

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

15th September, 2009

OA. 374/2009

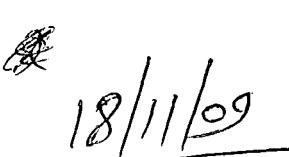
Present: Shri Amit Mathur alongwith Sh. Brij Sharma, counsel for
applicant
Shri Kunal Rawat, counsel for respondents

Heard counsel for the parties, Judgment reserved.


(M.L.Chauhan)

Member (Judicial)

mk


18/11/09
order pronounced today in
the open court by the aforesaid

Bench


18/11/09

COURT OFFICE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 18 day of September, 2009

ORIGINAL APPLICATION No.374/2009

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

B.S.Verma
s/o late Shri Lala Ram,
r/o 125/1, Officer Enclave,
Itarna, District Alwar,
Presently working as A.E. E/M,
Garrison Engineer,
Alwar (Raj.)

.. Applicant

(By Advocate: Shri Amit Mathur & Shri Brij Sharma)

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Director General, Personnel /E 1 B, Engineer in Chief Branch; Integrated Head Quarter of Ministry of Defence (Army), New Delhi.
3. Chief Engineer, CWE, Jaipur Zone, Jaipur

... Respondents

(By Advocate: Shri Kunal Rawat)



ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) by an appropriate order or direction the Annexure A/1 to Annexure-A/4 dated 24-12-2008, 11-08-2009, 12-08-2009 & 18-08-2009 may kindly be quashed and set aside qua it relates to the applicant. The respondents may be directed to allow the applicant to perform duty at his present place of posting.
- ii) Any other relief which is found just fit and proper in the facts and circumstances of the case may very kindly be passed in favour of the applicant by this Hon'ble Tribunal.

2. Briefly stated, facts of the case are that the applicant was transferred from Garrison Engineer, Alwar to CE SWC, Jaipur vide order dated 24.12.2008 (Ann. A/1). Feeling aggrieved by such order of transfer, the applicant filed OA no. 316/2009 in this Tribunal. The grievance of the applicant in that case was that he was transferred to GE, Alwar from Charduar, Assam where he joined on 19.4.2008. Thus, it was not permissible for the respondents to again transfer him after a short period of 8 months especially when he has not completed his tenure of posting at one station and also that he was given posting after serving in counter insurgency operational area as well as remote area. Since the applicant has made representation to the authority concerned vide letter dated 21.1.2009, this Tribunal taking notice of this fact and also that the case of cancellation of transfer was also recommended by the subordinate authority, direction was given to respondent No.2 i.e. Director General Personnel/ C 1 B to decide representation of the applicant dated 21.1.2009 expeditiously by passing reasoned and

speaking order. It was further made clear that till such representation is not decided by the respondent No.2, the applicant shall not be relieved pursuant to impugned order dated 24.12.2008. The respondent No.2 vide order dated 11th August, 2009 (Ann.A2) rejected representation of the applicant dated 21.1.2009. At this stage, it will be relevant to reproduce para 3 and 4 of the impugned order dated 11th August, 2009 whereby representation of the applicant was rejected on the following grounds which thus reads:-

"3. Replies to your representation dated 21 Jan 2009 are as under:-

- (a) You were posted from AGE (I) Charduar to GE Alwar on repatriation to your choice posting after completion of hard tenure.
- (b) You are now posted from GE Alwar to CESWC Jaipur vide MES/155/2008 dated 24 Dec 2008 on disciplinary ground as charge sheet under Rule 16 was issued to you by CE South Western Command Jaipur on 18 Aug 2008. In terms of Posting Guidelines (July 2003) Para 36, "Officers against whom disciplinary proceedings are initiated while in executive appointments may have to be moved out prematurely"
- (c) Presently, you stand posted to Jaipur, which is very near to Alwar to look after your old mother and studies of your son.

4. In view of the above you are directed to move to CE SWC Jaipur without any delay."

Now the applicant has again filed this OA thereby challenging earlier order dated 24.12.2008 as well as communication dated 11.8.2009 whereby representation of the applicant was rejected alongwith the order dated 12th August, 2009 whereby the applicant has been directed to hand over the charge of the post.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that disciplinary case against the applicant was decided by the HQCE SWC vide their letter dated 31st July, 2009 by issuing performance counseling to him. The same has been received back undelivered by the postal authorities giving reason on the envelope that his house found locked and despite several attempts made by them, the letter could not be delivered. The specific stand taken by the respondents is that the applicant has been transferred in terms of Para 36 of the Cadre Management of MES Civilian Officers Guidelines in the interest of work services. The posting of the applicant has been made in the government interest. It is further stated that representation of the applicant was considered sympathetically, as such, he was posted to Jaipur which is quite near to Alwar. Although the respondents have stated that the applicant has produced a false sick certificate and he was on medical leave from 4th August, 2009 to 13th August, 2009 and 13th August, 2009 to 27th August, 2009, but this issue is not relevant for the purpose of this case. The respondents have categorically stated the applicant has already been struck off from the strength w.e.f. 18th August, 2009 from GE, Alwar as per movement order Ann.A/4 i.e. he has already been relieved from GE, Alwar. It is further stated that charge of the applicant has already been handed over to ACE E/M on 17th August, 2009 (Ann.R/8) and the applicant presently neither holding any charge nor is performing any duties at GE,

Alwar. Thus, according to the respondents, the applicant has to report to his new duty station in terms of posting order dated 24th December, 2008.

