

OA/291/00418/2014

CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR

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Order Reserved on : 06.04.2016

Date of Order: 18/04/2016.**Coram****Hon'ble Ms. Meenakshi Hooja, Member (A)**

Shiv Singh son of Shri Kamal Singh by caste Jat, aged about 55 years R/o village and post Usrani Tehsil Kumher, District Bharatpur, presently working as FED No.10608044 in the office of Ammunition Depot, Bharatpur.

.....Applicant

(By Advocate Mr. N.S. Chouhan)

VERSUS

1. Union of India through the Secretary to the Government of India. Ministry of Defence, New Delhi
2. Officer In charge, AOC Records, Secundrabad.
3. OOC (S) Personnel Officer, Ammunition Depot, Bharatpur.
4. The Commandant, Ammunition Depot, Bharatpur.

.....Respondents

(By Advocate Mr.D.C. Sharma)

ORDER

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 against the Speaking Order dated 01 July 2014 (Annexure A/2) by which the representation of the applicant has been rejected and transfer order dated 01.04.2014 (Annexure A/1), seeking the following reliefs:

- (i) In view of the facts mentioned and grounds taken hereinabove, the applicant prays that this Original Application may kindly be allowed and the order dated 1.7.2014 (Annexure A/2) and order dated 1.4.2014 (Annexure A/1) may kindly be declared arbitrary and illegal and same may kindly be quashed and set aside. The Respondent may kindly be directed to allow the applicant to

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continue work on the post of FED at Bharatpur and respondents may further be restrained from issuing any posting order pursuant to impugned orders.

- (ii) Any other order or relief which this Hon'ble Tribunal deems fit may kindly be passed in favour of applicant.

2. When the case came up for hearing and consideration, Ld. Counsel for the applicant submitted that in a earlier OA No. 291/00270/2014 filed by the applicant, order dated 01.04.2014 was challenged by him (filed as Annexure A/1 in earlier OA and also as Annexure A/1 in present OA). The said OA was disposed by the Bench of this Tribunal at the admission stage itself, vide order dated 02.05.2014 (Annexure A/5) with the following directions:

"Having heard the learned counsel for the applicant, the applicant is given liberty to file a representation against the impugned order dated 01.04.2014 within seven days from today along with the paper book of this OA before the respondents. If such a representation is filed within the aforesaid period, in that eventuality, the respondents are directed to consider and decide the representation of the applicant by passing a reasoned and speaking order according to the provisions of law expeditiously but not later than a period of two months from the date of receipt of a copy of the representation. The respondents are further directed to maintain status-quo qua the applicant till the disposal of the representation.

If any prejudicial order is passed against the applicant, he is at liberty to file substantive OA."

It was submitted that thereafter vide speaking order dated 01.07.2014 (Annexure A/2), the representation dated 06.05.2014 (Annexure A/6) filed by the applicant was rejected.

3. With reference to points raised in the present Original Application, counsel for applicant submitted that the applicant is an ex-serviceman and working as Fire Engine Driver (FED) in Ammunition Depot Bharatpur from the year 1988. An order dated

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01.04.2014 (Annexure A/1) titled 'posting on Turnover Basis' was issued transferring the applicant from Bharatpur to 19 INF. DIV. ORD Unit by the OOC(S) Pers. Off, who is not the competent authority because the competent authority in the case of the applicant is the Office In charge (OIC) of Army Ordinance Corps. (AOC) Record Office Secundrabad. Further the applicant was not even allowed the opportunity to file a representation because the representation dated 09.04.2014 (Annexure A/3 - date of receipt perhaps mistakenly written as 09.04.2013 on the application) filed by him was returned vide letter dated 22.04.2014 (Annexure A/4) stating that no representation with regard to Turnover Posting will be accepted. Therefore he filed an OA (registered as OA No. 291/00270/2014) in which direction was given allowing the applicant to file a representation and for the Respondents to decide the same with a reasoned and speaking order. Counsel for applicant submitted the Respondents decided the same vide Speaking Order dated 01.07.2014 (Annexure A/2) by which however, the representation of the applicant dated 06.05.2014 (Annexure A/6) has been rejected.

4. In this context, counsel for applicant reiterated that in Para 5(e) of the Speaking Order itself it has been admitted that posting order under Turn over basis will be issued only from AOC Records, but order dated 01.04.2014 (Annexure A/1) was issued by OOC(S) Pers.Offi Bharatpur Depot, who is clearly not the competent authority. Counsel for applicant also drew attention to Para 5(f) of the Speaking Order wherein it has been mentioned that 'posting

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order has not been issued only confirmation sought for station seniority, but order Annexure A/1 does not even mention anything about confirmation of station seniority and straightway transfer orders have been issued, by an authority not even competent to do so.

