

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 22.3.2002

OA 81/2002

P.K.Gupta, Superintendent Engineer in the O/o Chief Engineer (MES), Jaipur Zone, Power House Road, Bani Park, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer in Chief, Army HQs, Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer (MES), Jaipur Zone, Power House Road, Bani Park, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.R.L.Agarwal

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant is a Superintending Engineer in MES, who has challenged the order of his transfer dated 27.12.2001 (Ann.A/1) from Jaipur to Bareilly. He came to Jaipur on 4.6.2001 from Maharajpur on promotion under orders dated 24.5.2001. He has assailed his transfer to Bareilly mainly on the ground that he had come to Jaipur only on 4.6.2001 and is being transferred out within a short span of about seven months. His wife is in service at Jaipur and his two daughters are studying there. By order dated 4.2.2001 this Tribunal had ordered that the statusquo be maintained with regard to the posting of the applicant as on that date. This interim order has continued.

2. It has been stated by the applicant that when he was earlier posted at Shillong, in the North East Region, he had made a request for being posted at Jaipur. The officers posted in the North-East Region are given choice



of three stations for their posting. In his case the choice given by him was not considered and after he completed his tenure in the NorthEast Region, he was transferred to Maharajpur. It was only on his promotion to the post of Superintending Engineer that he was posted at Jaipur vide order dated 24.5.2001. He has alleged that without letting him complete his tenure at Jaipur, he has been ordered to be transferred to Bareilly after a short stay of seven months, while officers with longer stay have been permitted to continue. He is also aggrieved with the fact that one of his juniors, Shri Y.S. Dwivedi, is being retained at Jaipur on promotion to the post of Superintending Engineer, while he is being sent out.

3. A notice of this OA was sent to the respondents, who have filed a detailed reply mainly asserting that it is for the concerned departmental authorities to utilise the services of any employee in a post or place where they consider fit and that the scope of judicial interference in the matters of transfer is very limited. The posting is done in the overall organisational interest and of the job. The applicant has been posted to Bareilly in the interest of administration. It has also been stated that the applicant had earlier been posted at Jaipur for almost five years i.e. from 25.7.92 to 25.4.97 and again after he completes his tenure at Bareilly, his request for posting at Jaipur will be considered favourably. It has also been mentioned that the applicant had made a detailed representation vide his letter dated 23.1.2002, which is marked as Ann.A/5, in which he had indicated that in case his case for being posted back to Jaipur after completing his tenure at Bareilly is considered sympathetically, he may be allowed to carry out the transfer order after 28.2.2002. While his request for immediate retention at Jaipur was rejected, but his request to continue at Jaipur upto 28.2.2002 was accepted. It was also advised that his request for posting at Jaipur after completing his tenure at Bareilly shall be considered sympathetically.

4. Heard the learned counsel for the parties and perused the entire records.



5. The learned counsel for the applicant vehemently assailed the transfer order for the reason that the same has been issued after the applicant's very short stay at Jaipur. The learned counsel contended that the posting guidelines of the department provide a minimum tenure of two years at one place, which has been over-looked by the department while issuing the impugned order. Another plea raised by him was that applicant's wife is in service and is posted at Jaipur, who cannot be transferred out, and that schooling of his two daughters will also adversely suffer as this transfer is mid-session transfer. The learned counsel forcefully argued on the point that the officers having longer stay at Jaipur have been permitted to continue while the applicant has been picked up arbitrarily for the transfer after a short stay. Not only officers with long stay have been permitted to continue at Jaipur but one Shri Y.S.Dwivedi is being retained at Jaipur on promotion to the grade and post in which the applicant is already working. These aspects were stressed by the learned counsel to contend that the action of the respondents was mala fide in content. He also hastened to add that it was not necessary, while alleging mala fide, that any particular person be impleaded as a party. In support of this contention, the learned counsel relied on ruling of the Apex Court in the case of The State of Punjab v. Ramji Lal & Ors., AIR 1971 SC 1228, in which Hon'ble the Supreme Court had observed that;

"We do not think that the law casts any such burden upon the party challenging the validity of the action taken by the State Government. The State Government has undoubtedly to act through its officers. What matters were considered, what matters were placed before the final authority, and who acted on behalf of the State Government in issuing the order in the name of the Governor, are all within the knowledge of the State Government, and it would be placing an intolerable burden in proof of a just claims to require a party alleging mala fides of State action to aver in his petition



and to prove by positive evidence that a particular officer was responsible for misusing the authority of the State by taking action for a collateral purpose."

