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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00346/2014

Reserved on : 18.05.2015

Jodhpur, this the 4th of June, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Jagmohan Singh Rawat S/o Shri Mukund Singh Rawat, aged about 54 years, R/o Qtr. No. 7, Type-3, CPWD Colony, Opposite Church, Jaipur Road, Bikaner-334004, presently employed on the post Asst Engineer (Elect), Bikaner Central Elect Sub Division, CPWD, GPRA Opposite Church, Jaipur Road, Bikaner.

.....Applicant

By Advocate: Mr. J.K. Mishra.

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Urban Development, CPWD, Nirman Bhawan, Maulana Azad Road, New Delhi.
2. Director General (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.

.....Respondents

By Advocate : Ms K. Parveen.

ORDER

In this OA filed u/s 19 of the Administrative Tribunals Act,

(Ann.A/2) whereby representation of the applicant has been dismissed by the respondents.

2. The facts, so far relevant for deciding the case, are that the applicant was initially appointed as Junior Engineer (Elect.) in Amritsar Central Electric Division and posted at Bikaner Central Elect Sub Division on 13.3.1981. He enjoyed his next promotion as Assistant Engineer (Elect.) w.e.f. 2.7.2008 on the basis of seniority cum suitability and was posted from Sriganganagar to Bikaner Central Sub Division of Jodhpur Central Elect Division. The applicant has referred to transfer policy dated 1.4.2010 (Ann.A/3) whereby para 2.7 prescribes that the Assistant Engineer who have completed 50 years of age and ladies shall normally not be posted to hard area or out of region. The applicant was ordered to be transferred from Northern Region to North Eastern Region vide order dated 22/23.7.2010 which is inter regional transfer and his name find place at Sl.No.15. The applicant filed OA No.211/2010 and challenged the impugned order which was disposed of vide order dated 17.8.2010 with direction to the respondents to examine the representation of the applicant. Thereafter the applicant filed further OA No.392/2012, which was disposed of vide order dated 8.3.2013 (Ann.A/5) to consider representation but the respondents abruptly turned down representation of the applicant vide letter dated 11.4.2013. The applicant filed yet

of age and not after that. According to the applicant, the cut off date is not mentioned in any guidelines but used by the Directorate as a solid ground to deny the relief and the criterion is 50 years of age and natural interpretation would be that the age would be seen at the time of transfer and not at the time of inclusion of name in the readiness list. The said OA was decided by the Tribunal vide order 9.7.2014 (Ann.A/8) with direction to the respondents to decide the representation. Therefore, the applicant filed exhaustive representation dated 14.8.2014, but his representation has been rejected by the respondents vide order dated 19.9.2014 (Ann.A/2). It has been urged in the grounds that his transfer has been made in violation of the transfer policy as it was admittedly issued after he had crossed the age of 50 years. Further, his representation has been turned down abruptly and he has been transferred, even though others have been retained and moreover, the applicant has now already crossed the age of 54 years. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for quashing the inter-regional transfer and rejection of his representation.

3. By way of reply the respondents have submitted that the applicant was transferred from Northern Region to North Eastern Region vide order dated 23.7.2010 as per inter-regional transfer guidelines of Assistant Engineer, being the longest stayee

direction to relieve him for joining in NER after completion of one year retention period vide OM dated 17.6.2011. The said retention period ended on 16.6.2012 and he was requested to join NER, but he again filed OA No.248/2013 requesting to cancel his transfer order. On the direction of Hon'ble Tribunal in order dated 9.7.2014 in OA No.248/2013, his representation was considered in the Directorate and he was informed vide reasoned and speaking order dated 19.9.2014 (Ann.A/2). The respondents have further submitted that the Assistant Engineers who have completed the age of 50 years as on 1.5.2010 for the year 2010 are only exempted from IRT. As per record, the date of birth of the applicant is 30.6.1960 and accordingly, he completed 50 years on 29.6.2010, therefore, he was less than 50 years as on 1.5.2010 and so he was not eligible for exemption from IRT. The respondents have further submitted that as per para 2.2(iii) of corrigendum of OM dated 1.4.2010 issued on 27th April, 2010, the cut off date of inter regional transfer posting of AEs is clearly mentioned as 1st January or each year and 1st May of each year 2010. Therefore, there is no confusion about the cut off date. So far as retention of Shri Hira Prasad Maurya, AE (C) is concerned, the respondents have stated that he was engaged with the Commonwealth Games in Delhi and he was not relieved on transfer in public interest and exigencies of works regarding Commonwealth Games in Delhi. After winding off

have been retained in public interest and exigencies of work by the department even after inter regional transfer and if he has crossed the age of 50 years, his transfer may be cancelled. In view of above, the transfer of Shri Hira Prasad Maurya was cancelled. Therefore, the applicant is not entitled to any relief and the OA is liable to be dismissed.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA and the respondents have filed additional affidavit.

