

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060/00517/2014

Order pronounced on: 21.11.2014
(Order reserved on: 03.11.2014)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)

Pritam Singh (MES No. 510004) son of Shri Lachman Singh, age 40 years,
working as JE (E/M), office of Garrison Engineer (Utility), Ambala Cantt.

By: Mr. D.R. Sharma, Advocate.

Applicant

1. Union of India through Secretary, Ministry of Defence, North Block,
New Delhi.
2. Engineer-in-Chief, E-in-C's Branch, Integrated HQ of MOD, Kashmir
House, New Delhi.
3. Chief Engineer, Northern Command, C/o 56 APO Pin-914698.
4. Chief Engineer, HQ Western Command, Chandimandir, Panchkula.
5. Garrison Engineer (Utility), Ambala Cantt.

By: Ms. Jyoti Chaudhary, Advocate.

Respondents

ORDER**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

M.A. No. 060/01367/2014 stands allowed and disposed of by taking
amended reply on record.

2. By means of the present Original Application the applicant has sought quashing of the orders dated 4.4.2014 (A-1) and 30.5.2014 (A-2) qua him vide which he has been transferred out of Western Command to Northern Command and for a declaration that once he had been permanently transferred on compassionate grounds, without any condition, then he cannot be transferred back to his own Command without any change of circumstances.

3. The facts in brief are that the applicant joined service in Northern Command on 17.2.2000. He sought his transfer to Western Command which was accepted vide order dated 21.7.2004. He has remained at various stations in this command from time to time. Vide letter dated 1.3.2014 respondent no. 4 informed respondent no.3 about status of employees transferred on compassionate grounds from Northern Command to Western Command. The applicant submitted a representation on 1.4.2014 that he may be allowed to continue at present Command as his father is 90% physically handicapped and he is the only dependant to take care of him. However, vide order dated 4.4.2014 (A-1) the applicant has been posted out of command to GE (U), Udhampur. The request of applicant against this decision duly recommended by relevant quarters was rejected vide letter dated 30.5.2014. He submits that at the time of acceptance of his request for transfer from Northern Command to Western Command, no condition was imposed that his transfer can be revoked or cancelled subsequently or that this was a short

term measure only. An identical claim raised in O.A.No. 195-HP-2012 – **Smt. Asha Vidhan Vs. Union of India & Others** has been allowed on 24.5.2012 (A-9) directing the competent authority to “use his discretionary powers in the case of the applicant to dispense with the condition of restriction of two years for inter-command transfer and to allow her to remain at Western Command, treating it as an exceptional case in view of the observations made hereinabove and also in view of her case being strongly recommended by the concerned authorities in this regard”.

4. The stance adopted by the respondents primarily hinges around the law settled by Hon’ble Apex Court of the country asking the courts of law to maintain a restraint in interfering with the transfer orders passed by the authorities in their wisdom. Reliance is placed upon **State of U.P. & Others Vs. Gobardhan Lal** (2004) 11 SCC 102, **Kendriya Vidhayala Sangathan Vs. Damodar Prashad Pandey** 2005 (1) RSJ 329 and **Jit Singh Mallah Vs. P.S.E.B.** 2007 (2) RSJ 527. They submit that seniority of applicant is at All India level and as such he can be transferred to any command. It is pleaded that government servants have no inherent right to choose place of their posting and instructions on transfer are mere guidelines and have no statutory force. As per instructions, the posting of all the individuals was to be restricted for three years and there is shortage of staff in the relevant Command where applicant has been posted out. The applicant has already overstayed for about 10 years in the

command. The decision in the case of Smt. Asha Vidhan (supra) would not help the applicant at all.

5. We have given our thoughtful consideration to the entire matter and have gone through the pleadings on record, with the able assistance of the learned counsel.

6. When the case came up for hearing on 16.9.2014, learned counsel for respondents sought time to offer her response qua the plea taken by the applicant that the issue raised in this case is squarely covered by order dated 22.9.2014 passed by a learned coordinate Bench of this Tribunal in O.A.No. 060/00516/2014 – **Satish Kumar Vs. Union of India & Others**, decided on 22.9.2014. In this case too, the respondents had taken a plea that the period of stay on compassionate ground was only two years which period was over and as such he was transferred out. The Court held that the compassionate order clearly indicated that it was a permanent posting and the individual was to be transferred on his own expenses. This nature and character of transfer, the Bench held, gave credence that the applicant was given permanent transfer to Western Command from Northern Command. Dealing with the plea of respondents that such transfer could be kept only for two years, the Bench held that "applicant had already spent 6 years at Ambala, the question arises as to why the applicant was not moved out from Western Command on completion of his two years tenure there". The Bench held that since the applicant continued at Ambala for 6 years, his claim of posting to

Western Command of being permanent gets credence. In that case the applicant was also on the verge of retirement which is not the case here but the fact remains that the basic issues raised therein are identical to one raised in this case which have been answered in favour of the employees. Despite persistent query the learned counsel for the respondents was not in a position to point out any distinguishing feature in the present case which may actuate us to take a different view. One cannot dispute about the proposition of law laid down by Hon'ble Apex Court in the field of transfer of employees including in judgments cited on behalf of the respondents but the fact remains that there is a specific judgment of a co-ordinate Bench of this Tribunal in the particular facts of the case which cannot be ignored by us to ensure judicial discipline in administration of justice.

7. Finding that the case in hand is fully covered by the ratio laid down in the case of Satish Kumar (supra) on all favours, it is allowed. Impugned orders, Annexures A-1 and A-2 qua the applicant are quashed and set aside.

8. No costs.


(SANJEEV KAUSHIK)
MEMBER(J)


(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh
Dated: 21.11.2014