6. I would first like to deal with the allegation of mala fide, as alleged by the learned counsel for the applicant. I consider that this is only a feeble attempt made simply to be rejected for the reason that in the OA no such allegations of mala fides have been made against any individual or against the department. There is not even an iota of evidence to suggest that the order of transfer is arising out of mala fide action. The contention of the learned counsel that some persons with longer stay or persons junior to the applicant are being retained at Jaipur, cannot be stated to be arising out of any mala fide intention on the part of the concerned authorities as no link can be inferred in respect of any interest on the part of the administration in favour of any individual or individuals or against the applicant. In fact the learned counsel for the respondents stated that the applicant was being posted to an executive post of CWE from a staff officer's post. He submitted that it is only the officers with higher levels of performance who are picked up for being posted as CWE. Ordinarily, the posting is done in order of seniority and suitability and those not found suitable for such posting, even though senior, are left out. This would only go to explain that the applicant has been rated high in respect of the qualities required of an officer of his level and that is the reason he has been picked up for the posting as CWE. Since the vacancy had arisen at Bareilly, he is being posted to Bareilly. Under such circumstances, it cannot even remotely be inferred that such order could have arisen out of mala fides against the applicant.

7. The learned counsel also drew a parallel with the case of S.C.Nijhawan v. UOI & Ors., decided by the Bombay Bench of this Tribunal on 30.3.95 in OA 1277/93. That case also related to the same department and the challenge was to the transfer of the applicant in that case from the



Executive post to Staff position. It was held by the Tribunal that the transfer was against guidelines and the respondents were directed to give Executive posting to the applicant. The learned counsel contended that the applicant in the instant OA is being shifted from the Staff post to the Executive post without completing his tenure and thus following the decision of the Bombay Bench the applicant deserves to be continued in the Staff post at Jaipur as he has done only seven months of tenure.

8. I have carefully perused this order of the Bombay Bench. It has been observed in para-2 of this order that; "Executive tenures are considered as prestigious because it is only Officers of outstanding merit who are given two Executive tenures. Therefore, the shift from Executive tenures viz. BSO to the Staff tenure when the officer had not completed the normal length of tenure is considered as derogatory." It has to be appreciated that in that OA the action of the respondents resulted into lowering the status of the applicant in that case, which action was termed by the Tribunal as derogatory. The instant case is one where the officer is being posted to the Executive post from the Staff post. Admittedly, the Executive post is considered prestigious and superior. Obviously, action of the respondents in this case cannot be said to be derogatory, rather it is a recognition of the outstanding talent of the applicant. In this view, the judgement of the Bench in the case relied upon by the learned counsel for the applicant is of no help,

9. It is oft repeated position by various courts including Hon'ble the Supreme Court of India that transfer is an incident of service and not a condition of service. It is the competent authorities in the departments who can best judge the place and the post against which an employee can be utilised. The courts/Tribunals cannot sit as appellate authorities over the decisions of competent departmental functionaries. The scope of judicial interference could arise only if the transfer order is made in infraction of the statutory rules or the order arises out of colourable exercise of power or because of any mala



fide on the part of the authority issuing the transfer order. The Government has issued guidelines which have to be kept in mind by the authorities issuing the transfer order but such guidelines cannot be stated to be mandatory. They have to be observed as far as possible. Even the guidelines relating to keeping the husband and wife at the same station is not possible of being enforced at all time. Interestingly, the contending parties have placed reliance on the landmark case of Union of India & Ors. v. S.L. Abbas, AIR 1993 SC 2444, in which the Apex Court has comprehensively gone into all aspects of the circumstances relating to a transfer of a government employee. The learned counsel referred to this case to emphasise that while ordering the transfer, the authority must keep in mind the guidelines issued by the government on the subject. But it would be proper to go through the relevant paragraph of the orders of the Hon'ble Supreme Court in this case to which a reference was made by the learned counsel for the respondents :

"7. Who should be transferred where, is a matter for appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the same appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right." (emphasis supplied)

Further, Hon'ble the Supreme Court went on to say :

"8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction



of the High Court under Art.226 of the Constitution of India in service matters. This is evident from a perusal of Art.323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Art.323-A. (We find it all the more surprising that the learned single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an appellate authority sitting in judgement over the orders of transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)."

