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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 91/2006

Date of order: 11th April 2007.

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Prem Singh Shekhawat S/o Shri Pratap Singh, Age 54 years, R/o Village - Kali Pahari Via Bagar, District Jhunjhunu (Raj.) - at present posted as UDC in the office of Barrack Store Officer, C.W.E., Army, Jodhpur.

...Applicant.

Mr. P.R. Singh, counsel for applicant.

VERSUS

1. The Union of India, through the Defence Secretary, Defence, Secretariat, Raksha Bhawan, New Delhi.
2. The Engineer in Chief, Engineering Branch, Army Headquarter, New Delhi - 11.
3. The Chief Engineer, Southern Command, Pune - 1.
4. The Zonal Chief Engineer, Jaipur Zone, Power House Road, Bani Park, Jaipur - 6.
5. The Commander, Works Engineers (Army), Jodhpur.
6. The Barrack Stores Officer, C/o Commander Works Engineer (Army), Jodhpur.

...Respondents.

Smt. K. Parveen, counsel for respondents.

ORDER

[per Hon'ble Tarsem Lal, Administrative Member]

The applicant has explained in the OA No. 91/2006 and in the rejoinder that he was appointed as Lower Division Clerk (Civilian) in 41 Field Regt. On 09.05.1973 and subsequently joined MES on 06.08.1976. He was promoted as Upper Division Clerk on 01.03.1995. He was posted in the office of Barrack Stores Officer C/o Commander Works Engineer (Army), Jodhpur from Chief Engineer Jaipur Zone, Jaipur vide order dated 03.07.2004 (Annexure A/3). He has been promoted as Assistant vide order dated 24.09.2005 (Annexure A/4) and posted to GE (AF), Jodhpur. He was not relieved from the office

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of Barrack Stores Officer, Commander Works Engineer (Army) Jodhpur for a considerable period for joining his duties on promotion in the Office of GE (AF), Jodhpur.

2. The applicant has submitted that firstly he was transferred to the Office Barrack Stores Officer, Commander Works Engineer (Army) Jodhpur on absolutely wrong basis from the Office of Chief Engineer, Jaipur Zone, Jaipur, whereas persons having longer stay at Jaipur were retained at Jaipur. The applicant stands at serial no. 8, if the period of stay is calculated at Jaipur as he was transferred to Jaipur w.e.f. 03.07.2004 after completion of hard tenure station Jamnagar whereas incumbents namely Shri R.G. Sharma, UDC was posted in the same office on 28.06.1993 likewise Shri G.L. Kumawat UDC posted on 28.05.1998, Shri Rameshwar Khichi, UDC posted on 17.07.1999 and Smt. Asudi Lalwani, UDC posted on 05.11.1999 were retained at Jaipur. Surprisingly, some of the incumbents station senior to the applicant transferred along with him like Shri Shiv Mangal Singh UDC posted at Jaipur Station on 22.09.1998 and Shri M.C. Khandelwal posted on 05.11.1999 at Jaipur station did not choose to join at their place of posting and now they are being retained at the same place of posting i.e. at Jaipur by taking illegal benefits on the name of raising of new command and thus they shall be absorbed in the newly raised command.



3. Subsequently options were called for from the staff of Southern Command for posting Chief Engineer Southern Western Command vide letter dated 23.02.2006 (Annex. A/6). The option was required to be exercised by 28.02.2006. The applicant gave option for posting in HQ Chief Engineer, Southern Western Command, Jaipur and volunteer for posting to HQ Southern Western Command. His request for posting to

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HQ CE HQ SWC has not been agreed to by the Headquarters Southern Command Engineer Branch vide their letter at Annexure A/1.

4. Aggrieved by the above order, the applicant has sought for the following relief: -

"(1) It is, therefore, prayed that this Hon'ble Tribunal may kindly be please to accept and allow this original application and call for the record pertaining to the applicant's transfer to the new raising command i.e. Southern Headquarter Chief Engineer Southern Western Command, Jaipur from Southern Command, Pune.

