

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00241/2015

Reserved on : 17.07.2015

Jodhpur, this the 7th August, 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

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

(i) That impugned order dt. 22/23.7.2010 (Annexure A-1) and order dated 19.9.2014 (Annexure A/2), Order dated 19.6.2015 (Annexure A/3) and order dated 19.6.2015 (Annexure A/4), may be declared illegal, qua the applicant and the same may be quashed accordingly. The applicant may be allowed with all consequential benefits as if the impugned orders were never in existence.

(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 as Junior Engineer (Elect.) in Amritsar Central Electric Division and posted at Bikaner Central Elect Sub Division on 13.03.1981. He enjoyed his next promotion as Assistant Engineer (Elect.) w.e.f. 02.07.2008 on the basis of seniority cum suitability and was posted from Sriganganagar to Bikaner Central Sub Division under Jodhpur Central Elect Division. The applicant has referred to transfer guidelines dated 01.04.2010 which were amended vide Corrigendum dated 27.04.2010 and para 2.2 (ii) and (iii) were substituted and sub-para 1.4, 2.2 (vi) and 2.12 and 2.13 were added (Ann.A/5). It has been averred that para 2.7 of the above guidelines prescribe that the Assistant Engineers who have completed 50 years of age and ladies shall normally not be posted to hard area or out of region. The applicant has further stated that conjoint reading of the

intended that Assistant Engineer should not be transferred after completion of 50 years of age. When a revised list of Assistant Engineer (Elect) under Northern Region who were below 50 years as on 01.05.2010 for effecting transfer -2010 vide letter 29.04.2010 was prepared, the applicant protested for inclusion of his name. The applicant has further stated that OA No.1936/2010, Ravindra Pal Malik and 33 others vs. Union of India and Ors was filed before the CAT-Principal Bench whereby OM dated 01.04.2010 and OM dated 27.04.2010 were challenged and these were held as valid with observation that specific individual issues are to be dealt with separately. The applicant was ordered to be transferred from Northern Region to North Eastern Region vide order dated 22/23.07.2010 (Ann.A/1) which is Inter Regional Transfer (IRT) and his name finds place at Sl.No.15. The applicant filed OA No.211/2010 and challenged the impugned order which was disposed of vide order dated 17.08.2010 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 08.03.2013 to consider representation but the respondents abruptly turned down representation of the applicant vide letter dated 11.04.2013. The applicant filed yet another OA No.248/2013 by which he pleaded that the transfer of an Assistant Engineer could be made only if

applicant, the word 'cut off date' is not mentioned in any guidelines but used by the Directorate as a solid ground to deny the relief. 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 09.07.2014 (Ann.A/8) with direction to the respondents to decide the representation. Therefore, the applicant filed exhaustive representation dated 14.08.2014 (Ann.A/9), but his representation has been rejected by the respondents vide order dated 19.09.2014 (Ann.A/2) in a mechanical way. The applicant has also given example of one Shri Natha Singh JE (Civil) whose date of birth is 15.10.1961 and was promoted and posted to the post of AE (Civil) vide office order dated 03.06.2011 (Ann.A/10) and his name has been placed at Sl.No.34 and he was transferred before completion of 50 years of age but his transfer has been cancelled vide order dated 11th August, 2014 (Ann.A/11) on the ground 'exemption as attained the age of 50 years (probably when he was sought to be relieved). In the case of Natha Singh, another reason has been informed as 'His wife has been working in Punjab State Education Department.' The respondents have thus changed their stand just to justify their wrong action. In yet another case while deciding representation of Shri Pritam Pal vide order dated

exemption from IRT since he attained the age of 50 years. The applicant has alleged that the respondents have created a separate classification as 'retained in administrative interest' and Shri Maurya crossed the 50 years of age and his transfer was also cancelled. Thereafter the applicant had no option except to approach this Tribunal vide OA no.346/2014 and the same was also disposed of with direction to the respondents to inform the applicant, within one month from the date of receipt of copy of the order whether the decision dated 19th September, 2014 has been duly considered by the Inter Regional Transfer Committee as per directions of the Tribunal contained in order dated 09.07.2014 passed in OA no.248/2013. The applicant also filed a Review Application against the above order of the Tribunal. According to the applicant, the respondents have flouted the direction of the Tribunal and have informed the applicant vide letter dated 19.06.2015 (Ann.A/3) that his representation was considered and decided by DG, CPWD who is final authority in effecting IRT and the order of Tribunal dated 04.06.2015 has been treated as of no effect or of no consequence to the authorities. The applicant has been ordered to be relieved simultaneously vide order dated 19.6.2015 in unceremonial manner to ER, Calcutta to which he has not even been ordered to be transferred and he is asked to immediately hand over the charge (Ann.A/4). He has faced

