

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No. 84/2008**

**Date of decision : 27.02.2009**

**Hon'ble Mr.N.D. Raghavan, Vice Chairman.**

**Hon'ble Mr. Tarsem Lal , Administrative Member.**

Bisakha Singh, S/o Shri Pritam Singh aged about 56 years, Resident of Q. No. 40/1 MES Colony, Suratgarh District Sri Ganganagar, presently working on the post of MCM in the office of G.E. (Army) Suratgarh ( Rajasthan)

: applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

**VERSUS**

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Western Command, Chandimandir.
3. Commander Works Engineer (CWE) AF Bikaner.
4. Shri Karminder Kumar prik MCM, C/o GE (N) Bikaner (Rajasthan).

Rep. By Mrs. K. Parveen : Counsel for respondents 1 to 3

Rep. By Mr. N.K.Khandelwal : Counsel for the respondents 4

**ORDER**

**Per Mr. Tarsem Lal, Administrative Member .**

Bisakha Singh, has filed O.A. No. 84/2008 and prayed for the following reliefs:

- a. By an appropriate writ, order or direction impugned order dated 29.01.2008 ( Annex. A/1) qua the applicant be declared illegal and be quashed and set aside as if the same was never issued against the applicant.
- b. By an order or direction, the respondents may be directed to produce the relevant record of transfer of applicant and by an order or direction , the seniority of the applicant be assigned from 10.02.78 and place the applicant above respondent No. 4 with all consequential benefits.
- c. By an order or direction, the respondents may be directed to correct the date of promotion of the applicant on the post of MCM as order vide Annex. A/3.
- d. Any other relief which is found just and proper be passed in favour of the applicant.



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2. The brief facts of the case are that the applicant was initially appointed on the post of Engine Fitter on 29.01.1975. He was promoted on the post of Charge Mechanic w.e.f. 10.02.78. The post of Charge Mechanic was re-designated as Senior Mechanic (H.S. Gr. I) w.e.f. 24.06.87.

3. The applicant was transferred in the interest of service from Bhisiana to Suratgarh on 31.03.86 vide order dated 07.04.86 (Annex. A/2). The applicant was promoted on the post of MCM vide order dated 24.01.2002 (A/3).

4. Respondent No.3 wanted to revise the seniority of the applicant, against which he made a representation on 04.05.2007 (A/4) by giving full facts of this case i.e. his transfer from Bhisiana to Suratgarh was in the interest of the State and he has drawn TA-DA on his transfer to Suratgarh. Therefore, he requested that the respondents ought to have maintained his seniority on the basis of his date of initial appointment. Thereafter, the 3<sup>rd</sup> respondent vide his letter dated 21.05.2007 (A/5) informed the applicant that due to restructuring of the cadre his seniority position is under verification. The 3<sup>rd</sup> respondent vide his letter dated 18.07.2007 (A/6) intimated the applicant that on receipt of his posting order from his previous unit, his seniority position would be ascertained and if needed a review DPC would be ordered and promotion to MCM from HS will be issued accordingly.

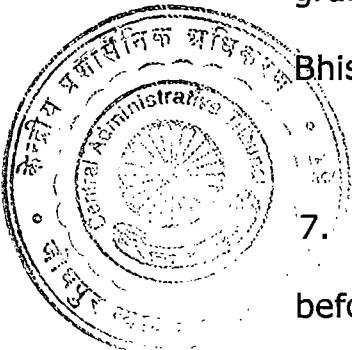
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5. The G.E. Suratgarh wrote a letter dated 06.09.2007 (A/7) to respondent No. 3 to decide the representation of the applicant. However, without considering the factual position, i.e. the transfer of the applicant from Bhisiana to Suratgarh was in public interest and not on compassionate/medical grounds, the respondents, vide their PTO dated 08.10.97 (A/8), have promoted junior persons from retrospective dates i.e. from 01.01.96 and gave monetary benefits also. In this connection the applicant has referred the name of one Karnail Singh FGM (HS) (R/4 in this O.A).

6. The respondent No. 2 vide his letter dated 09.10.2007 (A/9) clarified that the case of the applicant has been examined and as per existing policy individuals posted on compassionate/medical grounds are liable to lose their seniority. In view of this, the seniority of the individuals will be reckoned from the date of joining the new place of posting. Prior to that respondent No. 3 vide his letter dated 01.09.2007 (A/10) informed respondent No. 2 that as per the entries made in his service book, the applicant was not posted on compassionate/medical grounds or against surplus /deficiency. However, the entries specified that the individual was granted joining/journey period against move on posting from Bhisiana to Suratgarh.



