

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/01005/2014 Date of order:- January 15, 2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

MES-194514 S.K.Mishra s/o Sh. S.C.Mishra, Sr. Architect, Director
(Architect), O/o Head quarter, Chief Engineer, Bathinda Zone,
Bathinda, District Bathinda.

.....Applicant.

(By Advocate :- Mr. D.R.Sharma)

Versus

1. Union of India represented by Secretary to the Government,
Ministry of Defence, South Block, New Delhi.

2. Military Engineering Service through Engineer-in-Chief, Army Head
quarter, South Block, New Delhi.

3. The Director General (Personnel), E1B, Military Engineer-in-Chief
Branch, New Delhi-110 011.

4. Headquarter, Chief Engineer, Bathinda, District Bathinda.

...Respondents

(By Advocate : Ms. Jyoti Chaudhary).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant has filed the present Original Application for quashing the order dated 18.7.2014 whereby he was transferred from HQ CE Bathinda Zone to CE(AF) Shillong Zone as Director (Architect) and also order dated 31.10.2014 whereby the representation against the order dated 18.7.2014 has also been rejected.

2. Facts in brief are that the applicant joined as Director (Architect) HQ Chief Engineer, Bathinda Zone on 21.11.2011. The applicant was transferred from his present place of posting to CE(AF) Shillong Zone vide order dated 18.7.2014. Against his transfer order, the applicant made a representation to reconsider his transfer. However, the representation made by the applicant was rejected vide order dated 19.8.2014. Against the transfer order dated 18.7.2014, the applicant approached the Tribunal by filing OA No.060/00736/2014 for quashing the impugned order dated 18.7.2014 qua him. The said OA was disposed of vide order dated 27.8.2014 by directing the respondents to decide the representation filed by the applicant by passing a fresh reasoned and speaking order within 15 days from the date of receipt of a certified copy of the order and till then, the operation of the impugned transfer order qua the applicant shall

remain stayed. The respondents again rejected the representation vide order dated 31.10.2014.

3. The applicant has contended that his transfer is sheer violation of Clause 17(c) (d) and (e) and Appendix F Clause V of the Guidelines. Hence the present Original Application has been filed by the applicant.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the present OA is not maintainable as the appointing authority reserves its right to transfer or non-transfer of its employees from one unit to another on administrative grounds. They have relied upon the judgments of the Hon'ble Apex Court wherein it was held that the transfer is an incidence of service and the Tribunal or Court have very limited scope (only where the bias is alleged) to interfere in such matter. The respondents have also relied upon a judgment passed by the jurisdictional High Court in the case of Jit Singh Malah versus P.S.E.B (2007(2) R.S.J. Page 527) wherein it was held that "the government servant has no inherent right to choose place of posting. Instructions regarding transfer are mere guidelines and cannot be said to be mandatory". The guidelines of January, 2013 had already been superseded by new Guidelines namely Cadre Management of Civilian

Officer Guidelines issued on April 25, 2014. Para 18 (c) of the Guidelines stipulates that "any officer who has not done tenure in the present rank would be considered eligible and due for tenure". The present applicant has not done any tenure in his entire service career, as such, he was due for tenure and considered for turnover. The guidelines are not statutory in nature and are not to be considered as a matter of right as per para 34 of the guidelines, 2014.

5. On merits, the respondents have stated that as there is acute shortage of officers in Architect cadre, the length of tenure was reduced from 3 ½ to 2 ½ to 3 years. The applicant was taken on strength on 20.11.2011 and had completed the minimum duration of 2 ½ years as per guidelines. Even the duration of tenure can be curtailed or extended as per para 12 of the policy (Annexure R-3). Since the officers who had completed 2 ½ years of duration and had not done any tenure station, as such, those officers are considered for posting. They have thus prayed for dismissal of the OA.

6. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

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7. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

8. The main ground of the applicant is that he has been transferred in violation of the transfer guidelines. There was some dispute between the applicant and the respondents with regard to which transfer guideline should govern the transfer of the applicant, the one issued in 2012 or the one dated 25.4.2014 that superseded the 2012 guideline? The applicant claimed that his transfer order has to be seen in the light of the provisions of the 2012 guidelines while the respondents maintained that his transfer is governed by the guidelines of 25.4.2014. We have seen both the guidelines. The earlier guideline was issued on 31 December, 2012 which has been replaced by the guidelines of 25.4.2014. The applicant's transfer orders were issued on 18.7.2014, therefore, the guidelines in currency on that day holds the field and the legality or otherwise of his transfer has to be viewed in the light of the provisions of this guideline.

9. The relevant paragraph concerning the tenure posting i.e. Paragraph 18 of the guideline is reproduced below:-

"18. TENURE STATIONS. A list of tenure stations is given at Appendix 'J'. Following parameters are applicable for posting to these stations and repatriation thereof:

(a) The duration of tenure of the officers at the time of posting with service of ten years or less is three years and for those more than ten years is two years.

(b) An officer is liable to serve atleast in one tenure station in each rank. However, offrs beyond fifty seven years of age will generally not be liable for tenure postings, except on executive appointments and / or willingness of the individual officer. However, posting of officers of CE rank shall be as per organizational requirement.

(c) Prior to issuance of turn over postings, Pers Directorate of E-in-C's Br will issue cut off dates for turnover at least two to three months in advance. This list will include offrs who may be due for tenure station posting. In any case, all offrs who have not done a tenure in the present rank would be considered eligible and due. These offrs will be posted based on their profile and organisational requirement. Cut off dates will generally be 30 Jun/31 Dec for postings to be issued in Apr / Oct respectively for the same year. In case, an officer's tenure commences between these two dates, his cut off date will be later of the two.