5. Counsel for applicant further submitted that in Para 5(b) of the Speaking Order Annexure A/2 it has been mentioned that Turn over posting is made as per ROI/C/01/09 and as per Para 12 Turn over posting will be made on the basis of station seniority in a particular grade. In this context he submitted that the respondents have not followed their own guidelines (which have been filed as Annexure R/3 with the reply). The applicant, is not Station senior most at FAD Bharatpur, and Shri Rajendra Singh, Digambar Singh and Shri Gopal Singh were station senior to him at the time of issue of the order Annexure A/1 and this fact was not been correctly taken into account while deciding the representation of the applicant.

6. In this regard counsel for applicant submitted that though it has been accepted in the Speaking Order (Annexure A/2) that Shri Rajendra Singh is a station senior in the FED category but he was not considered for Turn over Posting in view of him having applied for voluntary retirement. In this context counsel for applicant contended that on the date of issue of the order i.e. 01.04.2014 (Annexure A/1), no application of Shri Rajendra Singh for voluntary retirement was pending with the respondents because when Shri Rajendra Singh, FED had applied for voluntary retirement w.e.f.

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31.03.2015 vide letter dated 01.03.2014 (Annexure R/7) the application had been returned as the date of voluntary retirement was too long, and he subsequently applied for voluntary retirement only on 27th May, 2014 as apparent from Annexure R/8 filed by the respondents themselves, and clearly at the time of issue of the order, Shri Rajendra Singh was Station Senior who should have been considered for Turn over posting and not the applicant. Then counsel for applicant further contended that both Shri Digamber Singh and Shri Gopal Singh are station senior because they are working at FAD Bharatpur w.e.f. 13.08.1983 and 22.04.1988 respectively and the applicant only joined the Depot on 03.08.1988. Thus it is clear that he was not the station senior.

7. Counsel for applicant further referred to Annexure R/3 filed by the Respondents which is the procedure for Turn over posting and referred to Para 11 in which it is stated that if there are no volunteers to proceed on such posting, AOC (R) to post a replacement from the concerned category by name from the choice station itself in accordance with the length of service in the station i.e. longest stayee in the station will be selected for posting and further referred to Para 12 of the said Circular that selection will be made from the persons placed on the station seniority list in a particular grade. In this connection counsel for applicant submitted that when Shri Gopal Singh of 19 INF.DIV.ORD Unit was due for turn over posting and had given Ammunition Depot, Bharatpur as a choice station then in the first place the respondents should have sought any volunteers and thereafter only

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considered making a replacement in accordance with the length of service in the station i.e. longest stayee. However, this process was not followed by the respondents and even without considering the station seniority the applicant was posted on turn over basis by OOC(S) Pers. Off. vide order dated 01.04.2014 (Annexure A/1) who is not even the competent authority and the representation has also been decided without taking these facts into accounts.

8. Counsel for applicant also submitted that in his representation (Annexure A/6) the applicant had raised the point regarding date of posting out and place of posting not mentioned in the order and the respondents in the Speaking Order Annexure A/2 had themselves accepted in Para 5(f) that posting order was not issued and only confirmation sought for seniority and details of move will be intimated to FAD Bharatpur for issuing of posting order by AOC Records. He further contended that though in the Speaking Order reference has been given in Para 3 to signal dated 26th March, 2014, and the same has also been filed as Annexure R/2 with the reply but no reference was given of the signal in the order dated 01.04.2014 (Annexure A/1) and posting order issued, without proper confirmation of seniority and not following the procedure laid down in the relevant guidelines/circular. Counsel for applicant thus prayed that Annexure A/1 dated 01.04.2014 not being issued by the competent authority and Annexure A/2 Speaking Order dated 01.07.2014 not being in accordance with seniority guidelines and thereby arbitrary, are required to be set aside and prayed for the OA to be allowed.

9. Per contra, Id.counsel for Respondent contended that there is no force in the contention of the counsel for the applicant that order dated 01.04.2014 (Annexure A/1) was not issued by the competent authority because the OOC Personnel Officer has simply communicated that the applicant has been ordered for posting on Turnover basis to 19 INF.DIV,ORD. and it also been mentioned in the order that "in this regard it has been intimated by AOC Records no representation will be accepted." Thus the language of order Annexure A/1, makes it clear that the transfer order has simply been communicated by the OOC Pers. Officer as per direction of AOC Records, who is the competent authority.