the applicant has taken the plea that the word 'cut off date' is not mentioned in any guidelines but used by the Directorate as a solid ground to deny the relief. The main issue has not been addressed and new interpretation is being given and irrelevant terminology has been used just to deny him the benefit of exemption under the transfer policy. The applicant has further taken a ground that he has completed about 55 years by now and his case is otherwise out of the purview of the inter regional transfer policy. This position is fortified by a recent decision of the respondents in case of one Shri Hira Prasad Maurya, AE (Civil) as mentioned in the order dated 14.06.2013 at Sl.No.2. As Shri Maurya was retained due to exigencies of work and during that period he crossed the age of 50 years and his transfer from NR to WR was cancelled. But the aforesaid position has not been applied in the case of the applicant and the discrimination is due to some extraneous reasons best known to the concerned authority. According to the applicant, he is sought to be moved in contravention of the provisions of transfer policy i.e. after completion of 50 years of age and Shri Natha Singh's transfer has been cancelled on the ground that he completed 50 years of age (on the date he was sought to be relieved) and granted exemption but the applicant has been discriminated despite the fact that he has a better case, inasmuch as, he had completed more than 50 years of age on the

of the respondents, has filed this OA praying for the reliefs as mentioned above.

3. By way of reply the respondents have submitted that the respondent-department had prepared a list as per guidelines issued vide letter dated 01.04.2010 and 29.04.2010 about Inter

Regional Transfer of Assistant Engineers (Civil and Electrical) after considering all the Senior Officers of the respondent-

department for transfer and posting in the interest of Government and cut off date for Inter Regional Transfer/Posting (IRT) has been considered i.e. below 50 years of age on 01.05.2010 for effecting

IRT-2010 vide letter dated 29.04.2010 and the applicant was transferred from Northern Region to North Eastern Region vide order dated 22/23.07.2010. The applicant being dis-satisfied filed

OA No.211/2010 which was decided on 17.08.2010, another OA No.392/2012 decided on 08.03.2013 and OA No.248/2013 decided

on 09.07.2014 and OA No.290/00346/2014 decided on 04.06.2015.

After decision dated 04.06.2015 in OA No.346/2014, the applicant

was relieved vide order dated 19.06.2015 (Ann.A/4) on the ground that the list of the candidates for IRT has been prepared

earlier when the applicant did not attain the age of 50 years, therefore, his name was recommended for transfer/posting and that the list came in force after crossing the age of 50 years is no

ground for cancellation of his transfer. Therefore, action of the

respondents is legal and does not require any interference. The respondents have further stated the applicant has been working in the Northern Region w.e.f. 02.07.2008 at Bikaner and IRT is made from the longest stayee Assistant Engineers of particular region to minimize the imbalance in other regions. The applicant's name comes in the longest stayee Assistant Engineer in Northern Region along with other Assistant Engineers, therefore, his transfer was made to North Eastern Region on the recommendations of IRT Committee in the year 2010. The cut off date for IRT in 2010 has been clearly mentioned as 01.05.2010 and a list of longest stayee Assistant Engineers below the age of 50 years as on 01.05.2010 was prepared and IRT was made on the basis of that list. The applicant was below the age of 50 years, therefore, he was not eligible for exemption from IRT as according to IRT guidelines dated 01.04.2010, the station tenure of the applicant will not come under IRT, therefore, his transfer is perfectly legal and in accordance with rules on the subject. Therefore, the respondents prayed that the OA may be dismissed.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA and submitting that he does not have any grievance with the transfer policy but he was ordered to be transferred after he crossed the age of 50 years and he has been discriminated as the persons

transferred before 50 years of age continued after such transfer order after they attained the age of 50 years. Their transfer orders were cancelled since they crossed the age of 50 years, but the respondents have been insisting not to apply the provisions of policy to the case of the applicant on one pretext or the other, even throwing the normal channel of consideration of his case by hard case committee. Therefore, the applicant is entitled to the relief as prayed for in the OA.

5. Heard. Counsel for the applicant, Mr. J.K. Mishra, submitted that the respondents have only filed a preliminary reply and not a final reply, in which they have not denied any points raised in the OA or the points on the basis of which IR was granted. The preliminary reply is only a history of the case and does not contain replies or denial to the issues raised in the OA and that what is not denied is deemed to be admitted. Counsel for the respondents in this regard submitted that preliminary reply may be treated as the final reply and the case be heard accordingly.