(2) That the order Annexure A/1 (dated 17 March 2006) may kindly be quashed and set aside.

(3) That the respondents may be directed to consider the case of the applicant for transfer to the new raising command i.e. Southern Headquarter Chief Engineer Southern Western Command, Jaipur from Southern Command, Pune.

(4) That the condition laid down in the Annexure A/6 that the persons already stand posted to other units should not apply as volunteer may kindly be quashed and set aside.

(5) That any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper may also be passed in favour of the applicants.

(6) Cost of the O.A. may kindly be awarded in favour of the applicant.



5. The respondents have not agreed to any of the prayers made by the applicant. They have explained that the individual was posted out on promotion as Asstt. from BSO CDS Jodhpur to GE (AF) Jodhpur as BSO CDS Jodhpur is not authorized for posting of Asstt. Further, no postings have been issued based on volunteers received for Chief Engineer, South West Command.

It is submitted that further options have been asked from all candidates like the applicant of adjoining area also. This information is being collected for planning purposes. However, no posting have been issued based on his volunteer ships. It is clarified that whenever

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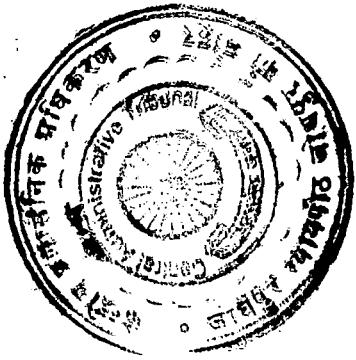
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these options are processed for posting staff permanently to south West Command, individual's candidature will be considered as per policy being followed.

The applicant's transfer to Jaipur was considered and not approved on account of deficiency of staff at Jodhpur.

6. Learned counsel for the applicant and respondents have been heard and documents perused.

7. Learned counsel for the applicant submitted that firstly the applicant was transferred to the Office Barrack Stores Officer, Commander Works Engineer (Army) Jodhpur on absolutely wrong basis from the Office of Chief Engineer, Jaipur Zone, Jaipur, whereas persons having longer stay at Jaipur were retained at Jaipur. The applicant stands at serial no. 8, if the period of stay is calculated at Jaipur as he was transferred to Jaipur w.e.f. 03.07.2004 after completion of hard tenure station Jamnagar whereas incumbents namely Shri R.G. Sharma, UDC was posted in the same office on 28.06.1993 likewise Shri G.L. Kumawat UDC posted on 28.05.1998, Shri Rameshwar Khichi, UDC posted on 17.07.1999 and Smt. Asudi Lalwani, UDC posted on 05.11.1999 were retained at Jaipur. Surprisingly, some of the incumbents station senior to the applicant transferred along with him like Shri Shiv Mangal Singh UDC posted at Jaipur Station on 22.09.1998 and Shri M.C. Khandelwal posted on 05.11.1999 at Jaipur station did not choose to join at their place of posting and now they are being retained at the same place of posting i.e. at Jaipur by taking illegal benefits on the name of raising of new command and thus they shall be absorbed in the newly raised command. This action of the respondents shows that they are not



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considering the application of the applicant for voluntary to be transferred in the newly raised command is not being considered deliberately with a view to mala fide intention. More particularly in the circumstances when only two incumbents from clerical staff willing for volunteer to Chief Engineer, South West Command.

8. Learned counsel for the applicant pleaded that the applicant is not asking transferred to Jaipur only but in any of the offices under South Western Command, Jaipur. He also pointed out that there are existing vacancies at Headquarters, Chief Engineer, Jaipur where the applicant can be adjusted.