4. When the matter was listed on 12th August, 2009, this Tribunal after noticing the contention of the learned counsel for the applicant granted ex-parte stay thereby directing the respondents to maintain status-quo qua the applicant till the next date of hearing as it was contended on behalf of the applicant that the applicant has not been relieved till date.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. The main contention of the learned counsel for the applicant is that admittedly the applicant has joined at GE, Alwar on repatriation to his choice posting after completion of hard tenure on 19.4.2008. but the normal tenure in such cases is two years . Thus, it was not permissible for the respondents to transfer the applicant before completion of tenure on non-existent grounds i.e. violation of Para 36 of the Cadre Management of MES Civilian Officers Guidelines. In support of this contention, the learned counsel for the applicant submits that no doubt when the original order of transfer was passed on 24th December, 2009, the disciplinary proceedings under Rule 16 were pending against the applicant but the respondents have not relieved the applicant at the relevant time and it is pursuant to order dated 11th August, 2009 that the applicant has been relieved and on that date the disciplinary proceedings were not pending against the applicant. The learned

counsel for the applicant submits that very purpose of Para-36 which empowers the authority concerned to curtail the tenure of executive/non-executive officers against whom disciplinary proceedings have been initiated is that such person should not influence the disciplinary proceedings. Thus, according to the learned counsel for the applicant, since the proceedings have been concluded on 30th July, 2009, as such, it was not proper for respondent No.2 to take into considered this aspect while rejecting representation of the applicant vide impugned order dated 11th August, 2009 (Ann.A/2).

7. I have given due consideration to the submissions made by the learned counsel for the applicant. In order to decide the point in issue, it will be relevant to reproduce para-36 of the guideline/New Cadre Management Policy for MES Civilian Officers as issued vide letter dated 1st July, 2003 (Ann.R/1) and thus reads:-

"EXTENTION/CURTAILMENT OF TENURE

36. All tenures both Executive/Non executive tenures can be extended/curtailed based on performance of the officer and specific recommendations of MOD/GOC-in-C/AOC-in-C/FOC-in-C. Recommendation of CE Commands/CE Zones will also be given due consideration. Recommendation for moving officers on administrative grounds will be backed with adequate documentary or other evidence by the concerned authority. In case of doubtful integrity, the administration will be taken in confidence by the authorities mentioned above so that concerned individual could be turned over in the interest of the state. E-in-C/DG (Pers) can curtail/extend any tenure with explicit written orders by them. Officers against whom disciplinary proceedings are initiated while in executive appointments may have to be moved out prematurely."

From perusal of this Para, it is evident that tenure of Executive/Non-executive officers can be curtailed based on performance of the officer and also where the integrity of the officer is doubtful. This Para also stipulates that the officer against whom disciplinary proceedings are initiated while in executive appointment may have to be moved out prematurely. In terms of the aforesaid policy decision, it was permissible for the respondents to issue order dated 24th December, 2008 (Ann.A/1) as on that date disciplinary proceedings have already been initiated against the applicant. Thus, we see no infirmity in the action of the respondents in issuing order Ann.A/1 whereby the applicant was transferred from GE, Alwar to CE SWC, Jaipur as AAD. The contention of the learned counsel for the applicant that when the representation of the applicant was rejected vide impugned order dated 11th August, 2009 (Ann.A/2), the disciplinary proceedings have already been concluded is of no consequence, as the validity and legality of the order has to be examined on the date when it was passed. Simply because the respondents could have cancelled the transfer order in view of the subsequent development will not render the earlier order invalid in view of the provisions contained in Para 36 of the policy decision, as reproduced above. Further, I am unable to accept the contention of the applicant that he should have been immediately relieved from the post pursuant to the order dated 28.12.2008 and since the respondents have not relieved the applicant till the conclusion of the disciplinary proceedings, as such it was not permissible for the respondents to relieve him.

subsequently. According to me, there is no substance in the submission so made by the learned counsel for the applicant. The respondents have stated that the applicant was not relieved as there was paucity of staff and the matter was taken up with the higher authorities to provide substitute in place of the applicant. Now the competent authority has provided a substitute and he has already joined and taken the charge of the post vide order dated 17.8.2009 (Ann.R/8). The respondents have also placed on record order dated 30th July, 2009 (Ann.R/4), perusal of which shows that the applicant has already handed over charge of the post to Shri Gir Raj Prasad Bairwa who has further handed over charge to AGE (EM) vide Ann.R/8.

Thus, in view of this subsequent development where the new AGE (EM) has already resumed the charge of the post held by the applicant and the fact that the applicant has been transferred to Jaipur which is very near to Alwar so that he can look after his old mother and studies of son, it is not permissible for me in exercise of power of judicial review to interfere with the order of transfer especially when the normal tenure of the applicant is also to be expired after few months i.e. on 18.4.2010. The reliance placed by the learned counsel for the applicant on the decision of the Apex Court in the case of Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and Ors., (2004) 12 SCC 299 that infraction of any prescribed norms of principles governing transfer/guidelines can form basis for interfering with the transfer order is of no consequence as the applicant was transferred pursuant to the

guidelines as contained in para-36 (supra). This is not a case of infraction of guidelines. Further, the Apex Court has repeatedly held that transfer is an incident of service. Who should be transferred where is the matter for the appropriate authority to decide. Unless the order of transfer is vitiated on mala fide or is made in violation of the statutory provisions, it is only in these circumstances that the court can interfere. This being not a case of such nature. Thus, according to me, no interference is required in the matter.

8. For the foregoing reasons, the OA is dismissed with no order as to costs.



(M.L.CHAUHAN)

Judl.Member

R/