Counsel for the applicant thereafter, contended that as per Annexure-A/8, which is the decision of this Tribunal dated 09th July, 2014 in OA No.248/2013 there was specific directions in para No. 6 & 7 that the case of the applicant requires to be considered sympathetically by the Inter Regional Transfer Committee as

"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 Inter Regional Transfer 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 within 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."

The respondents have, however, issued letter dated 19th September, 2014 (Annexure-A/2) deciding the representation of the applicant submitted in pursuance of order of the Tribunal dated 09th July, 2014 in which there is no reference whether his case was considered sympathetically by the Inter Regional Transfer Committee or not and therefore the applicant filed OA No.346/2014 against the said order dated 19.09.2014. This Tribunal decided the OA No.346/2014 vide order dated 04.06.2015 (Annexure-A/13) in which the following directions were issued :-


"9. In view of above position and considering the entire facts and circumstances of the case, it is deemed appropriate to

Accordingly, the respondents are directed to inform the applicant, within one month from the date of receipt of a copy of this order, whether the decision dated 19th September, 2014 (Annexure-A/2) has been duly considered by the Inter Regional Transfer Committee as per directions of this Tribunal contained in order dated 09.07.2014 in OA No.248/2013. Till then the interim relief directions given vide order dated 26.09.2014 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.”

However, instead of informing the applicant whether his case has been sympathetically considered by the IRT or not, the respondents simply rejected the representation of the applicant by order dated 19th June 2015 (Annexure-A/3) stating that representation was considered and decided by the DG, CPWD, who is the final authority in effecting Inter Regional Transfers as per Rule 4 of the IRT Guidelines issued by this Directorate vide File No.18/01/2008 EC III dated 19th May, 2014, and no reason has been given, and further even relieving order dated 19.06.2015 (Annexure-A/4) was issued. Counsel for the applicant emphasized that the main case of the applicant has been that the applicant completed 50 years age as on 30th June 2010 and when the transfer order was issued on 23rd July, 2010 (Ann.A/1), on the said date he had already crossed 50 years of age. Counsel for applicant further contended that though this list has been prepared for the year 2010 only and fresh lists have to be prepared for each year, but the respondents are continuing to

implement this list for the year 2010.

guidelines itself have provided that the list of Inter Regional Transfer shall be prepared each year. He further contended that there has been discrimination between the applicant and other persons whose transfer orders, similar to his case, have been cancelled, but his transfer was not cancelled. The applicant referred to the case of Shri Hira Prasad Maurya who was retained for one year on administrative grounds for exigencies of work and was later exempted from IRT because he had crossed the age of 50 years during that period as may be seen from letters dated 14th June, 2013 (Ann.A/6) and 19th September, 2014 (Ann.A/2). Further, in the case of one Shri Natha Singh as may be seen at serial No.18 in order dated 11th August, 2014 (Annexure-A/11), he was exempted from IRT for the reason that he had crossed the age of 50 years after issuing of transfer order dated 3rd June, 2011 (Ann.A/10) and another reason i.e. his wife is working in Punjab State Education Department has been given in the letter dated 19.9.2014 (Ann.A/2). Counsel for the applicant further contended that in pursuance of order dated 04.06.2015 (Annexure-A/13), no response has been given by the respondents to the directions issued by the Tribunal and the case of the applicant has simply been rejected vide order dated 19.06.2015 (Ann.A/3) and he has not even been informed whether the IRT has considered his case sympathetically or not, in fact this amounts to contempt of the

argued that this is the fifth OA which has had to be filed by the applicant because the respondents have not given due consideration to his case or followed the directions of the Tribunal and they are maintaining the transfer list even in the year 2015 which was prepared for the year 2010. Therefore, he prayed that the OA may be allowed.

