

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 668/89
T.A. No. ---

198

DATE OF DECISION 2 June 93

Noor Elahi Osman

Petitioner

Mr. G. M. Mohoney

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr. Ravi Shetty for Mr. R. K. Shetty

Advocate for the Respondent(s)

JURAM :

The Hon'ble Mr. V.D. Deshmukh, Member (J)

The Hon'ble Mr. ---

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

[PRRNND-12 CAT/86-3-12-86-15,000]

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(V.D. DESHMUKH)
Member (J)

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.668/89

Noor Elahi Osman,
C/o. G.E. MES Kamptee,
Nagpur - 441 001. .. Applicant

-versus-

1. The Garrison Engineer,
M.E.S.
Kamptee,
Nagpur 441 001.
2. The Chief Engineer,
Southern Command,
Pune - 1.
3. The Engineer-in-Charge,
Army Head Quarters,
(E-in-C's Branch,
New Delhi.
4. Union of India
through
Secretary,
Ministry of Defence,
New Delhi. .. Respondents

Coram: Hon'ble Shri V.D.Deshmukh,
Member(J)

Appearances:

1. Mr.G.M.Mohoney
Advocate for the
Applicant.
2. Mr.Ravi Shetty
for Mr.R.K.Shetty
Counsel for the
Respondents.

JUDGMENT:
(Per V.D.Deshmukh, Member(J))

Date: 22 June 93

The applicant had been working as
U.D.C. under the respondent No.1, Garrison
Engineer, MES Kamptee since 20-10-1979. The
applicant was born on 28-3-1932 and retired
by superannuation w.e.f. 31-3-1990. He
completed 55 years of age in March, 1987.

2. While the applicant was in service
at Kamptee the transfer order dt. 29-10-1986
was issued by respondent No.2 transferring

Lohagaon, for
the applicant from Kamptee to ~~Lohagaon~~.

It is the contention of the respondents that this transfer order was issued as the applicant was in Nagpur complex continuously for more than 12 years. As per the move instructions the move was to be implemented before 30-11-1986 and the applicant was informed to be in readiness to move to Garrison Engineer(AF) Lohagaon vide letter dt. 15-11-86. However, this order was later on modified and the applicant was transferred to kirkee instead of Lohagaon vide the letter of Respondent No.2 dt. 19-2-87.

It is not disputed that such modifications/amendment of the original posting order dt. 29-10-86 was done. The movement order pursuant to the amended transfer order was issued on 9-3-87. However, it appears that again at the request of the applicant the movement order was also modified and the applicant was to be struck off strength(SOS) from 30-4-87 instead of 31-3-87.

3. As per the contentions of the applicant the transfer order dt. 29-10-1986 was in contravention of the policy regarding transfer of civilian subordinates as indicated by letter No.794990/E-inC(i) dt. 30-12-1983/ ^{and hence for} was illegal and void. The applicant therefore preferred an appeal cum representation on 18-4-87 to the respondent No.2 through the respondent No.1. The applicant contents that respondent No.1, however, simply filed the representation and did not act upon it or did not forward the same to respondent No.2. The applicant thereafter

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preferred the copy of this representation dtd. 18-4-87 to the respondent No.2 i.e. Chief Engineer, Southern Command, Pune-1 which was received by respondent No.2, as per the applicant, on 25-5-1987. He further contends that after considering his representation the respondent No.2 by his letter dt. 10-7-87 cancelled the posting of the applicant. However, again the respondent No.2 did not implement the said order of cancellation within a reasonable time and deliberately did not communicate the result of the applicant's appeal to the applicant for a period of more than six months. According to the applicant the cancellation of the transfer order was communicated to him on 6-1-1988 and thereafter he resumed his duties w.e.f. 11-1-88 at Kamptee.