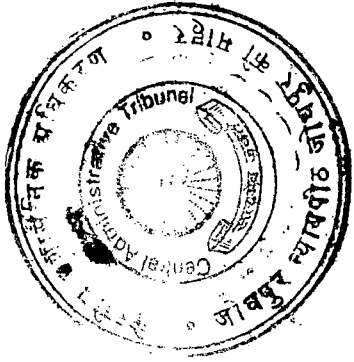
Learned counsel for the respondents explained that during CML 2004 LDCs and UDCs were surplus at Jaipur, therefore, the applicant and five other station senior UDCs were posted out from Jaipur as per provision in the posting policy. She also explained that Shri RG Sharma UDC, Shri GL Kumawat UDC, Shri Rameshwar Khinchi UDC are Junior to the applicant as per Station Seniority list of Jaipur Complex and also the female employees were exempted from long distance posting as per policy at that point of time. Therefore, Smt. Lalwani LDC was not posted out from Jaipur. However, Senior most applicant/individual persons were posted out during CML 2005 and 2006. In this connection, all these moves of posted out applicant are pending due to non receipt of decision from higher authorities regarding providing the manpower to newly raised Chief Engineer Southern Western Command, Jaipur, as such, the said Chief Engineer Southern Western Command has been raised w.e.f. 25th May, 2005, therefore, the authorization for new raising has still not been sanctioned by the higher authority.

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That 4 UDCs have been posted from Jaipur Complex during CML 2006 and during CML 2004 the posting order in respect of Shri Shiv Mangal Singh UDC was issued along with applicant. However, as Shri Shiv Mangal Singh's mother was as acute cancer patient, the PO was cancelled on extreme medical grounds and his name was considered for posting during CML 2005. Shri MC Khandelwal UDC was also posted during CML 2004.

10. The applicant was posted to Jodhpur during CML 2005 on 03.07.2004 as UDC. As per panel issued by Engineer-in-Chief's Branch vide their letter dated 24.08.2005, applicant's name was considered for promotion as Assistant vide PPO dated 29.07.2005, after lapse of 12 months period from issue of CML 2004 postings. The applicant was posted on Job requirement to CDS Jodhpur to meet their critical requirement. Further due to non availability of vacancy of Assistant at CDS Jodhpur, applicant PPO has been issued to GE (AF) Jodhpur. In this view some staff from Jaipur complex has been side stepped to HQ Southern Western Command to meet immediate requirement, the persons are not posted to southern Western Command but are on attachment. The learned counsel pleaded that as the management of persons posted to Jaipur complex and its units are still looked after by Southern Command and Western Command till final decision. The final decision of handing over entire management of person is pending with higher HQ option form individual persons, who are serving in areas of Southern Western Command at Jaipur Kota, Alwar and Bharatpur and adjoining areas was asked for further planning purpose. The department is under no obligation to post any persons either to HQ Chief Engineer Southern Western Command or Jaipur Zone. The staffing will be done as per direction received from HQ and as per requirement on ground. Therefore, the applicant claim



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for consideration of posting to Jaipur is baseless, based in contravention to the conditions.

11. The learned counsel averred that during CML 2004 Jaipur Complex was surplus in the category of UDC and being the senior most individual has been posted out from Jaipur to meet the critical requirement of Jodhpur, which is in order as per posting policy. Further during CML 2005 four other surplus UDCs have been posted out from Jaipur to Jodhpur on job requirement basis. However, in spite of clear direction from higher authorities, the moves of these persons has not yet been implemented. The individual option or posting to Jaipur was rejected due to sufficient holding of staff at Jaipur and critical def of clerical staff at Jodhpur. The applicant was posted to Jodhpur to meet their critical requirement and posting back from deficient station to another station is not in order as per existing posting policy. The planning for actual transfer of civilian staff of Chief Engineer, Southern Western Command will be made applicable only after sanction of Military establishment to Southern Western Command and final decision from higher authorities.



12. The head office of the respondents vide its letter dated 23.02.2006 sought options from the individuals/applicant, who are serving in Jaipur, Alwar, Kota and Bharatpur and from adjoining areas as Jaipur, Alwar, Kota and Bharatpur will be a part of new raising South West Command. However, Jodhpur will remain with Southern Command. The applicant is serving at Jodhpur which will remain part of Southern Command only. Further Jodhpur has critical def of UDC/LDC and applicant request for posting to Jaipur will be considered, whenever, posting staff to HQ CE SWC is processed.