5. Heard counsel for both the parties. Counsel for applicant referred to Annex. A/1 dated 23.07.2010 wherein the applicant whose name is at S.No. 15 has been transferred from North Region to North Eastern Region under Inter Regional Transfer (IRT hereinafter). In this context, he referred to para 2.7 of Annex. A/3 OM dated 01.04.2010 which states that Assistant Engineers who have completed 50 years of age and ladies shall normally not be posted to hard area or out of region. In this connection, he referred to the procedure laid down in the aforesaid OM dated 01.04.2010 as modified vide corrigendum dated 27.04.2010 which provides that a list of all Assistant Engineers with age less than 50 years as on 1st of January of each year/1st May for year 2010 shall be prepared for IRT. He emphasized in this regard that the applicant was just two months less than 50 years as on 01.05.2010



and when the actual orders were issued i.e. on 23.07.2010 he had already crossed the age of 50 years and was therefore not to be transferred under IRT as per para 2.7 of the Scheme (Ann.A/3). But in view of the order issued on 23.07.2010, he challenged the same in OA No. 211/2010 which was decided on 17.08.2010 (Annex.

A/4) with the direction to the applicant to submit representation and the respondents to decide the same within 3 months from the date of receipt of such representation. He subsequently filed another OA bearing No. 392/2012 because his representation was not decided as per the directions of the Tribunal, but only order dated 23.02.2011 was issued where he was directed to hand over the charge of the post and get relieved. The OA No.392/2012 was decided on 8.3.2013 with the direction that the representation dated 15.09.2010 filed by the applicant shall be decided by the respondents by a speaking order with a month. Meanwhile, he will not be disturbed during the pendency of his representation.

The respondents did not decide the representation of the applicant and without considering his representation simply ordered to retain the applicant on medical ground and neuron problems of his wife, therefore, the applicant had to file another OA which was registered as OA No. 248/2013 which was decided by order of this Tribunal dated 09.07.2014 (Annex. A/8) in which the following directions were given:

completed 50 years of age as on 01.05.2010 and the applicant completed 50 years of age on 29.06.2010. Looking to the period span w.e.f. 01.05.2010 to 29.06.2010, it appears that the case of the applicant requires to be considered sympathetically by the IRT Committee and therefore, we are proposing to dispose of this application with certain directions.

7. Accordingly, the applicant shall make a representation to the respondent-department within two weeks from the date of receipt of a copy of this order and the respondent department is directed to decide the said representation with a month from the date of receipt of such representation. Further, it is ordered that the transfer order at Annexure-A/1, qua the applicant, shall remain stayed till the disposal of the representation to be filed by the applicant."

Counsel for the applicant submitted that the respondents have now decided the representation of the applicant in pursuance of the aforesaid order of the Tribunal, vide their letter dated 19.09.2014 (Ann.A/2). In this regard, he contended that in the first place, this is order of the Director and the matter has been considered only in the Directorate and the Inter Regional Transfer (IRT) Committee has not even considered it, though the directions of the Tribunal in its order dated 9.7.2014 in OA No.248/2013 were for IRT Committee to consider the same sympathetically. Counsel for the applicant further contended that as on 01.05.2010, the applicant was just short of 2 months and on the date of order i.e. 23rd July, 2010 (Ann.A/1) the applicant has already crossed 50 years, but this matter was not considered in his case. He contended that the official has been discriminated as may be seen

after one year he completed 50 years of age, therefore, his transfer orders were cancelled on the ground that he has crossed 50 years. The applicant was also retained for one year on medical grounds and in the meanwhile he also crossed 50 years of age, but his transfer has not been cancelled, hence, there is discrimination between the employees. Thus, counsel for applicant contended that rejection of the representation vide order dated 19.09.2014(Annex: A/2) is illegal because it has not been considered by the IRT Committee as ordered by the Tribunal vide its order dated 09.07.2014 passed in OA No. 248/2013 and further, as brought out earlier, he was retained on medical grounds for one year and when he completed 50 years after this retention, he should not have been transferred under IRT because he has already crossed 50 years of age and as of now he has crossed more than 54 years of age. Counsel for applicant further contended that the list once prepared or orders issued in 2010 cannot be continued in perpetuity even though age of the applicant is well above 50 years and now nearing 55 years and prayed for according the relief sought in the OA and quashing the order dated 22/23rd July, 2010 (Ann.A/1) and 19th September, 2014 (Ann.A/2).

