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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A.NO.1161 of 1999.

DATE OF DECISION. 18-11-1999.

BETWEEN:

J.Sreehari.

..Applicant

A n d

1. Union of India, Rep. by its Secretary,
Ministry of Defence, Southern Block,
New Delhi.
2. The Engineer-in-Chief, Army Head
Quarters, Kashmir House, Defence
Headquarters Post Office, New Delhi.
3. The Chief Engineer, Head Quarters,
Southern Command, Pune.
4. The Chief Engineer (Factory),
Opp.Parade Ground, Secunderabad.
5. The Commander Works Engineers,
Mudfort, Secunderabad.
6. The Garrison Engineer E/M,
Mudfort, Secunderabad. ..Respondents

COUNSEL FOR THE APPLICANT : Mr.Siva

COUNSEL FOR THE RESPONDENTS : Mr.P.Phalgun Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

1. The applicant is challenging his transfer in this OA. On 16-2-1998, he was transferred and posted to the office of the Garrison Engineer E/M, Secunderabad. It is not disputed that the impugned transfer of the applicant is from one department to another situated in the same compound. The transfer is mainly assailed on the ground that the guidelines for transfer had been given a complete go-bye. The applicant points out that the transfer policy formulated by the respondents clearly stipulates that the officer shall not be shifted if they have not completed three years of tenure. The applicant was posted on 18-2-1998 only and that he would be completing the stipulated period of three years only in the year 2001, which was not in accordance with the guidelines and therefore, according to the applicant, he was not liable to be transferred. It is also pleaded by the applicant that his impugned transfer is from a sensitive post to a non-sensitive post, which was also not legal and proper as no reason was cited as to why did it become necessary for the respondents to transfer the applicant from sensitive to non-sensitive post. Further according to the applicant, he was the President of the All India MES Civilian Engineers' Association. The General Secretary of the Association took up the matter relating to the applicant's transfer with the 2nd respondent on 14-5-1999. Further according to the applicant, he came to know from the reliable sources that the 2nd respondent had passed on a signal message on 24-5-1999 stating that the Order was not in accordance with the posting policy for local turn over and that the applicant's posting should be withheld if the applicant was not moved by then and in view of the fact that the 2nd respondent was seized of the matter, the 4th respondent ought to have obtained clearance from him. This having not been done, the Order impugned in the OA was liable to be quashed and set aside, according to the applicant.



2. From the perusal of the transfer policy as contained in Annexure-I to OA, page 9, dated 27-12-1996, the following points are required to be taken into consideration before coming to a final conclusion:-

a) SUPOT B/R & E/M GDE Is

All B&R/E&M Gde-Is employed on executive appointments would be turned over to another Division in the same station after three years. No GDE I will be allowed to remain on executive appointments for more than six years continuously. While computing this period, entire service profile of the individual will be considered irrespective of stay in the present Unit/Station. Thereafter, they will be posted to CSWE/CE Zone/CE Command on staff appointments.

On the point of duration, it is provided that any sensitive appointments as indicated in the guidelines should be followed scrupulously. However, an individual may be moved out prematurely on administrative grounds from sensitive appointments if his continuance is considered detrimental to the service with the specific approval of CE. It is further provided that the tenure in sensitive appointment can be extended to four years maximum on specific recommendation of CE Zone and in any case no individual could be allowed to continue on sensitive appointment for more than a maximum period of four years. In Clause 10 of the said guidelines relating to 'authorities competent to order turnover of staff', it is provided that local turn over of staff from sensitive to non-sensitive appointments should be ordered by the CE Command/CE Zone/CWE (Highest authority in the station). However, in the case of Pune Complex turnover will be ordered by CE Command only.

3. On 5-5-1999, the applicant made a representation to the Chief Engineer (Fy), Secunderabad, stating that he was posted from CE (Fy), Hyderabad (Non-sensitive appointment) to GE E/M, Secunderabad (Sensitive appointment), vide Posting Order dated 17-11-1997 after serving for more than four years. It was intimated to him on 3-5-1999 that he had been posted to CE R&D, Secunderabad,

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a non-sensitive appointment. But according to the applicant since he had completed only one year and two months, it was against the spirit of the policy letter issued by the Chief Engineer, Southern Command, Pune, vide letter dated 27-12-1996 and in view of the same the applicant requested the authority that the posting order issued be cancelled.

