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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 392/2012

Jodhpur this the 8th day of March, 2013.

Reserved on 05.03.2013

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Jagmohan Singh Rawat S/o Shri Mukan Singh Rawat, aged about 52 years, resident of Qtr. No. 7, Type-3, CPWD Colony, Opposite Church, Jaipur Road, Bikaner-334 004, at present employed on thepost Asstt. Engineer (Elect), Bikaner Central Elect Sub Division, CPWD, GPRA Opposite Church, Jaipur Road, Bikaner

.....Applicant

(Through Advocate Mr. J.K. Mishra)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Urban Development, CPWD, Nirman Bhawan, Maulana Azad Road, New Delhi
2. Director General of Works
Central Public Works Department, Nirman Bhawan
Maulana Azad Road, New Delhi
3. Executive Engineer (Elect)
Jodhpur Central Electric Division, CPWD, Nirman Bhawan
3, West Patel Nagar, Circuit House Road, Jodhpur

(Through Advocate Mr. Vinit Mathur)

.....Respondents

ORDER

Per Justice Kailash Chandra Joshi, Member (J)

The applicant Shri Jagmohan Singh Rawat has filed this OA being aggrieved by the impugned order dated 22/23.07.2010 Annex. A/1 and order dated 17.06.2011 Annex. A/2 which contain

instructions for release of applicant to NER after completion of one year from his present place of posting and order dated 14.09.2012 Annex. A/3 and prayed to declare Annexs. A/1, A/2 & A/3 illegal qua applicant and further prayed to quash these orders.

2. The brief facts of the case as averred by the applicant are that he was initially appointed to the post of Junior Engineer (Electrical) in Amritsar Central Electric Division and posted at Bikaner Central Elect Sub-Division on 13.03.1981 and was promoted to the post of Asst Engineer (Elect) w.e.f. 02.07.2008 and posted at Bikaner Central Sub-Division of Jodhpur Central Elect Division. He was posted from Sri Ganganagar to his present place of posting i.e. Bikaner. The second respondent issued main transfer policy vide letter dated 27.02.1998 and as per para 3.4 of the policy the normal period of continuous stay of Assistant Engineer (AE) shall be 4 years only at any station except Delhi. Subsequently, the additional guidelines were issued by the respondents. The respondents have issued yet another office memorandum on 01.04.2010 and para 2.2 (iii) is reproduced below:

“2.2 (iii) A list of Assistant Engineers with age less than 50 years as on 1st of January of each year/5th April for year 2010 shall be prepared by concerned SE (Coord.). The name of all Assistant Engineers, who have still not completed 10 years after successful return from hard areas or the inter-regional transfer as on 1st January of each year/5th of April for year 2010, shall be shown as exempted from inter-regional transfer. This list will be made public and shall be forwarded to Directorate General on or before 31st January of each year/10th to 15th April for 2010. This will be sorted out in ascending order of age and will be the basis of inter-regional transfer (in order of ascending order of age)”

Further, this office memorandum was amended vide corrigendum dated 27.4.2010 and para 2.2 (iii) revised as under :

“2.2(iii) a list of all Assistant Engineers with age less than 50 years as on 1st January of each year/1st May for year 2010 shall be prepared and circulated by the concerned Superintending Engineer (Coordination). The list will include names of all AEs below 50 years of age including those who have returned from Hard area or from Inter Regional within the last 10 years. However, for those who have returned from Hard Area/Inter Regional Transfer during the preceding 10 years, the date of return from such posting shall also be indicated. This list will be made public and shall be forwarded to Directorate General on or before 31st January of each year/30th April for 2010. The list of longest stayee AEs received in the DG Office from SE (Coord.) will be sorted out in the order of seniority based on the length of the stay in the region and it will be the basis of Inter-Regional Transfer.”

On the said basis revised list of AE (Elect) under Northern Region who were below 50 years as on 01.05.2010 for affecting inter-regional transfer was issued and the name of the applicant was included at S.No. 24 Annex. A/8. The applicant submitted a representation protesting against the inclusion of his name in the list. The office memorandum dated 01.04.2010 and 27.04.2010 have been challenged before the Principle Bench but the same OA was dismissed and the transfer policy and the guidelines were upheld by the Principle Bench but individual matters were left open. As the applicant has not completed 2 years stay at the Bikaner, therefore, he was required to be exempted from the inter-regional transfer during the year 2010 and he has also pleaded for normal tenure of 4 years at Bikaner.

The applicant has one school going daughter studying in 12th and younger child in UKG. However, the applicant was ordered to be transferred from Northern Region to North Eastern Zone by

transfer order dated 22/23.07.2010 (Annex. A/1). The applicant filed an OA No. 211/2010 and challenged the impugned order of his transfer before this Tribunal and the same was disposed off vide order dated 17.8.2010 (Annex. A/11) with direction to the respondent to examine the representation of the applicant within a period of one month and further respondents are directed to not to disturb the applicant for one month after decision on his representation. The applicant submitted detailed representation alongwith copy of the above order to the competent authority but it was not responded (Annex A/13). He filed yet another representation dated 15.5.2011 and objected to inclusion of his name in fresh list issued on 1.1.2011 for transfers of AEN having age less than 50 years. His representation was not decided as per the direction of this Tribunal but he was issued an order dated 25.3.2011(Annex. A/15) wherein he was directed to hand over the charge of the post and get relieved. The second respondent issued an office memorandum dated 17.06.2011(Annex. A/2) whereby the applicant was ordered to be retained at Bikaner for one year, on the basis of a subsequent representation. The applicant again took up the matter with the competent authority vide letter dated 11.04.2012 and requested to cancel the impugned transfer order, especially on the ground that he had completed 50 years of age when his transfer order was issued. The second respondent issued a letter dated 14.09.2012 (Annex. A/3) whereby earlier order of transfer dated 22/23.7.2010 (Annex. A/1) was sought to be

