

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A No. - 060/00232/2014 ... Date of decision- 14.03.2014
...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

...
Sh. J.R.Jassal, Private Secretary, O/o HQ Chief Engineer, Pathankot
Zone, Pathankot-145001.

...APPLICANT

BY ADVOCATE: Sh. Rohiteshwar Singh

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Defence, Room No. 101-A, South Block, New Delhi-110011.
2. The Director General (Personnel), Military Engineer Services, E-in-C's Branch, Kashmir House, Rajaji Marg, New Delhi-110011.
3. The Chief Engineer, Western Command, Chandimandir-134107.
4. The Chief Engineer Pathankot Zone, Pathankot-145001.

...RESPONDENTS

BY ADVOCATE: Sh. Deepak Agnihotri.

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ORDER (ORAL)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought quashing of impugned order dated 17.01.2014 vide which he has been transferred from CE Pathankot to CE Jabalpur and also seeks issuance of a direction to respondent no. 2 to transfer him on compassionate grounds/last leg posting within the Command.

2. In support thereof, learned counsel for the applicant submits that the impugned order dated 17.01.2014 passed by the respondents is contrary to their own guidelines and the policy (Annexure A-3) and as per Clause 10 (b) of Cadre Management of MES Civilian Officers Guidelines-2003, two compassionate postings can be allowed in total service including one in lieu of last leg posting on foregoing. He further submits that applicant is about 57 years of age and having three years residual service. During his total tenure of service, he has not availed even a single compassionate posting, therefore in terms of said clause, the applicant can choose his last leg of posting of his choice. He also states that the impugned transfer order was received by the applicant on 06.03.2014 and immediately thereafter, on 07.03.2014, he made a representation to the respondents to

consider his request which was favourably recommended by respondent no. 2 vide letter dated 09.03.2014 but no order thereon has been passed till date.

3. Mr. Rohiteshwar Singh, learned counsel for the applicant categorically made a statement at the bar that the applicant has not yet been relieved from the present place of posting till date as he is on medical leave, the applicant would be satisfied if a direction is given to the competent authority to decide his pending representation in a time bound manner and in the mean time the operation of impugned order dated 17.01.2014 qua applicant may be stayed.

4. There is no need to issue notice to the respondents, however, Sh. Deepak Agnihotri, learned Senior CGSC who is having advance notice, puts in appearance on behalf of the respondents. He did not raise any objection to the prayer made by the counsel opposite to decide the pending representation of the applicant. However, he states that a court of law should not interfere in transfer orders unless same are violative of statutory rules or actuated with malafide or is issued a measure of penalty.

5. Before I advert to the submissions made by the learned counsel for the parties, it will be useful to take notice of the law regarding the scope of interference in assailing the transfer orders. It is settled law of the land the courts should not deal with transfer

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orders as if they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. They cannot substitute their own decision for that of the Competent Authority in the matter of transfer. The scope of judicial review in the matter of transfer is restricted in as much as if an order of transfer is challenged on the ground of violation of statutory provision or lack of competence of person who has passed the order malafidely, only then the Court should interfere otherwise it is not liable to be interfered in Judicial review. The reason for such a view taken by the Courts repeatedly is that no Government servant has a right to be posted in a particular post or position once appointed in service. Reliance in this regard is placed upon the judgment of Hon'ble Supreme Court in the case of **E.P. Royappa Vs. State of Tamil Nadu**, the Hon'ble Apex Court reported 1974 SCC (L&S) 165, **B. Varadha Rao V. State of Karnataka and Ors.** 1986 SCC (L&S) 750, **Mrs. Shilpi Bose Vs. State of Bihar and Ors.** reported as 1992 SCC (L&S) 127, **Union of India and Ors. Vs. S.L. Abbas** reported as 1994 SCC (L&S) 230, **National Hydro-Electric Power Corporation Ltd. Vs. Shri Bhagwan and Anr.** 2001 (91) FLR 259, **Maj. General J.K.Bansal** versus **Union of India & Ors.** A.I.R.2005 S.C.3341, **UOI & Ors. Versus Muralidhara Menon & Another** 2009 (9) SCC 304, **Rajendra Singh vs. State of U.P.** 2009 (15)

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SCC 178. The underline theme of the above authoritative law is that an order or transfer cannot lightly be interfered as a matter of course or routine for one or any type of grievance sought to be made until and unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer.

6. In view of the authoritative law, now I proceed to examine the present case.

7. Concededly, the applicant was transferred from Pathankot to Jabalpur vide impugned order dated 17.01.2013. As per averment made by learned counsel for the applicant, the applicant received the said order on 06.03.2014 and immediately, thereafter on 07.02.2014, he made a representation to the respondents to consider his case as per their own guidelines for transfer year 2013. It is also stated that the applicant got favourable recommendation from the Chief Engineer, Pathankot Zone to consider the case of the applicant on ground of Compassionate grounds/last leg posting or other grounds.

8. Considering the above and coupled with the prayer made by learned counsel for the applicant, I dispose of the present O.A with a direction to respondent no. 2 to take a final view on the pending representation dated 07.03.2014, by passing a speaking order, supported with reasons as per law and guidelines on the

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subject, within a period of seven days from the date of receipt of a certified copy of this order. I am not inclined to grant stay for the simple reason that the applicant is already on medical leave, however, if he moves an application for extension of the leave for another seven days (as granted to the respondents) , or till the respondents decide his pending representation, they are directed to accord the sanction. Orders so passed be duly communicated to the applicant.

9. It is made clear that I have not expressed any view in so far as the merits of the case are concerned.

10. With the observations and directions as above, this O.A. stands disposed of in limine with, no orders as to costs.

11. **Dasti.**

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 14.03.2014

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