10. Counsel for Respondent further submitted that the applicant preferred OA No. 291/00270/2014 and the Hon,ble Tribunal decided the OA on 02.05.2014 (Annexure A/5) with the direction that the applicant is given liberty to file a representation against the impugned order dated 01.04.2014 and respondents were directed to consider and decide the representation within a period of two months from the date of receipt of a copy of the representation and the same has been decided in accordance with law by passing a reasoned and speaking order dated 1st July 2014 (Annexure A/2) and thereafter order of posting has also been issued on 1st July, 2014 itself as at Annexure R/4.

11. Counsel for respondents drew attention to Annexure R/3 which are the relevant part of the procedure and guidelines for Turnover posting in which in Para 12, it is clearly mentioned that

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selection will be made from the persons placed on the station seniority list in a particular grade. In this connection he referred to chart at Annexure R/11 and also as brought out in the Speaking Order dated 01.07.2014 (Annexure A/2), that Shri Rajendra Singh is no doubt senior as he was FED from 01.01.1987 but in view of his application for voluntary retirement he was not considered for posting on Turnover basis. Regarding the contention of the counsel for applicant that as on 01.04.2014 (i.e. date of order Annexure A/1) no application for voluntary retirement was pending, counsel for Respondent submitted that the application dated 01.03.2014 (Annexure R/7) had only been returned and not rejected and at the time of passing the Speaking Order, the voluntary retirement had already been accepted vide order dated 26th June 2014 (Annexure R/10). Thus it is clear that the case of Shri Rajendra Singh for voluntary retirement was there before the Respondent authorities at the time of passing order Annexure A/1. He further submitted that the applicant was next senior in the station seniority in the grade of FED (both in A & B category) because he became FED-A on 03.08.1988 while Shri Digamber Singh and Shri Gopal Singh, (whom the applicant has claimed were more station senior), actually became FED later i.e. on 23.07.1998 and 01.03.2001 respectively. Even after becoming FED-B the applicant remained senior because he became FED-B on 03.02.2000 and Shri Digamber Singh and Shri Gopal Singh became FED-B on 01.04.2007 and 01.01.2010 respectively i.e. much after the applicant. Counsel for Respondent contended that as per the guidelines at Annexure R/3 selection is to be made from the

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persons placed on the station seniority list in a particular grade, and in this case seniority has been counted from the date the officials became FED. The applicant was directly appointed as FED-A on 03.08.1988 and Shri Digamber Singh and Shri Gopal Singh became FED-A & B much later. The question of counting of seniority of Shri Digamber Singh and Shri Gopal Singh from the grade of Fireman does not arise because Fireman is a lower and different grade. He further submitted that in view of the clear position of the seniority, the applicant was station senior as Shri Rajendra Singh had applied for voluntary retirement on 01.03.2014 and on return of his application, he again applied on 27.5.2015 and the same was accepted vide Annexure R/10 dated 26th June 2014. Counsel for Respondents also submitted that the applicant has been at Bharatpur Depot from the date of his initial appointment i.e. 03rd August 1988 and this is his first Turnover posting as relief to Shri Govind Singh who has been posted at Bharatpur as his choice station. Further all the points raised in the representation have been duly considered and the same has been rejected on valid grounds, and after the rejection of the representation, orders of posting have also been issued by the competent authority as per Annexure R/4 dated 01.07.2014 and counsel for Respondents therefore prayed for dismissal of the OA.

12. Considered the aforesaid contentions and perused the record. As far as the question of order dated 01.04.2014 (Annexure A/1) is concerned a perusal of documents filed in the OA by the applicant and Respondents reveal that actually the order Annexure