6. Per contra, Smt. K. Parveen, arguing on behalf of the respondents submitted that the OA is not maintainable and submitted that though the initial transfer order was issued on dated 23rd July, 2010 (Annexure-A/1) but the applicant instead of joining his duties filed the OAs and this is the fifth OA. In this context, she submitted that vide Annexure-A/1 not just the applicant but 29 persons have been transferred and earlier the matter had been challenged in the OA No.1936/2010 in CAT Principal Bench, New Delhi and after judgment dated 16.07.2010 of the CAT Principal Bench, New Delhi, the transfer list dated 22/23.07.2010 (Ann.A/1) was issued. Counsel for the respondents contended that as is clear from Annexure-A/1 not just the applicant but 2 other persons as at serial No.22 and 29 had also crossed the age of 50 years on the date of issuing order i.e. 23rd July, 2010 and no special benefit could be given to the applicant, who is at serial No.15, merely because he was just 2 months over the age of 50 years because all persons who were less than 50

years of age as on 01.05.2010 (as per guidelines as at Ann.A/5) came under the IRT transfer. She also contended that the applicant has not challenged the guidelines. She further submitted that the applicant challenged his order in OA No.211/2010 which was decided on 17th August 2010 and on the basis of the directions of this Tribunal, his representation was decided. The applicant filed another filed OA No.392/2012 which was decided on 08th March, 2013 and the representation was accordingly decided on 11th April, 2013. Applicant thereafter filed another OA No248/2013, which was decided on 09.07.2014 (Ann.A/8) on the basis of directions of the Hon'ble Tribunal. Thereafter, applicant has filed two more OAs bearing OA No.346/4 and 241/2015 and now the present OA (No.241/2015) has been filed. In each case, the respondents have abided by the directions of the Tribunal and decided the representation in accordance with the guidelines. The applicant had not completed 50 years as on 01.05.2010, therefore, he was eligible to be transferred for Inter Regional Transfer and he was transferred accordingly as per Annexure-A/1. She further reiterated that as the applicant was below the age of 50 years, as on 01.05.2010, therefore, the transfer order was perfectly valid and despite so many OAs being filed by the applicant against the transfer order, there were no directions of the Tribunal to cancel the transfer order. She further contended

the Director General (CPWD) has full power to order transfer/posting or retention and the applicant has not challenged the guidelines and the order dated 19th June, 2015 (Ann.A/3) deciding his representation and relieving order dated 19th June, 2015 (Ann.a/4) are in accordance with the guidelines. She also clarified that there has been no discrimination because the case of the applicant and the case of Hari Prasad Maurya and Natha Singh referred to by the applicant stand on different footing. Counsel for the respondents further contended that the applicant is continuing on the post for last 5 years or so has now challenged the order dated 23rd July, 2010 (Ann.A/1) again after so many years which is not maintainable and on all these grounds prayed for dismissal of the OA.

7. Rebutting the arguments, counsel for the applicant submitted that in each of OAs, the case of the applicant was considered and directions were issued but as the order of the respondents were not in accordance with the guidelines and there was discrimination, he had to plead his case again and again. He further contended that though the policy/guidelines have not been challenged, but the policy itself at para 2.2 (iii) refers that the list has to be prepared for each year and once the applicant has crossed the age of 50 years the list made in the year 2010 can

not be automatically be valid for the next year (s) and prayed for the OA being allowed.

8. Considered the contentions and perused the record. It is seen from record that the transfer order dated 23rd July, 2010 (Ann.A/1) in which the name of the applicant appears at Sl.No.15 was issued consequent upon dismissal of OA No.1936/2010 vide judgment dated 16.7.2010 of CAT-Principal Bench, New Delhi and in terms of guidelines issued vide OM No.18/01/2008-EC-III dated 01.04.2010 and corrigendum of even No. dated 27.04.2010.

9. Against the transfer order dated 23rd July, 2010, the applicant filed OA no.211/2010 which was decided on 17.08.2010 in which the Tribunal directed the respondent department to examine the representation of the applicant dated 15.09.2010 and pass a speaking order. Thereafter the respondent department issued order dated 04.11.2010 (Ann.R/1). Thereafter the applicant filed another OA no. 392/2012, which was disposed of vide order dated 8.3.2013 with direction to consider representation dated 15.9.2010, but the respondent department turned down the representation vide order dated 11.04.2013. The applicant filed third OA No.248/2013 which was also decided on 9.7.2014 with direction to the respondent department to decide representation of the applicant. The applicant submitted a representation before the competent authority as per direction and respondents issued

