

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.238/2013

Jodhpur, this the 22nd day of January, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Pritam Pal s/o Shri Tara Chand, aged about 48 years, resident of 3/25, Housing Board, Sriganganagar, at present employed on the post of Assistant Engineer (Civil), in Sriganganagar Central Sub Division, CPWD, 1/272, Housing Board, Sriganganagar

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Urban Development, Central Public Works Deptt, Nirman Bhawan, Maulana Azad Road, New Delhi.
2. Director General (Admn), Central Public Works Department, Nirman Bhawan, Maulana Azad Road, New Delhi.
3. Executive Engineer (Civil), CPWD Office, Sagar Road, Near SSB Training Centre, Bikaner.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

In this OA the applicant has challenged the impugned transfer order dated 6.6.2013 (Ann.A/1) by which the applicant was transferred from Sri Ganganagar to Western Region, therefore, he has prayed that the order

Ann.A/1 may be declared illegal qua the applicant and the same may be quashed. He has further prayed that respondents may be directed to exempt the applicant from inter regional transfer and continue at Sriganganagar as per the mandatory policy of posting of the husband and wife prescribed by DOPT (Ann.A/5) at the same station and allow the OA with all consequential benefits.

2. Short facts so far relevant for deciding the OA are that the applicant was initially appointed as Junior Engineer (Civil) in Rajkot in Gujrat on 10.5.1990. Thereafter he was promoted to the post of Assistant Engineer (Civil) w.e.f. 17.6.1990. He was posted from Delhi to Sriganganagar Sub Division and joined at Sriganganagar on 22.6.2012. (Ann.A/2). His name was included in the list of Assistant Engineer (C) for inter-regional transfers and his name is placed at Sl.No.123. The applicant submitted a representation requesting for exempting him for inter-region transfer as per the transfer policy, but there has been no response to the same. The applicant has stated that his wife is working as Teacher under State Government at Sriganganagar. The applicant has been transferred from Sriganganagar to Western Region vide order dated 6.6.2013, though he has completed hardly one year at the present place of posting. The DOPT vide Memo dated 30.9.2009 (Ann.A/5) has made a policy of posting husband and wife at the same station and the respondents following the same, have also issued guidelines vide OM dated 1.4.2010 as amended vide Corrigendum dated 27.4.2010 and 20.8.2010, but the respondents seem not to have given effect to para 2.2. (viii) (Annexure-A/5) which provides for dealing with working

spouse case as per guidelines prescribed by the DOPT, which are otherwise made mandatory. The post against which the applicant is posted remains vacant and no one has been posted. There is thus no impediment to obstruct the continuing the applicant at his present post and exempt him from inter-regional transfer as per the guidelines of the DOPT. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the prayers as mentioned above.

3. In reply, the respondents have submitted that as per the Service Rules, the Assistant Engineers (Civil and Electrical) are having All India Service liability. The CPWD is decided into four regions viz. Northern, Eastern, Western and Southern under respective ADEs. To minimize the imbalance in the working strength in the region, the inter-regional transfers were unavoidable to keep the department working efficiently and to complete the tasks given by the department. The Department has a laid down policy for inter-regional transfer and transfer are made in accordance with the guidelines. The applicant has been working in Northern Region since 4.2.1993 and he has never been transferred outside the region, and his name falls under the longest stayed list of AE (Civil), so his transfer from northern region to western region vide order dated 6.6.2013 is perfectly just and proper and in accordance with rules. It is further submitted that para 2 of DOPT Om dated 30.9.2009 stipulates that when both spouses are in same central service or working in same department and if posts are available, they may mandatory be posted at the same station. In this case, the applicant has been working in Central Govt. Service and his wife has been working in Rajasthan State Government service, therefore, it is not mandatory to post

the applicant at the same station where his wife is posted. The Hon'ble CAT-New Delhi has in OA no.3160/2010 and other OAs also mentioned in its order dated 13.12.2010 that while transferring AE of CPWD from one region to another region even where their spouses were working in Govt. services, the department had not infringed the guidelines of the DOPT OM dated 30.9.2009. The representation of the applicant was considered by the IRT Committee and even in the HQs, but the same was not acceded to. The applicant's transfer from NR to WE has been made in accordance with the requirement of AEs in WR and his transfer was essential. Therefore, the applicant has no case whatsoever and the OA deserves to be dismissed.