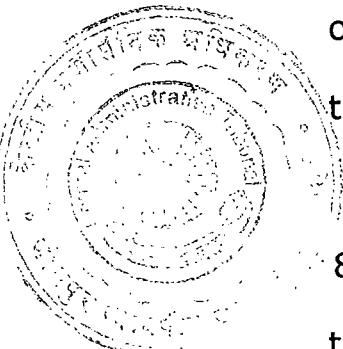
7. The applicant submitted a letter dated 14.11.2007 (A/11) before respondent No. 3 stating that his transfer was in the interest of state and not on compassionate/medical grounds and he

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had received TA/DA on his transfer. The third respondent again took up the matter with respondent No.2 vide his letter dated 14.11.2007 (A/12) stating that keeping in view the movement order and other letters issued by various authorities, the posting of the applicant might have been issued in the interest of state and on other than compassionate grounds in which the individual should not loose seniority on reporting to GE (Suratgarh) and requested respondent No. 2 to verify the grounds of posting before taking any action. The applicant again vide his letter dated 09.01.2008 (A/13) requested the respondents to maintain his seniority in view of the position explained by him. Despite the records available with the respondents to the effect that the applicant was transferred from Bhisiana to Suratgarh was in the interest of state and not on compassionate/medical grounds, the respondents vide impugned order 29.1.2008 (A/1) change the seniority as well as the date of placement of the applicant without any notice to the applicant, whereas the fact remains that the applicant was promoted to the post of MCM much before to R.4, who was appointed in the year 1978 as DES and became charge mechanic on 25.11.85 and thereafter promoted to the post of MCM on 20.05.2003, Aggrieved by the above, the applicant has filed this O.A praying for the reliefs as given in para 1 above.

8. The official respondents have filed a very brief reply, stating that whether the individual was transferred in the interest of state or on compassionate grounds can be ascertained only from the

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posting order and since no copy of the posting order of February 1986 is available, it could not be ascertained from the record as to how the applicant was transferred. It is stated that posting of industrial personnel are generally issued only if the same is sought by the individual on compassionate grounds and no posting are issued under surplus/deficiency criteria as there is deficiency of industrial staff at all the formations.

9. It is seen from the photocopy of the service of the individual there is no mention whether the posting was on compassionate grounds or against surplus/deficiency. The entry for grant of joining /journey period against move of posting cannot be treated as proof for treating transfer of the applicant was in the interest of State. There is always scope for correcting an entry, which was made erroneously. In view of the above the official respondents have stated that the applicant is not entitled to any relief without any documentary evidence in his favour.

10. The private respondent No. 4 Karminder Kumar Parik, MCM, GE (N) Bikaner has filed a separate detailed reply. He has stated that the transfer of the applicant from Bhisiana to Suratgarh was on his own request and it cannot be said that the transfer was in the interest of service as he himself made an application for his transfer from Bhisiana to Suratgarh, which is an admitted fact and in no case the transfer of the applicant can be termed in public interest. If the applicant had been granted TA/DA as well as



joining time, then the same was a bonafide mistake and cannot give any right to the applicant to justify his transfer as in public interest. Respondent No. 4 has pointed out that his transfer was made at his own request and this fact could be verified from Annex. A/13 which is an application submitted by the applicant and in para 2 of the above letter he has stated that " I was posted from GE (Air Force) Bhisiana to GE (Army) Suratgarh in 1986 on voluntary basis". This averment made by the applicant himself is very conclusive and establishes that his transfer in question i.e. from Bhisiana to Suratgarh was on his 'own personal request'.

11. In order dated 09.10.2007 (Annex. A/9) the correct position has been mentioned by the Chief Engineer (AF) [clarifying the legal position to the C.W.E ( AF) Bikaner].

12. Respondent No. 4 has stated that if, inadvertently, a wrong entry has been made in the service book of the applicant that wrong entry will not vest any right in the applicant and bona fide mistake can be rectified at any time by the competent authority. The applicant cannot take shelter of such wrong entries made inadvertently in his service book. The Apex Court has observed in catena of judgments that bona fide mistake can be rectified at any time when the same is brought to the notice of the competent authorities. It is for the official respondents to rectify the entries, which were made inadvertently in the service book of the applicant by giving a show cause notice to him.