4. On an earlier occasion the applicant filed OA.No.723 of 1999 before this Tribunal, which was disposed of by an order passed on 23-6-1999 giving certain directions that the respondents should consider the applicant's representation dated 5-5-1999 within 15 days and that the competent authority should bear in mind the policy indicated in the letter dated 27-12-1996 and till such time the Interim Order passed on 12-5-1999 was directed to be continued.

5. The respondents, vide letter dated 21-7-1999 addressed to CWE, Secunderabad, stated that the representation dated 5-5-1999 submitted by MES/141709 Shri J.Sree Hari, Superintendent E/M Gde I had been considered at ⁱⁿ appropriate level and rejected ⁱⁿ organisational interest. The direction was also given that the individual be informed accordingly in writing.

6. In the reply statement the respondents reproduced the particulars of the services rendered by the applicant in various formations as follows:-

Grade	Unit served	Date	
		From	To
Supdt. E/M II	GE, Sec'bad	12-1-72	3-11-77
-do-	GE(N) Sec'bad	04-11-77	20-5-83
-do-	GE(S) Sec'bad	21-5-83	1-5-87
-do-	GE Jaisalmar	2-5-87	10-11-87
Supdt.E/M I	GE(P) No.2 Mailaram	16-11-87	21-5-90
-do-	GE(S) Sec'bad	1-6-90	21-1-94

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-do-	GE(Fy) Hyd.	1-2-94	16-2-98
-do-	GE E/M Sec'bad	17-2-98	till date.

7. Further according to the respondents, it was not mandatory that before the completion of three years, no person should be posted outside and that according to them in organisational interest posting could be done earlier or later. It is also asserted that posting was generally ordered during April/May, but it was not binding on the Department.

8. It is not disputed by the respondents that the applicant was an employee in MES and that he was presently holding the post of Superintendent E/M Grade-I.

9. During the course of arguments, the learned Standing Counsel Mr.P.Phalguna Rao produced a copy of the letter dated 22-7-1999, (which was ^{therein} ordered to be taken on record). It is pointed out that the instructions issued vide HQ Letter No.132402/Policy/Gen/183/EIB(S), dated 27-12-1996, were only guidelines for issuing the turnover posting by the Zonal CEs within the Station complex. This did not debar the Zonal CEs to adjust the personnel to suit job requirements. It is further pointed out that according to the guidelines, no Grade-I should be allowed to remain on the existing appointment for more than Six years continuously and the entire service profile of the individual had to be considered while computing the period, irrespective of their stay in the present Unit. In the case of the applicant, he had been employed on sensitive appointment from January, 1972 to January,1994 (i.e, for 22 years), and he had been employed on non-sensitive appointment from February,1994 to February,1998 in the office of CE (P) Fy Hyderabad. It is further pointed out in the aforesaid letter dated 22-7-1999 that the individual had been posted to sensitive appointment in the Office of GE, E/M,Secunderabad, which was under raising, considering the immediate man power requirement in the interest of the organization and that

since the manpower position had improved in GE E/M, Secunderabad, as the holding of E/M Grade-I being nine against ten, which was highly satisfactory considering the over all deficiency of Command being 15%, it became necessary to post the individual back to a non-sensitive appointment so that the guidelines issued by the Head Quarters are followed strictly. It is further pointed out in the said letter that posting/transfer was an administrative matter. The department had, therefore, to employ the personnel to suit job requirement keeping in view various policies and procedures prescribed to avoid resentment from other employees of the same cadre. It is further stated that the individual was trying to exert pressure on the organization through All India MES Civilian Engineers Association to change his posting and thus interfering with the administrative functioning of the organization which was not desirable and in view of the above, according to the respondents, the posting of the applicant from GE, E/M, Secunderabad, to CE, R & D, Secunderabad was in order and it was directed in the said letter that the individual may therefore be given a Speaking Order duly incorporating the points mentioned in the said letter dated 22-7-1999.

10. Ordinarily a transfer from one post to another in the same City cannot be regarded as transfer at all and therefore in such cases the general transfer policy is not attracted. We could have straightaway declined the relief sought by the applicant on the basis of this settled principle but for the fact that in the instant case it is categorically stated in the letter dated 27-12-1996 (Annexe A-I to the OA, Page 9), concerning the guidelines for transfer (in Sub-Paragraph (a) on page 2 of the said guidelines), that all B & R/E&M Grade-Is employed on executive appointments would be turned over to another Division in the same station after three years and that no Grade-I would be allowed to remain in executive appointments for more than six years continuously. Moreover, in Para 6 it is provided that duration of stay in sensitive appointments as indicated should be followed scrupulously.

