on which orders has been passed are given at the bottom of Ministry of Defence letter as IP Nos.6 (3)/2000/D(Works) and 6(5) /2000/D(Works)

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both dated 26.3.01. Hence the contention ~~with~~ that the order has been passed by an authority lower than the authority authorised to make <sup>of</sup> the transfer ~~to~~ <sup>for</sup> the applicant cannot be accepted. The order has merely been communicated by an officer of the rank of Lt. Colonel to the applicant.

12. Counsel for the applicant has urged before us that there has been a discrimination against the applicant as he has been ~~singled~~ <sup>singled</sup> out for a second posting to North East while there are many officers who have not done a single stint in the North East. It is settled in law that transfer is an incident of service and judicial review of transfers shall be limited to cases of violation of statutory rules or malafides. The question of <sup>such alleged</sup> discrimination would, therefore, not come in case of transfer and would not be subjected to judicial review.

13. Counsel for applicant has filed a supplementary affidavit in which he has pointed out the instance in which the transfers of certain officials to North East region, hard/tenure stations was changed after the officers filed representations to the respondents or filed OAs in the Central Administrative Tribunal. We find that the applicant had made a representation to the respondents and obtained an order of C.A.T. to consider the same. The representation had been replied to by order of respondents dated 28.6.01 in which the request of the applicant has been turned down. We do not find that there is any reason to interfere ~~that~~ with rejection of the applicant's representation.

14. Counsel for the applicant has placed before us some pages of a journal in which catalogue of cases has been given under various heads but has not been able to give the journals in which judgments are reproduced in full. Since the law on transfer is settled, we do not consider it necessary to refer to the items underlined by the counsel

for applicant in the said catalogue.

15. We, thus, find no merit in the O.A. Counsel for the applicant states that the applicant is ready to go anywhere after 6th of March on which his son<sup>s</sup> is to be married at Bareilly. He may ~~make~~ <sup>make</sup> this request to the respondents and we expect that due consideration will be given to such request.

There shall be no order as to costs.

  
A.M.

  
A.M.

Asthana/

The Registrar is directed to ensure that the above judgment is fair typed and compared before a copy of the same is given to the parties.

  
J.M.

  
A.M.