

3. Command Works Engineer MES, Sriganaganagar.
4. Garrison Engineer, MES, Sriganaganagar.

.. Respondents

By Advocate: Ms. K.Parveen

OA No.533/2013

1. Kushi Mohd s/o Shri Ismail Khan aged about 55 years, at present employed on the post of Elect. MCM.
2. Rajesh Kumar Sharma s/o Shri Madan Mohan Sharma, aged about 51 years at present employed on the post of Elect. MCM.
3. Madan Lal Swamy s/o Shri Ram Chander, aged about 34 years.
4. Radhey Kishan Yadav s/o Shri Hari Singh Yadav, aged about 55 years
5. Govind Singh s/o Shri Satya Singh, aged about 56 years,
6. Satya Pal Sharma s/o Shri Hari Ram Sharma, aged about 56 years,

Applicant No. 3 to 6 are at present employed on the post of Elect. HS-I. All the applicants employed in the office of Garrison Engineer, MES, Sriganaganagar, Distt. Sriganaganagar.

Address for correspondence: c/o Shri Govind Singh r/o Qtr No.235/02, MES Colony, Sriganaganagar.

.. Applicants

By Advocate: Mr. M.S.Godara

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, South Western Command, Khatipura Road, Jaipur
3. Command Works Engineer MES, Sriganaganagar.
4. Garrison Engineer, MES, Sriganaganagar.

.. Respondents

By Advocate: Ms. K.Parveen

1. Vinod Singh s/o Shri Sawai Singh aged about 55 years employed on the post of FGM HS-I.
2. Raham Tullah s/o Shri Raj Bali Miya aged about 58 years, at present employed on the post of FGM HS-II.
3. Parkash s/o Shri Babu Ram aged about 54 years, at present employed on the post of FGM SK.
4. Jetha Ram s/o Shri Nathu Ram aged about 50 years at present employed on the post of FGM SK.
5. Lakhi Ram s/o Shri Garib Dass aged about 50 years at present employed on the post of FGM SK.
6. Ram Shanker s/o Shri Nathi Lal aged about 53 years at present employed on the post of FGM SK.
7. Satya Pal Singh s/o Shri Sanker Singh aged about 55 years at present employed on the post of FGM SK.
8. Bangali Babu s/o Shri Sohan Lal aged about 57 years, at present employed on the post of FGM SK.
9. Babu Lal s/o Shri Paccha Ram aged about 52 years at present employed on the post of FGM SK.

All the applicants are at present employed on the post mentioned against their name in the office of Garrison Engineer, MES, Sriganganagar, Distt. Sriganganagar.

Address for correspondence: c/o Vinod Singh, CPO-Sadhuwali, Sriganganagar, Distt. Sriganganagar.

.. Applicants

By Advocate: Mr. M.S.Godara

Versus

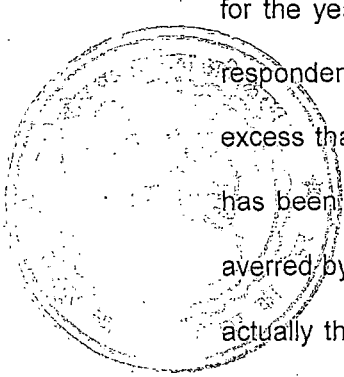
1. Union of India through Secretary to the Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, South Western Command, Khatipura Road, Jaipur
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ORDER (ORAL)

Since controversy involved in these Original Applications is similar in nature and the applicants are aggrieved by the order dated 22nd November, 2013 (Ann.A/1 in all the OAs), therefore, these are being disposed of by this single common order. For deciding the matter, I am taking the facts of the OA No.532/2013 (Ram Chander and Ors. vs. UOI) as a leading case.



2. The short facts of the case are that the applicants are working on the posts of Refg/Mech SK, Refg/MEch HS-II and Refg/Mech HS-I under the respondents. The sanctioned strength of various posts in each division/unit for the year 2012-13 and for the year 2013-14 has been accorded by the respondents. The actual working strength on the posts at Sriganganagar is excess than the sanctioned strength and cadre strength under GE, Lalgarh has been reduced almost for all the posts in the trade of Refg/Mech. It is averred by the applicants that total cadre strength of Refg/Mech SK is 6 but actually there are 11 persons at GE, Sriganganagar and 8 persons at GE, Lalgarh. Thus, already 2 persons are excess at GE, Lalgarh. In the same manner, 4 persons are working against 2 sanctioned posts of Refg/Mech HS-II and 5 persons are working against 3 posts of Refg/Mech HS-I under GE Lalgarh where the applicants have been ordered to be transferred. The respondents have issued transfer order vide letter dated 22.11.2013 in respect of 30 persons. The applicants have been transferred to GE, Lalgarh where already excess persons than the sanctioned strength are working.