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13. Learned counsel for the respondents produced a statement, which shows that there were eight surplus UDCs in the Jaipur Complex. In the same statement, it is also indicated that there is a deficiency of three UDCs in the Jodhpur Complex. She also produced another Movement Order dated 19.03.2007 under which the applicant has been relieved from BSO Jodhpur for joining his duties in GE (AF), Jodhpur.

Learned counsel for the applicant pointed out from the same statement furnished by the learned counsel for the respondents that there are four surplus UDCs at Banar Complex. Learned counsel for the respondents explained that Banar is not a part of Jodhpur Complex.



It is seen from the statement that at Banar Complex there are ten authorized posts of UDCs against which ten are posted. Similarly, there are five dues in and five posted out UDCs have been shown, therefore, it is not clear how the surplus of four UDCs has been shown against Banar Complex.

14. I have given due consideration to the arguments, pleadings, evidence and material placed on record in this case. The factual position is that the applicant was transferred from Chief Engineer, Jaipur Zone during the year 2004 and has further been promoted as Assistant vide order dated 29.09.2005 (Annexure A/4). The applicant has already been relieved from the office of BSO CDS, Jodhpur for joining GE (AF), Jodhpur vide order dated 19th March 2007. He has already been struck off from the strength of BSO, CDS, Jodhpur on 24th March 2007. It is seen from the statement furnished by the learned

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counsel for the respondents that there is surplus of eight UDCs in the office of Chief Engineer, Jaipur Zone, Jaipur. On the contrary, there is a deficiency of three UDCs in the Jodhpur Complex.

15. As regards judicial review of posting/transfers is concerned, starting from authority in the case of **E.P. Royappa v. State of Tamil Nadu**, (1974 (4) SCC 3) till the latest judgment in the case of **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey**, (2004 (12) SCC 299), the Hon'ble Apex Court has held that transfers are incidence of service and can be challenged only if such orders are issued due to mala fide intentions or in violation of policy guidelines. No employee has a right to be posted in one station forever. Courts or Tribunals cannot interfere with such orders unless there are proved mala fides or there is violation of transfer rules. Exigencies of service may necessitate transfer even if it is ordered prematurely.



Hon'ble the Supreme Court has further held in the case of **S.C. Saxena vs. Union of India and another** reported in 2006 SCC (L&S) 1890 that a Government servant cannot disobey a transfer by not reporting at the place of posting and then go to Court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at place of posting and indulging in litigation needs to be curbed.

16. It is seen from the statement furnished by the learned counsel for the respondents that there are deficiencies in the posting of UDCs at Jodhpur whereas there are surplus UDCs posted at Jaipur. In view of the settled law by the Hon'ble Supreme Court that transfer is an

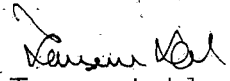
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incidence of the Govt. service and the Govt. servant cannot disobey a transfer by not reporting at the place of posting and it is his duty to first report for work where he has been transferred and then make a representation as to what may be his personal problems. In this case, the applicant has failed to prove that there is any malafide in his transfer or there is violation of any statutory Rules. In regard to his claim that senior to him or other persons have been retained at Jaipur, I find that none of them is a party in this O.A. and as such no order adverse to their interests can be passed by this Bench of the Tribunal. This Tribunal cannot sit in appeal over the decision taken by the respondents that his services are required at Jodhpur due to deficiency of UDCs. In view of this, Original Application No. 91/2006 is dismissed.



17. However, if the applicant so chooses, he may make a fresh representation to the Chief Engineer, Headquarters, Southern Command, Pune, within a period of ten days from the date of receipt of this order, bringing out all the facts given in his present OA and rejoinder. The Chief Engineer, Headquarters, Southern Command, Pune shall examine his representation within a period of three months from the date of receipt of application from the applicant and consider whether an assurance can be given to the applicant for his transfer to Jaipur in future. No costs.


[Tarsem Lal]
Administrative Member

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