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11. Reading these provisions together, there could be no denial that care should be exercised to ensure that no violation of the guidelines contained in the letter dated 27-12-1996 takes place and in that view of the matter inspite of the fact that the transfer is within the same station, the same could still not be resorted to lawfully by the respondents.

12. As far as the sensitive and non-sensitive posts are concerned, the explanation as stated in para 9 above does not appear to be satisfactory. In Clause (d) of the said guidelines, we have seen that all Superintendents B&R/E&M II /B/S II/SA II, employed on executive sensitive appointment would be turned over between Divisions after every three years and they would be compulsorily posted to CSWE/CE's office on completion of nine years or earlier if circumstances warrant.

13. In paragraph 6, it is further provided that duration of stay in sensitive appointments be followed scrupulously. However, an individual may be moved out prematurely on administrative grounds from sensitive appointments if his continuance is concerned detrimental to the service with the specific approval of CE, Command.

14. This provision categorically precludes us from approving the impugned transfer of the applicant. The respondents have not stated anything how, if at all, the continuation of the applicant in his present post was detrimental to the service.

15. The letter dated 22-7-1999 issued by the Office of Dakshin Kaman Mukhyalaya, HQ, Souther Command, Engineers Branch, Pune, addressed to the Chief Engineer (P) Fy, Hyderabad, states that the instructions issued vide letter dated 27-12-1996 were only guidelines for issuing the turnover posting by the

Zonal CEs within the Station complex, which according to the letter did not debar the Zonal CEs to adjust the personnel to suit job requirements. In Clause 4 (b) of the said letter, it is stated that, no Grade-I would be allowed to remain on the existing appointment for more than Six years continuously and the entire service profile of the individual would be considered while computing the period, irrespective of their stay in the present Unit. In the case of the applicant, it is stated in the said letter that he had been employed on sensitive appointment from January, 1972 to January, 1994 (i.e., for 22 years) and he had been employed on non-sensitive appointment from February, 1994 to February, 1998 in the office of CE (P)Fy, Hyderabad. In Clause (4) (d), it is stated that the individual had been posted to sensitive appointment in the office of GE, E/M, Secunderabad, which was under raising, considering the immediate manpower requirement in the interest of the organization. In Clause (4) (e), it is stated that since the manpower position had improved in GE E/M, Secunderabad, as the holding of E/M Grade-I being nine against ten, which was highly satisfactory considering the over all deficiency of Command being 15%, it became necessary to post the individual back to a non-sensitive appointment so that the guidelines issued by the Head Quarters were followed scrupulously.

16. Curiously the above letter dated 22-7-1999, is silent on the requirements contained in the guidelines in Paragraph 6 that an individual could be moved out prematurely on administrative grounds from sensitive appointment if his continuance is considered detrimental to the service with the specific approval of CE, Command.

17. In the absence of any plea or contention or any substantive material to satisfy the Tribunal that the applicant's continuance was considered detrimental to the service, I am afraid it would not be in order for this Tribunal to refrain from intervening inspite of the fact that this is a case of 'transfer'. The factors such as

public interest or administrative convenience or organisational requirements do not have any say on the facts and circumstances of this case in which the guidelines are precisely chalked out and it would not be in order for this Tribunal to give ~~any direction~~ ^{allow to} the respondents to act in a manner which is in contravention of the guidelines set out as far back was 1996.

18. In the result, therefore, the OA deserves to be allowed and the impugned order regarding applicant's transfer Order bearing Proceedings No.100112/1521/EIB(S), dated 28-4-1999 and Proceedings No.100112/1589/EIB(S), dated 21-7-1999, are hereby quashed and set aside.

19. The OA is allowed accordingly. No costs.


(D.H.NASIR)

Vice Chairman

Dated: this the 18th day of November, 1999


DSN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO :-

1. BOHMJ ✓

2. HRRN M (A) ✓

3. BBSOP M (J) ✓

4. D.R. (A) ✓

5. SPARE ✓

6. ADVOCATE ✓

7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR ✓

VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN :

MEMBER (ADMN.)

THE HON'BLE MR. S. S. JAI PARAMESWAR :

MEMBER (JUDL.)

* * *

DATE OF ORDER: 18/11/99

MA/R/CP. NO.

in
OA. NO. 1161/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

(12 copies)

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