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13. The respondent No. 4 states that the applicant has utterly failed to show any document of the official respondents in his favour. The document bearing No. 30674/Points'85/E.1C/1 dated 22.02.86, in response to which he has volunteered himself, clearly shows that his transfer from Bhisiana to Suratgarh was on his request. In Annex. A/13 the applicant has clearly admitted that he was posted from GE (AF) Bhisiana to GE (Army) Suratgarh in 1986 on volunteer basis. The above averment made by the applicant conclusively proves that his transfer in question was on his request and not in public interest. The seniority position of the applicant vis-à-vis respondent No. 4 has been correctly shown in the impugned order dated 29.02.2008 (A/1). There is no infirmity whatsoever nature in the seniority position shown in the impugned letter A/1. As per the extant rules, the applicant will get seniority at Suratgarh below all the existing incumbents of his grade as on the date of joining at Suratgarh. i.e. on bottom seniority basis, In view of the above the respondent No. 4 has prayed that the applicant is not entitled to any relief as claimed by him in para 1 above.

14. The learned counsel for the parties have been heard. They have generally reiterated the arguments already given in their respective pleadings. The learned counsel for the applicant has explained that the transfer of the applicant was made in public interest and not on compassionate basis. He has also been

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granted joining time and TA/DA for the same. In spite of that his name has been placed at the bottom i.e. his name has been shown below his juniors without following the principles of natural justice. He has further stated that his seniority position as per his original date of joining has been maintained till the impugned order dated 29.01.2008 (A/1) was issued. He has contended that A/1 has been issued without any basis and the same may be quashed and set aside.

15. The learned counsel for the official respondents has stated that it is an admitted position that the applicant vide his application dated 04.05.2007 (A/4) offered his name for volunteer posting amongst others. Therefore, the applicant cannot now turn around and state that his transfer from Bhisiana to Suratgarh was issued in public interest.

16. The learned counsel for the respondent No. 4 emphatically pleaded that the transfer of the applicant was issued on 31.03.86 whereas the seniority position has been fixed w.e.f. 02.04.86. Therefore the order fixing his seniority was a legally valid order and it cannot be challenged by the applicant. The learned counsel claimed that respondent No. 4 has been shown senior to the applicant in his own right and he is graduate whereas the applicant is a only 10<sup>th</sup> pass. It is clear that the transfer of the applicant was without any pressure or coercion. Vide his application dated 04.05.2007 he had stated that he has offered his name for posting

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from Bhisiana to Suratgarh and he has been transferred on his own request and therefore his name has been shown correctly on bottom seniority basis.

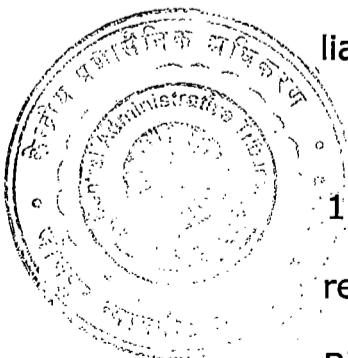
17. In this regard the learned counsel for the respondent no. 4 relied on judgement of the Apex Court in the case of **K.P. Sudhakaran and anr. Vs. State of Kerala and others**

[2006SCC (L&S) 1105], wherein it has been held as under:

"In service jurisprudence, the general rule is that if a government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects. The matter is however, governed by the relevant service rules."

He further stated that if the official respondents have made any bonafide mistake, the same could be rectified. This contention has also been fortified by the catena of judgements rendered by the Apex Court on the subject. In view of this, the learned counsel has submitted that the O.A is devoid of any merit and the same is liable to be dismissed.

18. We have considered this case carefully and perused the records. It is seen that the applicant was transferred from Bhisiana to Suratgarh and relieved on 31.03.1986 vide P.T.O.



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dated 07.04.1986. The official respondents have stated that at this belated stage the original records are not available, but the official respondents have also stated that it is an admitted position that the applicant vide his application dated 04.05.2007, stated that " I offer my name for volunteer posting amongst others"

19. It is also seen from the letter issued by the Hqrs Chief Engineer C/o 56 APO vide letter No. 30224/50/EIC-II dated 09.10.2007 (A/9) wherein the following has been stated:

" 1.....

2. The case in respect of MES 366695 Shi Bisakha Singh MCM has been examined at this HQ. The postings in case of industrial pers. are generally issued only if the same is sought by the individual on compassionate grounds. No posting are issued under surplus/Defi. criteria as there is defi. Of industrial staff at all the formations.
3. As per existing policy, individual posted on Compassionate/Medical grounds are liable to loose their seniority. In view of this, the seniority of the individual will be reckoned from the date of his joining the new place of posting.