4. The applicant has also filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA and also referred to the case of transfer of Shri Arun Kumar Srivastava.

5. In the additional affidavit filed by the respondents, the case of Shri Arun Kumar Srivastava has been differentiated on facts and reasons and also submitted that the applicant had given option for his posting in Western Region and accordingly he was transferred to Western Region as per recommendation of the Inter Regional Transfer Committee.

6. Heard both the parties. Counsel for the applicant contended that the respondent department issued an order dated 22.06.2012 (Annexure-A/2) by which the applicant was transferred from HQ Delhi to Sriganaganagar in the Northern Region, which is also an inter-regional transfer. However, vide order dated 01.03.2013 (Annexure-A/3) he was again considered eligible for the inter-regional transfers-2013 in the eligibility list and his name finds

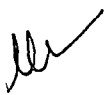
place at serial No.123 of the said list. The applicant filed a representation as at Annexure-A/4 and requested to the respondent authority to continue him in Sriganaganagar as his wife is posted in the State Government services at Sriganaganagar and his posting may be continued in accordance with the DoPT Guidelines which have also been incorporated in the CPWD Guidelines issued on 20.08.2010 at para 2.2. (viii). Counsel for the applicant referred to the DoPT Guidelines as at Annexure-A/5 wherein as per para 4 (vii) where one spouse is employed under the Central Government and the other spouse is employed under the State Government, the spouse employed under the Central Government may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted. However, without deciding his representation, the impugned order dated 06.06.2013 (Annexure-A/1) was issued by which the applicant was transferred from Northern Region to Western Region and his name finds place at serial No.65 of the said order. Counsel for the applicant also contended that in similar cases, the respondents have cancelled the transfer of one Shri Arun Kumar Srivastava on the ground that his wife was also working in that State/Region. Therefore, in the present case also the applicant has prayed for cancellation of his transfer order at Annexure-A/1.

6. Per contra, counsel for the respondents contended that the case of Shri Arun Kumar Srivastava cited by the counsel for the applicant is completely different as he had already joined in the Eastern Region and served in the transferred region for more than 50% of the normal tenure and therefore on his request that his wife was working as Assistant Teacher in Varanasi, he

was transferred back to the Northern Region in accordance with the DOPT OM. She further contended that the applicant has been working in the Northern Region since 04.02.1993 and he has never been transferred outside Northern Region so his transfer from NR to WR issued vide office order No.97/2013 dated 06.06.23013 is just and proper and in accordance with rules. She referred to Annexure-R/2, which is the report prepared with reference to the applicant and prayed that as the applicant has no case, the OA may be dismissed.

7. Considered the rival contentions of both the parties and perused the record. As has been held in catena of judgments by the Hon'ble Apex Court that transfer is in incidence of service and the Courts/Tribunals should not ordinarily interfere with the same unless there is malafide or gross violation of any policy guidelines and this does not appear to be so in the present case. However, in this case, as the spouse of the applicant is working in the State Government in Rajasthan and the applicant is working at Sriganganagar, which is part of the Northern Region of CPWD and further the CPWD & DOPT guidelines have provided for transfers on such grounds (though not mandatory) and as the representation Annexure-A/4 has not been formally decided by the competent authority, it is proposed to dispose of this OA with certain directions:

- (i) The applicant may file a fresh detailed representation regarding his transfer made vide order dated 06.06.2013 (Annexure-A/1) (which is presently stayed in view of the IR granted by this



Tribunal), to the competent authority within 15 days from the date of receipt of a copy of this order.

- (ii) The competent authority may decide the same within a period of one month from the date of receipt of such representation.
- (iii) Till the decision on the representation, the effect & operation of the order dated 06.06.2013 (Annexure-A/1 shall remain stayed, qua the applicant.

After the decision of his representation, grievance, if any, remains with the applicant he may approach the appropriate forum, as per law.

8. Accordingly, the OA is disposed of as stated above with no order as to costs.



[Meenakshi Hooja]
Administrative Member

Rss