4. When the applicant resumed his duty his period of absence was regularised as detailed below :

1-5-89	E.L.	128 days
6-9-87	HPL	21 days
27-9-87	EOL	98 days w/o MC w/o P&A
1-1-88	EL	5 days
6-1-88	EOL	5 days w/o MC w/o P&A
11-1-88	R/Duty	

The applicant claims that in the above circumstances the original transfer order itself was illegal and void and the cancellation of the transfer order was also not communicated to him in time and therefore his period of absence was illegally regularised with the effect that certain period was treated as Extra Ordinary Leave without pay and his E.L. was

also illegally utilised for regularisation. He therefore claims salary for the period 27-9-87 to 31-12-87 (i.e. 96 days) and from 6-1-88 to 10-1-88 (i.e. 5 days), total 101 days, which period were regularised as Extra Ordinary Leave without pay. He also claims the salary for the E.L. which was utilised for regularisation of the period from 1-5-87 to 5-9-87 (120 days) and from 1-1-88 to 5-1-88 (5 days), total 133 days).

5. Before I consider the contents of the applicant in the matter it will be necessary to refer to the HQ Letter dt. 30-12-1983 on which the entire reliance has been placed by the applicant. By this letter ^{— ions} ~~regarding~~ transfer of civilian subordinates in the MES was declared. The declared policy was that the persons reaching the age of 55 years or over should not be transferred except at their request to the stations of their choice. However, if such persons were to move on promotion and if there was no clear vacancy in the station where they were serving they had to move irrespective of the consideration of the age. As per the letter the age to be considered for the purposes of the policy was the age on the date of issue of posting by the Chief Engineer Commands.

6. It has been rightly pointed out by the learned counsel for the respondents that the letter dt. 30-12-83 only declared a policy and did not create any enforceable right in favour of the persons who were near about the age of 55 years and who were to be transferred. It was

also contended on behalf of the respondents that as the relevant date was issue of the posting order and as on the date of the transfer order in the present case i.e. 29-10-86 the applicant had not completed the age of 55 years the transfer order could not be considered as ~~a legal~~ ^{an illegal} order.

No doubt as per the policy the benefit could be received even by the persons who were reaching the age of 55 years on the date of issue of posting order. However, it is difficult to accept the contention that any transfer even in contravention of the policy declared in the letter would be illegal or void ab initio. It is not shown by the applicant that the initial transfer dt.

29-10-86 was malafide or contrary to the statutory rules. It is an established view that the transfer can be taken as illegal only if it is malafide or contrary to the statutory rules. The transfer if otherwise legal cannot be held to be illegal even if it is inconsistent with the policy or the administrative instructions.

7. The applicant relies upon the judgment of the High Court of Bombay in Ramesh Motilal v/s. Zilla Parishad, 1992 Mh.L.J. 325). In the case before the High Court the Stenographer with Zilla Parishad was transferred to the post of Senior Assistant. The petitioner stenographer did not join the post and challenged the transfer. Zilla Parishad ultimately reviewed the earlier order and reposted the petitioner to the original post and the period for which he did not join duty was treated partly as E.L. and partly without pay. The High Court found that the transfer was contrary

to statutory rules and hence illegal and void and hence the petitioner would be entitled to the wages for the period of absence when the illegal order was set aside. The applicant cannot receive the benefit of this judgment as the transfer order in the present case has not been shown to be contrary ~~to any statutory rules or malafide~~ to any statutory rules or malafide. The statement of the respondents that the applicant had completed more than 12 years in station at Kamptee has not been disputed and it goes without saying that the transfer order was not vitiated with any malafide intention.

8. After going through the written statement of the respondents it is obvious that the applicant has not revealed complete facts in his application before the Tribunal. The respondents have pointed out that after the transfer order was issued CWE in Nagpur directed the respondent No.1 to implement the move of the applicant ^{by due date} i.e. 30-11-1986 and forward the completion report. However the applicant had applied for medical leave from 14-11-86 to 3-1-87. It is very pertinent to note that the transfer order was not challenged on the ground that the applicant was medically unfit for transfer, and the applicant has not even mentioned in his application about this medical leave. According to the respondents CWE in Nagpur was intimated that the applicant could not be served with movement order as he was on medical leave upto 3-1-87. CWE in Nagpur by letter dt. 6-12-86 again asked the Kamptee unit the date of SOS of the applicant and the respondent No.1 informed CWE in Nagpur that the applicant had