6. Per contra, counsel for respondents submitted that the applicant has filed many OAs regarding his transfer order dated

representations have already been considered and decided and Annex. A/2 dated 19.09.2014 has been issued in pursuance of latest order of the Tribunal dated 09.07.2014 passed in OA No. 248/2013 and the applicant is continuing on the said post in pursuance of various orders of the Tribunal. So far as plea of the applicant that he was two months less than 50 years as on the date of consideration i.e. 01.05.2010 is concerned, it cannot be accepted because the age as on 01.05.2010 is applicable uniformly to all the employees and there may be several others who are also just few months less than 50 years as on that date and therefore exempting him from being considered on the relevant cut off date will amount to discrimination against others who may be adversely affected and this contention is, therefore, not tenable. She further contended that the applicant has not challenged the rules or the guidelines and the respondents have complied with the orders passed in all earlier OAs filed by the applicant and representation of the applicant has been decided correctly vide order 19.9.2014 (Annex. A/2) and there is no justification for setting it aside and prayed for dismissal of the OA.

7. Counsel for applicant rebutted the arguments stating that though all his previous OAs have been decided ,but his representations have not been considered properly and the latest order dated 19.9.2014 (Annex. A/2), has not been decided by the

Directorate and again reiterated that the transfer order has been issued when he had already crossed 50 years of age. Others who had crossed 50 years of age have been retained in public interest and he was also retained on medical grounds, but the applicant's transfer has not been cancelled even after crossing age of 50 years and now he is nearing 55 years of age, therefore, counsel for applicant prayed for allowing the OA.

8. Considered the rival contentions and perused the record. It is settled principle of law that Courts and Tribunals should not ordinarily interfere in the transfer matters unless it is mala-fide or in violation of statutory rules or in gross violation of any guidelines. However, in this case it is seen that in OA No.248/2013 decided on 9.7.2014 by this Tribunal, the following directions were given:-

“6. We have considered the rival contentions of both the parties. It is clear from the averments of both the parties that the list of the employees was prepared who have not completed 50 years of age as on 01.05.2010 and the applicant completed 50 years of age on 29.06.2010. Looking to the period span w.e.f. 01.05.2010 to 29.06.2010, it appears that the case of the applicant requires to be considered sympathetically by the IRT Committee and therefore, we are proposing to dispose of this application with certain directions.

7. Accordingly, the applicant shall make a representation to the respondent-department within two weeks from the date of receipt of a copy of this order and the respondent department is directed to decide the said representation with a month from the date of receipt of such representation. Further, it is ordered that the transfer order at Annexure-A/1, ~~the applicant~~ shall remain stayed till the disposal of the

The respondents have decided representation vide letter dated 19th September, 2014 (Ann.A/2) and it has been mentioned that the representation has been examined in the Directorate but there is no clear reference to the case having been considered by the Inter Regional Transfer Committee as was the direction (quoted above) in the order of this Tribunal dated 9.7.2014 in OA no.,248/2013.

9. In view of above position and considering the entire facts and circumstances of the case, it is deemed appropriate to dispose of this OA with certain directions:-

Accordingly, the respondents are directed to inform the applicant, within one month from the date of receipt of copy of this order, whether the decision dated 19th September, 2014 (Ann.A/2) has been duly considered by the Inter Regional Transfer Committee as per directions of this Tribunal contained in order dated 9.7.2014 in OA No.248/2013. Till then the interim relief directions given vide order dated 26.9.2014 that the applicant should not be relieved from his present place of posting, if he has not already been relieved till date for next 14 days, and since continued, will remain in operation.

The OA is thus disposed of as above, with no order as to costs.



[Meenakshi Hooja]
Administrative Member

JMZ
5/6/2015

CPWT

R/S

JMZ
8/6/15