

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW

Original Application No. 356/2011

This, the 7th day of December, 2011

HON'BLE JUSTICE ALOK KUMAR SINGH, MEMBER (J)

Harjeet Singh aged about 51 years son of Sri Kripal Singh resident of 803, Azad Nagar, Roorkee, District- Haridwar (Uttarakhand), Presently residing at K-587-A, Sector K, Ashiyana Colony, Kanpur Road, Lucknow

Applicant

By Advocate:- Sri G.P. Pandey

Versus

1. Union of India through the Secretary to the Govt., Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Engineer-in-Chief, Military Engineering Services, Integrated Head Quarters of Ministry of Defence (Army), Kashmir House, New Delhi.
3. Chief Engineer, Military Engineering Services, Central Command, Lucknow.
4. Commander Works Engineer, Military Engineering Services, Central Command, Lucknow.

Respondents.

By Advocate:- Sri Ashish Agnihotri

ORDER (Dictated in Open Court)

By Hon'ble Shri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

“Humble applicant sees3ks setting aside of the impugned orders No. 910127/CML-11/26/EIC (1) dated 25th April 2011 posting and transfer command Manning Level category JE E/M of Batch 2011 passed by HQ Chief Engineer, Central Command and order No. 910127 /CML-11/18/EOC (i) dated 30th June, 2011 passed by the Chief Engineer, Central Command, Lucknow (Annexure Nos. 1 and 2 respectively).

Such other suitable orders as be deemed fit and proper in the facts and circumstance of the case may also kindly be passed to meet the interest of justice.”

2. The case of the applicant is that he has been transferred from GE (West), Lucknow to GE, Ranikhet, wherein the movement date was mentioned 31.5.2011. But he was not relieved. Thereafter, a movement order dated 27.9.2011 has been passed which has also been impugned by means of amendment. The applicant happens to be retired Army officer who has been appointed as J.E. in Military Engineering Services (MES) on deputation-cum-reemployment scheme (DCRE Scheme) vide

Annexure 3 dated 28.6.2007. He made a representation dated 29.4.2011, which was rejected vide order dated 14.6.2011 (Annexure No.7). It is said that earlier a warning list of hard tenure posting in respect of the applicant was issued 24.12.2010 showing his station seniority as 30.6.2007. In response thereof, he has also given a choice but that transfer/posting in respect of hard station was not done for the reasons known to the respondents. Instead, they included the name of the applicant in Command Manning Level (CML) transfer list without asking his choice of station in accordance with the transfer policy of August, 2007 (Annexure 3), para 36 (c). It has been further contended that as per para 36 (e) of the aforesaid transfer policy, longest stayee was supposed to go on transfer first. In this connection, according to the applicant, there are five persons having more station seniority than the applicant as mentioned in his representation dated 29.4.2011 (Annexure 6) which has been rejected by impugned order (Annexure 7) and that too without assigning any reason.

3. The claim of the applicant has been contested by the respondents saying that choice station of CML posting batch, 2011 was asked vide headquarter's letter dated 12.3.2011 (but it has not been filed). In respect of longest stayee, out of the five persons, in Supple. Affidavit, in para 14 it has been said that due to over age, Gopal Singh and G.B. Singh were not considered for CML posting.

4. The applicant has also filed Rejoinder Reply reiterating his averments contained in the O.A.

5. I have heard the learned counsel for parties and perused the material on record.

6. I have carefully perused the above transfer policy, the transfer order dated 25.4.2011, the representation dated 29.4.2011 (Annexure 6) and the impugned order passed thereon dated 14.6.2011 (Annexure 7). It is true that the respondents being the employer can make transfers of the employees in public interest in accordance with transfer policy, if any.

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Concededly, there are above transfer guidelines which are being adhered and followed by the respondents. It is true that these guidelines are meant only for regulating the transfers and the same cannot be claimed as a matter of right. The impugned transfer order has been challenged on the ground of its being against the professed policy. But presently in view of the facts and circumstances of the case, I am not inclined for the present to touch the transfer order dated 25.4.2011. However, for the reasons mentioned herein below, it is seen that while deciding the representation dated 29.4.2011, the points raised therein have not been properly addressed in the rejection order which has also been challenged.. This representation consists of five names whose stations seniority is more than the applicant. Even specific dates have also been mentioned. These dates have not been challenged in the C.A. or in the Supple.CA. There is specific pleading contained in para 4.13 of the OA and Annexure 6 in this regard. It is informed that out of the five longest stayees, Sri B.S. Mehta having station seniority w.e.f. 4.8.2005 has now been transferred. The rejection order (Annexure 7) consists of only one line i.e. "Representation in respect of the above named individual has been considered and rejected by the competent authority." It is needless to say that being a model employer, the respondents were supposed to pass a reasoned and speaking order showing transparency. Further, if for some reasons , it could not be done in that order, then at least those reasons if any, could have been pleaded correctly and clearly in the CA or in the Supple. CA. Justice should not only be done but it should appear to has been done.

7. Para 36 (c), provide for asking of choice station and para 36 (e) deals with the longest stayee. Though, in para 13 of the CA, it has been said that the choice station for CML posting were called vide Headquarter's letter dated 12.3.2011 but it has been refuted in the R.A. and in order to substantiate this pleading, the respondents have not filed any copy of the aforesaid letter dated 12.3.2011. Even if there was any such letter, there is no pleading that it was circulated /served upon the

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applicant. Similarly, in respect of longest stayee, in a fragile manner, some averments have been made in para 14 of the Supple. CA, wherein it has been said that Gopal Singh and G.B. Singh were not considered for CML posting due to over age (their date of birth are 12th June, 1956 and 12th June, 1952 respectively). But even if the date of birth of Gopal Singh is taken to be 1956, his age comes to below 55 years and not over age of 57 years at the time of consideration of transfer of April, 2011. Therefore, this averment is wrong, misleading and misconceived. Of course, as said above, Sri Bahadur Singh is said to now been transferred. In para 33, in respect of Pancham Ram, it has been said that he was deleted from the list on medical ground but no paper has been enclosed to substantiate this pleading. Similarly, in respect of Om Veer Singh, in para 19, no satisfactory and clear reply appear to have been given. Thus, prima facie, it appears that the guidelines contained in para 36 (c) in respect of seeking choice of station and para 36 (e) in respect of transferring longest stayees have not been adhered in the letter and spirit and aforesaid questions raised on behalf of the applicant have not been dealt with by means of a reasoned and speaking order in a transparent manner while deciding the aforesaid representation of the applicant against his transfer.

8. As said above, presently the transfer order in question is not being touched. Instead with a view to give an opportunity to the respondents to rectify their mistakes if any, by considering and passing appropriate reasoned and speaking orders afresh on the representation, this Tribunal is inclined to give a direction to the applicant to move a representation afresh within 2 weeks from today indicating his above grievances which shall be decided by the respondents by means of speaking and reasoned order within next 3 weeks and it is accordingly so ordered, with further observation that the transfer order dated 25.4.2011 so far it relates to the applicant, shall be kept in abeyance till the aforesaid time.

9. O.A. is accordingly disposed of without any order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 7.12.11
Member (J)