requested extension of leave from 5-12-86 to 3-1-87 on medical grounds. In these circumstances ultimately the Chief Engineer, Pune Zone, requested Chief Engineer, Southern Command, Pune to divert the applicant to CWE Kirkee as there was no vacancy of UDC at Lohagaon where the applicant was transferred as the move of the applicant was postponed because of his leave and ultimately the Chief Engineer Southern Command issued the amendment of the original posting order dt. 29-10-86 and posted the applicant to CWE Kirkee vide the order dt. 19-2-87. The SOS of the applicant without further delay dt. 9-3-87 were sought to be served through a special messenger on the applicant on 10.3.87 but the applicant was not found at his residence. The movement order was again sent to the applicant to his permanent address by registered post dt. 11-3-87 but the same was received back undelivered with the endorsement "Continuously absent" w.e.f. 11-3-87 to 20-3-87. It appears that the applicant again went on medical leave upto 27-3-87 on the ground that the Doctor had advised for complete rest upto 27-3-87. The circumstance mentioned above however show that the applicant was not ~~at least~~ ^S home on 10-3-87 and also from 11-3-87 to 20-3-87.

9. In the above circumstance CWE Nagpur by his letter dt. 31-3-87 directed the respondent No.1 to depute an officer to enquire about the whereabouts of the applicant and the respondent No.1 was also asked to take action against the applicant in case the applicant was not found at his residence. It was then that the applicant reported for duty and requested the respondent No.1 to amend SOS from 31-3-87 to 30-4-87 and



accepted the movement order under protest.

The respondent again considered the request of the applicant and amended the movement order to 30-4-1987. The applicant however, did not implement the movement order and on the other hand sent another application dt. 18-4-87 to respondent No.2 for cancellation of his posting.

10. I have gone through the entire application and also the representations made by the applicant and it is extremely pertinent to note that the applicant has nowhere mentioned about the medical leave which he had taken. He had only mentioned about his illness in his representation dt. 18-4-1987, and the illness was bleeding piles. It is difficult to accept that such illness would prevent the applicant from obeying the order passed by the higher authorities and implementing the order which he had accepted. It has been rightly pointed out by the respondents that although the movement order was accepted by the applicant, although under protest, his representation would not be considered and therefore the respondent No.1 did not forward it to the respondent No.2. It is also stated that the applicant had given the assurance to report to new formation. The circumstances which are not disputed by filing any rejoinder clearly show that the applicant was trying to avoid the transfer by every possible means. In fact the applicant had remained at the same station for more than 12 years and no fault could be found with the transfer order. It is also very material that although according to the applicant the transfer order dt. 29-10-86 was

contrary to the policy laid down in the letter of the Head quarter dt. 30-12-83 he did not challenge the transfer order till he filed the present petition in August, 1989. Even the first representation which he made was dt. 18-4-1987. In addition the entire case of the applicant does not appear to be bonafide as the applicant has failed to disclose in his application the medical leave which he had taken during the crucial period. As I have stated earlier the transfer order dt. 29-10-86 cannot be held to be illegal or void and the circumstances discussed above would clearly show that there is no substance in the contention of the applicant regarding the delay in communicating the cancellation of the transfer order.

11. The respondents accept that the transfer order was cancelled by the Chief Engineer, Southern Command, Pune on 10-4-1987. On receipt of the cancellation order CWE Kirkee was telegraphically approached to confirm whether the applicant had reported for duty but it was intimated that the applicant had not reported for duty. The Chief Engineer, Southern Command was also approached with a request to review the cancellation as the applicant had already accepted the movement order although under protest. CWE Nagpur by letter dt. 30-9-87 intimated that in view of the cancellation of the posting the applicant had to be taken back on strength and it was informed that the cancellation letter did not seem to be in order as it was issued after the implementation of the move order. Ultimately Chief Engineer, Southern Command, Pune ordered that the applicant may be taken back on strength if he reported for duty and may be paid pay and allowances after regularisation of absence

period. The applicant was thereafter informed to report for duty on 6-1-88 and he reported for duty on 11-1-88. It was at this juncture that his period of absence was regularised in the manner which is not disputed by either party. The respondents have made a categorical statement that the applicant was specifically informed before taking him on strength that his absence from the date of SOS shall be regularised by granting leave in his credit and excess if any shall be treated as Extra Ordinary Leave without pay and allowance.

12. Considering all the circumstances I find that there is no substance in the claim of the applicant and there is no just and proper reason to interfere with the regularisation of period of absence. The application is accordingly dismissed, with no order as to costs.

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(V.D. DESHMUKH)
Member (J)