implemented. As such the applicant has crossed the age of 52 years as against the 50 years prescribed for transfer to NER and his representation submitted in pursuance to the order of this Tribunal in the year 2010 has not been examined/considered. The applicant has prayed to quash the Annexs. A/1, A/2 & A/3 on the grounds that he has not completed 2 years stay at Bikaner and his transfer is in violation of transfer policy, and ex-facie unwarranted, arbitrary, against fair play and natural justice whereas he has not completed normal tenure of 4 years at Bikaner.

3. By way of reply the respondents denied the grounds for quashing the Annexs. A/1, A/2 & A/3 and it has been pleaded that as per service rules, the Assistant Engineer (AE) (Civil & Electrical) have 'All India Service Liability' and subordinate offices of CPWD are spread all over India and AEs can be posted anywhere in India. The feeder cadre of AEs is JEs which are initially posted in the Region but as per the functional requirement of the department, they can be transferred from one region to another region. The Total strength of AEs in CPWD including projects is around 3210. These AEs are distributed in different regions of CPWD as per their functional needs. The CPWD is divided into 4 Regions Northern, Eastern, Western and Sourthern under respective ADGs and different regions have different sanctioned strength as per functional need of the Region. It has been further averred that to minimize the imbalances in working

strength in the regions, inter-regional transfers are unavoidable to keep the department working efficiently and the transfer is not only incidence but is a condition of service and who would be transferred, is the matter for the appropriate authority to decide. Thus, action of the respondents is perfectly just and proper being in accordance with the rules and policies on the subject.

The applicant was transferred from Northern Region to North Eastern Region vide directorate's order dated 23.7.2010 (Annex. A/1) as per the guidelines of inter regional transfer policy dated 01.04.2010 and the provisions of the office memorandum dated 27.2.1998 have no bearing on the transfer of the applicant. The applicant has been working in the Northern Region since 28.03.1998 which is more than 10 years standing in the same region and being the longest standing in the same region and being the longest staying AE in the Northern Region, his name was rightly included in the longest staying list of AE's in the Northern Region as per the inter-regional transfer office memorandum dated 01.04.2010 and corrigendum dated 27.04.2010. Inter-regional transfer of the applicant was ordered as per the provisions of the inter-regional transfer office memorandum dated 01.04.2010 where there is no provisions which says that if the stay of AE is less than 2 years he will be exempted from inter-regional transfer. As per clause 2.3 of the guidelines while making inter-regional transfer station/tenure shall not be a parameter for consideration.

4. By way of rejoinder the applicant denied the averments made in the reply and countered it.

5. Counsel for the applicant contended that in OA No. 211/2010 decided on 17th August, 2010 it was ordered by this Tribunal that

- I. *"The applicant is directed to submit a representation before the concerned respondent requesting for termination of the transfer order on the three grounds or any other appropriate ground (s) he wishes to highlight.*
- II. *On receipt of such a representation, the concerned respondent shall pass a speaking order within a month of the date of receipt of such representation.*
- III. *The applicant shall file a detailed representation which he deems fit within a month from today and*
- IV. *During the pendency of consideration of such representation and further for a period of one month, the applicant shall not be disturbed from the place of present posting."*

And he further contended that respondents passed order Annex.

A/2 dated 17.06.2011 without considering the representation and decided to grant one year retention to the application at Bikaner Station on medical grounds and neuron problem of his wife, in the best interest of welfare of staff and in the interest of administration and it was ordered that he be relieved for NER after completion of one year retention period.

6. Counsel for the applicant contended that when in earlier OA No. 211/2010, the respondents were directed to consider the representation within a month, respondents without considering the representation ordered to retain the applicant on medical grounds and Neuro problem of his wife and there is no reference of his

representation and the grounds mentioned in the representation in order dated 17th June, 2011 at Annex. A/2 and on completion of one year he was ordered to be relieved. He contended that the Annexs. A/1, A/2 & A/3 are per se illegal and against the transfer policy.

7. Per contra learned counsel for the respondents defended orders Annexs. A/1, A/2 & A/3.

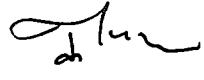
8. It is settled position of law that these transfer policies or office memorandum are not having statutory force and they are issued as guidelines by the instrumentality of the State and such guidelines are being issued to ease the difficulties of the employees and in the interest of efficiency of public service and it is also a settled position of law that transfer is not only incidence but condition of service and it is for the transferring authorities to decide such matters in a proper way. We are proposing to dispose off this OA directing the respondents to consider the representation of the applicant as directed while deciding the OA No. 211/2010 within a month because Annex. A/2 order does not refer to any fact mentioned in the representation filed by the applicant.

9. It is, therefore, ordered that the representation dated 15.09.2010 filed by the applicant shall be decided by the

respondents by a speaking order within a month. Meanwhile, he will not be disturbed during the pendency of his representation.

With these directions the OA is disposed off with no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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