Obviously, the above legal position does not favour the applicant's case. In so far as the departmental guidelines are concerned, the learned counsel referred to para 12(e) of the 'Career Planning and Posting Guidelines : MES Civilian Officers - 1999' to stress that the staff tenure could be curtailed to the minimum of two years and not below that. The applicant has worked only seven months as staff officer. This was countered by the learned counsel on the opposite side by referring to the same guidelines, wherein repeated emphasis has been laid on the organisational requirements and officers' overall performance. Para-11 of these guidelines postulates that, "these guidelines are for purpose of planning and cannot be claimed as a statutory right by any officer. All Officers, irrespective of group, have an all India posting liability." Para-12(e), which was relied upon by the learned counsel for the applicant, says in sub para (iii) that; "staff tenure may have to be curtailed on organisational requirement to make up deficiencies in other units/Zones or on raising of new formation."

10. Posting of the applicant has been done to fill up



the vacancy of CWE at Bareilly. The applicant contends that he is prepared to forgo his posting presently and somebody else can be posted at Bareilly. This, in my view, cannot be the prerogative of an employee. This has to be decided by the competent authority taking a view on the posting/transfer of an officer. The ground that the transfer is a mid session transfer and that education of children may suffer also does not hold much water. The new academic session is going to start now. Applicant's children have all along had their schooling in Jaipur only, while he has been posted to other stations. There is no doubt that every transfer away from the station of one's choice, does cause inconvenience. But then having joined a service with all India transfer liability, one cannot make a grievance of the transfer order; save & accept if the transfer order is against the rules/statutory provisions (as distinct from transfer guidelines) or is a result of mala fide action. Going by the facts of this case, I do not find any merit in the contention of the applicant for being retained at Jaipur. This is more so, when he has himself given a clear understanding while making his representation dated 23.1.2002 (Ann.A/5) that he may be permitted deferment of the order upto 28.2.2002. He had made a request seeking confirmation/commitment that on completion of his tenure as CWE at Bareilly, he shall be posted back to Jaipur for a complete tenure. In my view, such a firm commitment cannot be expected from the department as the circumstances in future cannot realistically be simulated in the present. The applicant has clearly stated in his representation that he be permitted to continue at Jaipur upto 28.2.2002. This date is already over. This request of his, has been accepted by the department by a Fax message dated 24.1.2002, annexed as Ann.R/1 to the detailed reply of the respondents. I find from that message that an indication has already been given that officer's request for posting to Jaipur on completion of his normal tenure as CWE, Bareilly, shall be considered sympathetically. After this communication had been received by the applicant, in my considered view, he had no further cause to complain or to entertain any doubts about the intentions of the department. The fact that the

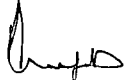


department has considered him an outstanding officer, fit for being posted as CWE should instil a greater level of confidence in the mind of the applicant towards respondents and should display faith in the authorities when they say that his case for being posted back at Jaipur shall receive a sympathetic consideration after he has done his tenure as CWE.

11. Having said that, I am constrained to observe that the applicant obtained the interim order without informing the Bench about the response dated 24.1.2002 from the administration on his representation. It was only expected that Bench should have been apprised of all the facts while making a prayer for any relief/interim relief. This was not done by the applicant. The learned counsel for the applicant attempted to explain this away by saying that the appropriate authority for taking a view on the transfer of the applicant was respondent No.1 i.e. Secretary, Ministry of Defence. The applicant has submitted a further representation dated 2.2.2002 but the same has not yet been disposed of. If we accept this plea then the basic question would arise as to how this OA was filed when the applicant was still waiting for disposal of his representation. Be that as it may, the fact remains that on the date of interim order dated 14.2.2002 this fact and the fact of disposal of his representation vide Fax dated 24.1.2002 was already known to the applicant but he took no steps to bring that to the notice of the Bench and obtained the stay order.

12. The fact now remains that the date of 28.2.2002 is already over and the applicant, as per his own commitment, has to carry out the order of transfer to Bareilly. Even otherwise, the applicant has failed to make out any case in his favour which could invite any judicial interference by this Tribunal.

13. The OA is dismissed as having no merits. The interim order dated 1.2.2002 is hereby vacated. No order as to costs.


(A.P. NAGRATH)
ADM. MEMBER