

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No.290/00224/2014

Jodhpur, this the 27th day of April, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Suresh Chandra Jain s/o Shri Chhagan Lal Jain, aged about 48 years, resident of 'Divya' 415, Shriji Vihar, New Vidhyadhar, Hiran Magri, Sector-04, Udaipur at present employed on the post of Assistant Engineer, Dungarpur Central Sub Division, CPWD, Dugarpur.

.....Applicant

By Advocate: Mr. A.K.Kaushik

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), Jodhpur Central Division, CPWD, Nirman Bhawan, 3, West Patel Nagar, Circuit House Road, Jodhpur

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

This OA has been filed u/s 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

(i) The impugned order dt. 29.5.2014 (Annexure A-1) may be declared illegal, qua the applicant and the same may be quashed, accordingly. The respondents may be directed to exempt the applicant from Inter Regional Transfer and continue at Dungarpur as per the mandatory policy of the Husband and wife prescribed by DOPT (A/5), at the same station and allow

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded.

2. Brief facts of the case, as averred by the applicant, are that he was initially appointed to the post of Junior Engineer (Civil) in Gangtok Central Division of CPWD and further posted at Siliguri in West Bengal on 29.4.1992. In due course, he was promoted to the post of Assistant Engineer vide office order dated 25.2.2013 and his name is placed at SL.No.75 (Ann.A/2). Thereafter, he was transferred from Udaipur Central Sub Division-I (under Jodhpur Central Division) to Dungarpur Central Sub Division, vide order dated 16.7.2013 (Ann.A/3) and he joined his duty on 31.7.2013. Later, his name was included in the list of Assistant Engineer (C) for Inter-Regional Transfers-2014 at Sl. No. 161 in letter dated 21.2.2014. The applicant immediately filed a representation (Ann.A/4). It has been further averred that wife of the applicant is employed as Teacher (Panchayati Raj) in Government Upper Primary School, Manvakheda, Panchayat Samiti, Girwa, Distt. Udaipur, which is in Rajasthan State and near the place where the applicant is presently posted. The applicant has been ordered to be transferred from Dungarpur which is in Northern Region to Southern Region vide order dated 29.5.2014 and his name is placed at Sl.No.33. It has been further averred by the applicant that the DOPT vide OM dated 30.9.2009 (Ann.A/5) has been pleased to make the policy of posting husband and wife at the same station and the second respondent has also issued instructions for following the same and issued guidelines for inter-regional transfer vide

OM dated 1.4.2010 as amended vide corrigendum dated 27.4.2010 and 20.8.2010 (filed collectively as Ann.A/6) whereby para 2.2 (vi), (vii) and (viii) were added and it has been specifically prescribed in para 2.2. (viii) that the cases of working spouse may be dealt as per DOPT guidelines. The applicant submitted representation dated 30.5.2014 (Ann.A/9) and requested for his retention at his present place of posting but nothing has been done and the applicant is going to be relieved at any moment. It has been further averred that this Hon'ble Tribunal was pleased to grant stay in case of persons belonging to the same Department holding the post of Assistant Engineer (Civil) vide order dated 14.6.2013 (Ann.A/10) in OA no.238/2013, Pritam Pal vs. Union of India and on all these grounds, the applicant has prayed that the OA may be allowed.

3. By way of reply, the respondents have averred that as per Service Rules, the Assistant Engineer (Civil and Electrical) have All India Service liabilities. The feeder cadre of Assistant Engineer is Junior Engineer, who are initially posted in the Region but as per functional requirement of the Department, they can be transferred from one region to another region and there are laid down guidelines for inter-region transfers. It has also been submitted that the transfer is not only an incident, but a condition of service and who should be transferred where, is the matter for the appropriate authority to decide and in this regard a number of judgments of the Hon'ble Apex Court have been referred in the reply. Regarding the applicant, it has been submitted that he has been working in the Northern Region w.e.f. 16.9.1996 and inter-regional transfer/posting is made from the longest

imbalance in other region. The applicant's name comes in the longest stayee AEs in Northern Region along with other AEs so his transfer was made to Southern Region on the recommendation of the IRT committee. It has been further submitted that DOPT OM dated 30.9.2009 does not specify that it is mandatory to post husband and wife at the same station when a spouse is employed in State Government department. It has been further averred that the DOPT guidelines never said that the officer will be posted at the same station during the whole service till his spouse is posted at the same station. It has been stated that as the transfer of the applicant from Northern Region to Sourthern Region is in order and the action taken by the respondents is perfectly legal and in accordance with the law, therefore, the OA may be dismissed.

4. Heard both the parties. Counsel for the applicant contended that the applicant has been transferred to Southern Region, which is far way from Dungarpur where he is presently posted and which falls in the Northern Region. His wife is working as Teacher in Panchayat Samiti, Girwa, Distt. Udaipur and he has also represented before the respondent department to consider his case in the light of the DOPT guidelines and instructions issued by the Department. In this context, he also referred to the order of this Tribunal dated 22.1.2015 passed in OA No.238/2013, Pritam Pal vs. Union of India, in which in a similar case directions have been given to consider and decide representation of the applicant. Counsel for the applicant also submitted that his representation dated 30.5.2014 (Ann.A/9) is pending with the respondent department.

5. Per contra, counsel for the respondents contended that inter region transfer order dated 29.5.2014 (Ann.A/1) has been made in accordance with the rules, regulations and policy of the Department and it is settled principle that transfer is an incident of service and it is for the Departmental authority to decide where a person should be posted. Counsel for the respondents also submitted that the representation of the applicant, Ann.A/9, was filed on 30.05.2014 i.e. one day after issue of transfer order dated 29.05.2014 (Ann.A/1) and without waiting for any decision, the OA was filed within a few days on 09.06.2014 itself and in view of interim order dated 16.6.2014, the representation Ann.A/9 could not be decided and remained pending.

6. Considered the rival contentions and perused the record. As has been held in a catena of judgments of the Hon'ble Apex Court that transfer is an incident of service and Courts and Tribunals should not ordinarily interfere with the same unless there is mala-fide or gross violation of statutory rules, regulations and policy guidelines and this does not appear to be so in the present case. However, it is seen that in the present case the spouse of the applicant is working as Teacher in Panchayat Samiti, Giwara, Distt. Udaipur and the applicant is presently working at Dungarpur, which falls in Northern Region and he has been transferred to Southern Region vide order dated 29.05.2014. Further, the DOPT and CPWD guidelines do provide for considering transfer on the basis of posting of spouse in the State Government, though it is not mandatory and as the representation dated 30.05.2014 (Ann.A/9) is pending with the respondent Department and keeping in view the order dated 22.01.2015 of this Tribunal in the case of

Pritam Pal vs. UOI in OA No.238/2013, it is proposed to dispose of this OA with certain directions. Accordingly directed that:-

The respondents may decide representation dated 30.5.2014 (Ann.A/9) of the applicant within a period of one month from the date of receipt of this order and till then status quo will remain with respect to Ann.A/1 qua the applicant. Thereafter if any grievance remains with the applicant, he may approach the appropriate forum, as per law.

The OA is disposed of accordingly with no order as to costs.


(Meenakshi Hooja)
Administrative Member

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