(d) The cut off dates will be uploaded on MES website and circulated for information. It will be the responsibility of the officers to keep themselves informed regarding their turn for turnover through the website.

(e) The officers who are due for tenure and have not done tenure posting in present rank may give their choices of three tenure stations, in order of preference, through the present unit, to E-in-C's Br, within 20 days of placing the list on the MES website. However, indication of choice stations does not confer automatic right of the officer to get posted to those tenure stations only. It will depend on vacancies available and organizational requirement.

(f) Offr who is otherwise not due for a tenure posting but wishes to volunteer for any reason, may do so. This will be considered based on availability of vacancies.

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(g) An officer on completion of tenure turnover may give three choice stations for posting in minimum two different commands, excluding last duty station. However, any two choice stns of the officer should not be in the same station complex. The officer's request will be accommodated subject to availability of a suitable post/appointment. While planning posting, choice given by tenure repatriation shall be given preference over person being posted from non tenure station, except compassionate cases. However, it is not mandatory to accept choice stations where officers are in the promotion zone or are being considered for executive/sensitive appointments. The organizational interest and requirements will be paramount, under all cases.

(h) The seniority list for tenure turnover will be decided upon as per the following in the same order of precedence as given below:-

(i) Number of tenure postings done in officer rank.

(ii) Year and month of exit from tenure station i.e. the officer who exited first will be due first for next tenure.

(iii) However, if an officer has done a tenure in his present rank, he will generally not be considered for posting again to tenure station in the same rank, till all officers in the same rank have done their tenure, except those specifically deferred due to incomplete tenures or on medical/compassionate grounds approved by the competent authority. Exceptions for specific organizational requirement and based on officer's special qualification, may be made, with approval of the E-in-C.

(iv) Also, in case of requirement of officers of specific qualification(egPG), senior most officer in the tenure list with requisite qualification will be posted ahead of the others, in organization interest.

(v) Postings to tenure stations may be deferred by the E-in-C on extreme compassionate grounds. However, in case the deferment is more than a period of one year from the date the officer is due out, it will be counted as a compassionate posting in r/o the concerned officer. The

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reasons for such a deferment will need to be recorded on file.

(j) An officer who applies for change of tenure posting on medical grounds will not be considered for executive tenure.

It emerges from the reading of these guidelines is that an officer is liable to serve at-least on tenure station in each rank. Admittedly, in his entire career, the applicant has not served in any tenure station so far. This is his first tenure posting. Therefore, he should ordinarily not resist his transfer. The issue of his daughter's education has been addressed by the respondents by offering to allow him to retain the accommodation till her 10th examination is over. The guidelines do not envisage that if the children are studying in class X, the officer cannot be transferred. In terms of the guidelines, the transfer of the applicant do not appear to be violative of the guidelines.

10. A question has been raised about the issue of the cut-off dates for turn over at least two to three months in advance. The applicant's contention is that his impending turn over has not been notified because as per the notification dated 17 December, 2013 the cut off date for the turn over of Sr. Architect is 31 December, 2010 where as the applicant has joined his posting in Bhatinda on 21.11.2011. Undoubtedly, it is a valid question. The respondents

explanation during the arguments to this omission was that the applicant was considered for turnover vide Annexure R-VI and as there was a proposal to transfer the post of Sr. Architect from civilian cadre to military cadre, which was eventually approved and notified on 20th May, 2014, the cut off date for the turn over could not be put on the website. The respondents were categorical that there was no injustice to the applicant as he was well aware of the fact that he has not done any tenure posting and is likely to be considered for the same.

11. An issue with regard to the duration of tenure has also been raised by the applicant. His contention is that the duration of tenure of Sr. Architect has been recommended by the respondents to be raised from two and a half years to three years; to three to three and a half years. This recommendation (Annexure 12, Appendix G) is dated 4th September, 2014 much after the instant transfer of the applicant was ordered. We therefore, may not pay much heed to it.

12. It is beyond dispute that the applicant has not done a single tenure posting in his entire career of over 18 years and therefore, his seeking cancellation of the same on purely technical grounds and on the ground of her daughter's education has been fairly considered by respondents. There is a general tendency to avoid postings in North Eastern region at any cost causing severe constraints

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of man power, particular at senior positions, for implementing projects in North East. This tendency needs to be discouraged. It is our understanding that the respondents have committed to allow the applicant to retain the government accommodation till her daughter's examination of class X concludes. Therefore, the respondents cannot be accused of being inconsiderate.

13. In any case, the preponderance of judgments of Hon'ble Apex court has cautioned that the transfer, which is an administrative responsibility and prerogative of the executive should be interfered with only in such cases where the ends of justice have patently been compromised. Our view find support from the law laid down by the Hon'ble Supreme Court in the cases of **Shilpi Bose and others. Vs. State of Bihar and others**, (1991) 2 SCC(Supp.) 659; **State of Madhya Pradesh and another vs. Shri S.S.Kourav & Ors** (1995(3) S.C.C. Page 270); **National Hydro Electric Power Corporation Ltd. Vs. Shri Bhagwan & Another** (2001(8) S.C.C. Page 574) and **Kendriya Vidyalaya Sangathan versus Damodar Prasad Pandey and others** (2005(1) R.S.J. Page 328). Again, the Hon'ble Apex Court has again reiterated in the case of **State of Haryana & Others versus Kashmir Singh & Another** (2010(4) R.S.J. Page 766) that "transfer ordinarily is an incidence of service, and the Courts should be

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very reluctant to interfere in transfer orders as long as they are not clearly illegal."

14. In view of the above discussion, we are disinclined to interfere any further in this matter. The OA is dismissed. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- January 15, 2015.

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