an order dated 19.09.2014 (Ann.A/2). Thereafter the applicant also filed OA no.346/2014 which was decided on 04.06.2015 and now the present OA No.241/2015 has been filed against the order dated 19th June, 2015 rejecting the representation (Ann.A/3) and the relieving order dated 19.6.2015 (Ann.A/4). It has been the main contention of the counsel for the applicant that the order dated 23rd July, 2010 (Ann.A/1) was issued in July, 2010 and the applicant had crossed the age of 50 years by the time of issue of the order. As per the guidelines, list of AEs with age less than 50 years as on 1st January of each year/1st May for the year 2010 is required to be prepared and will be the basis for inter-regional transfer, but the respondents are persisting with the list prepared in the year 2010 and rejected his representation vide letter dated 19.6.2015 (Ann.A/3) and ordered to relieve him vide letter dated 19.6.2015 (Ann.A/4). Per contra, it has been the contention of the counsel for the respondents that as per guidelines, the applicant was due for consideration for inter regional transfer as he had not crossed the age of 50 years on 01.05.2010 and that the applicant has challenged this basic transfer order in several OAs and as per direction of this Tribunal, the respondent authorities have decided his representations in accordance with the directions of the Tribunal and the guidelines.

10. In this regard, it is noted that the applicant has basically challenged his IRT order dated 23rd July, 2010 as at Ann.A/1 and the decisions of the respondents in pursuance to the directions of this Tribunal in the OAs filed by him, but in none of the OAs, the transfer order dated 23rd July, 2010, qua the applicant, has been cancelled. Moreover, the transfer order dated 23rd July, 2010 cannot be said to be in violation of the guidelines, because as per para 2.2 (iii), the list had to be prepared of those below 50 years of age as on 01.05.2010 and at that time, the applicant was below 50 years.

11. Counsel for the applicant had further contended that the respondents themselves had given retention to the applicant on medical grounds of his wife with reference to order dated 23rd July, 2010 and during that period, he crossed the age of 50 years but despite filing various OAs his justified claim has not been accepted while in other cases i.e. Shri Hira Prasad Maurya and Shri Natha Singh, they have been exempted from IRT, as such, there has been gross discrimination against him. Per contra, the contention of the counsel for the respondents is that in case of Hira Prasad Maurya, he was retained on administrative grounds and exigencies of work and during that period he had crossed the age of 50 years and, therefore, his transfer was cancelled. In the

that as may be seen from Ann.A/2, his case was agreed to because his wife was working in Punjab State Education Department.

12. In this context, from a perusal of the record it appears that as far as the cases of Shri Maurya and Shri Natha Singh are concerned, they appear to be on different footing. As brought out in communication dated 14th June, 2013 (Ann.A/6) and further communication dated 19th September, 2014 (Ann.A/2), Shri Maurya was retained in NR in exigency of work and during that period he crossed 50 years of age and was therefore, exempted from IRT. In the case of the applicant, he was given retention of one year (reference letter dated 19th September, 2014, Ann.A/2) on medical grounds of his wife and these two cases cannot be said to be on same grounds.

Further in the case of Shri Natha Singh, as seen from Ann.A/2 dated 19th September, 2014, the reason given for exemption was his wife working in Punjab State Government though the order dated 11th April, 2014 (Ann.A/11) refers to his exemption as having attained the age of 50 years. Though there may be some variance in the reasons given for cancelling the IRT of Shri Natha Singh in the two Annexures, but on this basis it cannot be said that his case is on the same footing as that of the applicant.

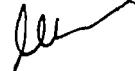
13. It is further seen that vide order of the respondents dated June 19, 2015, the representation of the applicant was considered and decided by Director General, CPWD who is the final authority for IRT transfer as per IRT guidelines dated 01.04.2010. In this connection, it is noted that in all the OAs basically the order dated 23rd July, 2010 has been challenged alongwith subsequent orders of the respondent department issued in pursuance of the directions issued in various OAs filed by the applicant. As the transfer order dated 23rd July, 2010 of the applicant has never been set-aside or cancelled in any of the OAs, the contention of the counsel for the applicant does not have much force that the respondents are persisting with the order of 2010 even in 2015 when the applicant is nearly 55 years of age. The rejection of representation vide order dated 19.6.2015 (Ann.A/3) and relieving order of even date have been issued by the competent authority. As per Para 4 of the guidelines (Ann.A/5), the DG, CPWD shall have full power to order transfer/posting or retention of any AEs (Civil) and (Electrical) keeping in view the exigencies of public service, compassionate grounds, administrative requirements and merit of the individual cases.

14. In view of the above analysis, therefore, no case appears to be made out in favour of the applicant in this OA and there

is a settled position that Courts and Tribunals should not normally interfere in the matters of transfer and posting unless there is gross violation of statutory rules or proven malafide, which does not appear to be so in this case.

15. However, the applicant is always at liberty to approach the departmental authorities who may take a suitable decision at their own level.

Accordingly, the OA is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

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