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A/1 dated 01.04.2014 was issued on the basis of Signal dated 27.03.2014 (Annexure R/2) sent by AOC Records, to AD Bharatpur in which the posting of the applicant being station senior as per their record was to be made at 19 INF. DOU as a relief of Shri Govind Singh and in this context it was also stated that no representation will be accepted. Simultaneously it was also mentioned that if the individual is unable to accept posting due to circumstances, request forward name of the next station senior as per ROI C/01/09 by March, 31. However, it is noted that there is nothing on record to suggest as to what response was sent by AD Bharatpur to AOC Record, but the next order is Annexure A/1. Though reference to this signal has not been given in Annexure A/1 order, but as mentioned in the reply AD Bharatpur has issued Annexure A/1 on the basis of signal issued by AOC. Further the word 'ordered' has been used in the order which implies that the communication is based on certain directions and it has also been stated that no representation will be accepted by the AOC Record. This further confirms that Annexure A/1 has been issued at the directions of AOC Records who is the competent authority and therefore in this view it cannot be said the Annexure A/1 has not been issued by the competent authority. Further Annexure A/1 was challenged in earlier OA No. 291/00270/2014 and in pursuance of directions given in the said OA the representation has been considered and decided by the respondent vide Speaking Order dated 01.07.2014 (Annexure A/2) and subsequently posting order dated 01.07.2014 (Annexure R/4) has also been issued by AOC Records who is admittedly the competent authority.

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13. As far as the substantial question of seniority is concerned, it is clear from Annexure R/3 filed by the Respondents that selection will be made from the persons placed on the station seniority list in a particular grade. The grade of Fireman cannot be said to be that of Fire Engine Driver (FED) as FED is a higher grade as Fireman are promoted as FED i.e. Fire Engine Driver. The applicant was directly recruited as FED-A on 03.08.1988 and became FED-B on 03.02.2000, while Shri Digamber Singh and Shri Gopal Singh, working earlier as Fireman, on promotion became FED-A on 23.07.1998 and 01.03.2001 respectively and thereafter Shri Digamber Singh and Shri Gopal Singh became FED- B on 01.04.2007 and 01.01.2010 respectively. Therefore, there is no doubt that in the category of FED the applicant is senior to Shri Digamber Singh and Shri Gopal Singh as brought out in the reply and submitted by the counsel for respondents and as apparent from Annexure R/11. As far as Shri Rajendra Singh is concerned, it is apparent from the record that Shri Rajendra Singh had applied for voluntary retirement on 01.03.2014 (Annexure R/7) w.e.f. 31.3.2015 and the same was returned as the date of voluntary retirement was too long and once again he requested for voluntary retirement vide application dated 27.05.2014 (Annexure R/8) modifying his date of voluntary retirement to 31st August 2014 and the same was accepted vide order dated 26.06.2014 (Annexure R/10). On the day when transfer order of the applicant was issued the application of Shri Rajendra Singh had not been rejected but was only returned because Sh. Rajendra Singh was seeking

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voluntary retirement from 31.03.2015 which appeared too long, and thereafter he again applied for voluntary retirement on 27.05.2014 w.e.f. 31st August 2014 and the same was accepted vide order dated 26.06.2014 (Annexure R/10). Thus it cannot be said that considering the case of Shri Rajendra Singh as having applied for voluntary retirement and treating the applicant as next station senior in the grade of FED is not correct. Thus as far as seniority is concerned, the applicant cannot claim he was not the station senior after Sh. Rajendra Singh (who had applied for voluntary retirement) for the purpose of Turnover posting. Hence, consideration of the applicant as station senior for the purpose of Turnover Posting as relief to Shri Govind Singh and rejection of the representation on the ground of seniority vide Speaking Order dated 1st July, 2014 (Annexure A/2) appears to just and valid and there are no grounds to set it aside.

14. It is further noted that the applicant has been at Bharatpur as FED right from 1988 and his turn over posting is in accordance with the station seniority of FED. There is no substance or force in the argument of counsel for applicant that the combined posting of Fireman and FED should be counted because as already discussed above it has been clearly mentioned in the guidelines (Annexure R/3) that the seniority is to be counted in a particular grade (emphasis supplied), and the FED is a higher and separate grade from Fireman.

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15. In view of the above, there appear no grounds to set aside the order dated 01.04.2014 (Annexure A/1) and Speaking Order dated 01.07.2014 (Annexure A/2).

16. However, during the course of hearing the counsel for applicant had also made a prayer that as Shri Rajendra Singh has taken voluntary retirement therefore the applicant could be permitted to continue at Ammunition Depot Bharatpur against that vacancy, especially considering the advancing old age of the applicant. In this context counsel for Respondent submitted that the applicant has been given Turnover posting as relief to Shri Govind Singh and the vacancy of Shri Rajendra Singh has no relevance. In this regard it can only be said that it is always open to the applicant to approach the respondents seeking redressal of his genuine problems, and difficulties, and no directions are required to be given for the same.

17. Accordingly, the Original Application is dismissed with no order as to costs. The Interim Relief granted on 28.07.2014 also stands vacated in view of the above order.



(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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