It is further stated by the applicants that they have been transferred for some extraneous reasons and not on administrative interest. Sufficient persons are already working in the unit/place where they have now been transferred and there is no vacancy at transferred unit. Further, the

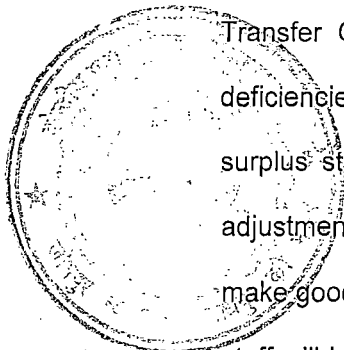
respondents have not followed the rules of transfer in such cases as the same has been made on pick and choose basis just to accommodate some of the favorites of the authorities. Therefore, the applicants have approached this Tribunal by way of filing the present OA praying for the following reliefs:-

- (i) That the applicant may be permitted to pursue this joint application on behalf of nine applicants under rule 4(5) of CAT Procedure Rules 1987.
- (ii) That impugned order dt. 22.11.2013 (Annexure A-1) may be declared illegal and the same may be quashed with all consequential benefits.
- (iii) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

3. The respondents by way of reply have submitted that seniority list (Ann.A/2) was prepared for CWE Sri Ganganagar area, which covers 3 GE offices and the seniority list was prepared only for promotion purposes, whereas in the posting/transfer cases, the seniority list is to be prepared station wise and category wise based on the date of posting of an individual in a particular station. The transfer has been ordered by respondent No.3 based on seniority of the individual in the station. It is further stated that the applicants are in agreement that there is surplus staff at Sri Ganganagar Military Station and the transfers have been ordered only on administrative reasons. There is requirement of staff at Lalgah Jattan and Abohar Station to carry out the work of manning and operation of AC plant. Lalgah Jattan Station has been working with deficient staff whereas Sri Ganganagar is working with surplus staff. Accordingly, respondent No.3 has issued transfer order to safe guard the Government interest. It is further stated that the applicants are senior most at the station. They are working since their appointment. The respondent No.3 has convened a meeting of the Board of

Officers to scrutinize all the relevant datas and they prepared a station-wise seniority list for all the three station and worked out surplus/deficient staff for each station and there is no violation of the rules and regulations, therefore, the applicants are not entitled to any relief.

4. Heard both the parties. So far as prayer regarding pursuing the matter jointly by filing joint OA, is concerned, the applicants are allowed to pursue the OA jointly in all the OAs.



5. Counsel for the applicants contended that as per para 53 of the Transfer Guidelines/Policy, where the surplus staff is to be adjusted or deficiencies are to be filled up due to reduction in workload or adjustment of surplus staff or where units or formations are closed down due to some adjustment of the surplus staff will be first done in the residual formations to make good deficiencies within the Command Manning Level. The remaining staff will be informed of the stations/complexes and approximate number of vacancies available in these stations/complexes of choice from amongst such individuals so as to enable them to opt for three stations/complexes. If the number of optees for a particular station/complex is more than the number of vacancies available, posting will be considered in order of first priority to be adjusted as per the option given. Those who could not be accommodated at their stations/complexes of choice for want of vacancies; they will be posted as per job requirement, volunteers will be given first preference.

6. Counsel for the applicants further contended that the compliance of this para has not been made by the respondent-department and they have issued order Annex. A/1 without giving any options to the surplus staff to

make-good deficiencies within the Command Manning Level. He further contended that non-providing of any opportunity to avail the options to the applicants for a particular station in itself is sufficient to set aside the order of transfer. He further contended that some more persons were posted to some stations where there exists excess man-power.

7. Per contra, counsel for the respondents contended that as per para 54 of the transfer guidelines/policy, the surplus staff is to be posted as per their seniority and the respondent-department while issuing the order Annex. A/1 kept in mind the provisions of the policy referred in para 54.

8. I have considered the rival contentions of both the parties and also perused the relevant record.

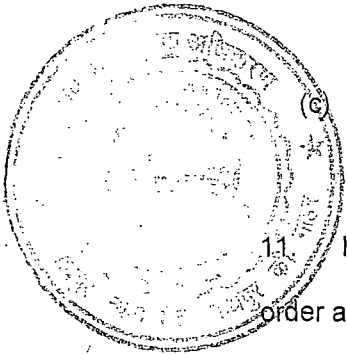
9. It is an admitted fact that before passing order Annex. A/1 no opportunity was accorded for any option to the applicants, informing the number of vacancies available in the stations of the command and the competent authority issued the posting/transfer order as per requirements, but in my considered view, before making good the deficiencies or before posting the surplus staff from one station to another, an opportunity by seeking option must have been provided to the employees. Though transfer order may be issued to make-good the deficiencies, but at the same time, it must have been issued after providing an opportunity by way of seeking options.

10. Therefore, in view of the discussions made hereinabove, I am proposing to dispose of all the OAs while quashing Annex. A/1 dated 22.11.2013 with following directions:

- (a) The applicants shall be entitled to draw the salary from the place where they were holding the post prior to the issuance of transfer order Annex. A/1 as per rules.
- (b) The competent authority shall comply with para 53 of the Transfer Guidelines/Policy of 2008 and inform the concerned employees regarding all stations or complexes available and invite options from the concerned employees for the same. After seeking options from the concerned employees, competent authority may transfer the employees in accordance with para 53 of the policy. However, the applicants shall remain posted at the place of their present posting till completion of this exercise.

- (c) If any grievance remains to the applicants, they may file representation before the competent authority.

11. In terms of above directions, all the OAs stand disposed of with no order as to costs.



COMPARED &
CHECKED

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R/ss

Sd/-
(JUSTICE K.C. JOSHI)
Judicial Member

CERTIFIED TRUE COPY

Dated 17.1.2014

D.R. Sharma

Secretary
Labour & Employment
Ministry of Labour & Employment
Government of India
New Delhi