20. It is further seen from Annex. A/13, which is a letter sent by the applicant to the HQ chief Engineer (AF) WAC Palam Delhi Cantt., the applicant has stated as under in para 2 & 3:

" 2. It is submitted that I was posted from GE (AF) Bhisiana to GE (Army) Suratgarh in 1986 on volunteer basis. In this connection kindly refer CE Western Command, Chandhimandir letter No. 30674/Points/85 EIC-I dated 22.02.86 **in which volunteer posting was asked from all GEs**

3. It is also submitted that I claimed **TA/DA** journey/joining period which has entered in my service book (photocopy) of extract is attached). The facts may please be verified from the service book at your end. In this connection, you may, refer to GE (AF) Bhisiana Part II order No. 14/86 dated 07.04.86 in which I and others have been posted out to GE (Army) Suratgarh and GE(AF) Suratgarh on **volunteer basis**. **Photocopy of part II No. 14/86 is attached.**



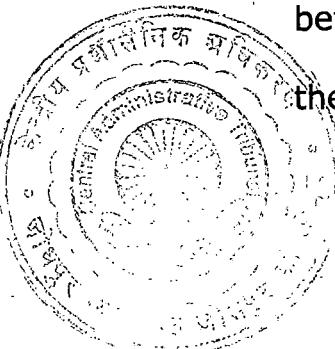
(emphasis supplied)

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21. The learned counsel for the applicant contended that the promotion was given to the applicant by the respondents themselves and there was no misrepresentation in this regard. Hence the applicant cannot be put in a disadvantageous position without following the principles of natural justice. In support of the above contention the learned counsel for the applicant relied on an order dated 08.12.2008 passed in O.A. No. 301/2007 by this Bench of the Tribunal [ **Ram Naresh Singh and anr. Vs. UOI and ors.** ]. Therefore the learned counsel for the applicant submitted that the respondents couldn't alter the date of promotion of the applicant on the post of MCM.

22. However, as the applicant had volunteered for the transfer from Bhisiana to Suratgarh, his seniority at bottom has been fixed correctly by the respondents and this Court would not like to interfere with the same.

23. It is seen from annex. A/3, Hqrs Western Command, Engineers Branch Chandimandir letter dated 24.01.2002, that the applicant was promoted as MCM 'in situ' w.e.f. 24.01.2002, whereas now the date of promotion of the applicant as MCM has been modified as 01.05.2004 vide Annex. A/1. In our opinion, revision of date of promotion to MCM will have civil consequences. Therefore principles of natural justice ought to have been followed before effecting any revision in the date of promotion. Therefore, the respondents are directed to issue show cause notice to the



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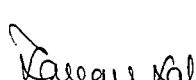
applicant stating that the date of promotion of the applicant as MCM is proposed to be modified as 01.05.2004 in place of 24.01.2002 and call for his representation. On receipt of reply from the applicant to the show cause notice, the respondents may pass a reasoned speaking order. The above action may be completed within a period of two months from the date of receipt of a copy of this order.

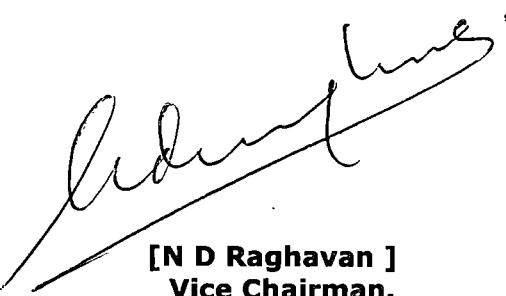
24. In view of the above discussion, we hold that the seniority of the applicant has been fixed correctly at Suratgarh.

25. The respondents are directed to comply with the direction given in para 23 above.

26. O.A is disposed of in the above terms.

27. No order as to costs.

  
**[Tarsem Lal ]**  
**Administrative Member**

  
**[N D Raghavan ]**  
**Vice Chairman.**

Jsv.

Received copy  
for N.K. Khandelwal

Stan Collier  
03/03/09

Ree  
S.K. Malhi  
04/13/09

Leave copy  
Kaur  
26.3.09

Part II and III destroy  
in my presence on 07/03/2015  
under the supervision of  
Section Officer ( ) as per  
order dated 07/07/2015

Section Officer (Record)