

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 113 of 1994.
T.A. NO.

DATE OF DECISION 19-1-1994

Shri Hardev Singh Bakshi

(PETITIONER(S))

Shri B.K.Sharma.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri S.Ali, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

X THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? *NO*

Judgment delivered by Hon'ble Member (A) *Sanglyine*

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.113 of 1994.

Date of Order : This the 19th Day of January, 1996.

Shri G.L.Sanglyine, Member (Administrative).

Shri Hardev Singh Bakshi
L.D.C in the office of the
Garrison Engineer, (Eastern Command),
Narengi, Guwahati-27. Applicant

By Advocate Shri B.K.Sharma.

- Versus -

1. Union of India
represented by the Secretary
to the Govt. of India, Ministry of Defence,
New Delhi.
2. The Chief Engineer(Eastern Command),
Calcutta-21.
3. The Garrison Engineer,
Narengi, Guwahati-27. Respondents.

By Advocate Shri S.Ali, Sr.C.G.S.C.

O R D E R

G.L.SANGLYINE, MEMBER (A)

The applicant is a civilian employee under the MES working as LDC in the office of the Garrison Engineer (Eastern Command) Narengi since 18.8.1979. In this application he has objected to the transfer order transferring him from CE Narengi to CE Shillong Zone (Annexure 5). His grounds are briefly narrated herein. He is an ex-serviceman who has suffered 40% disability for life and had joined the civilian post after his retirement or discharge from the army. Due to this disability in the lower limb he is not in a position to carry out the transfer order as it is difficult to move around specially in hilly terrain like Shillong. In addition, posting in Shillong in such circumstances would be very expensive and consequently will

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cause great hardship to him in maintaining his family consisting of himself, his ailing wife and three marriageable daughters with his meagre income. He had therefore submitted representations to the respondents for reconsideration of his case and posting him in Guwahati complex. The respondent had not however considered his case sympathetically despite the guidelines laid down in transfer policy formulated from time to time concerning employees who are disabled ex-servicemen with disability of 40% and above. In 1988 he was transferred out but after consideration the facts of his case carefully the authorities concerned had cancelled his transfer order. But at present, there has been no sympathetic consideration though facts remain same as would be evident from the message dated 5.2.1993 submitted by respondent No.3 to respondent No.1 about the facts of his disability in which he had pointed out the transfer policy in respect of disabled ex-servicemen. It is his contention also that his case was not considered on the ground that he was a senior most LDC but in fact there were other LDCs who were senior to him in terms of stay in Narengi. This is also against the guidelines of the transfer policy. That there were such senior persons to him was admitted by respondent No.3 in his letter dated 7.12.1993 and due to this fact he had therein recommended for cancellation of the order of transfer of the applicant to Shillong. The applicant also relied on the letter No.S(34/92-D(Apptts) dated 30.8.1993 issued by Government of India, Ministry of Defence directing that LDCs and UDCs should not be transferred out in order to avoid hardship to them being low paid employees. This transfer policy has also not been observed in his case. Learned counsel Mr B.K.Sharma submitted that in view of the facts and circumstances narrated above, the impugned transfer order is not sustainable.

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2. The learned Senior CGSC, Mr. S. Ali, resisted the contentions and submitted that there has been no injustice done to the applicant by virtue of the impugned transfer order but that his transfer was ordered only according to the transfer policy. There is no guideline that a physical handicapped employee is not liable to be transferred out of a station. The facts of the case of the applicant were duly considered by the competent authority of the respondents with reference to the transfer policy but it was found that as a matter of policy it was not possible to retain the applicant in the same station. His case was always considered sympathetically and it was for that reason only that he has been accommodated in the same station since 1979 and that for the same consideration also he was posted in a place like Shillong. He submitted that since the applicant is liable to be transferred and in the absence of any justifying reason for his retention in the same station he is to move out in compliance of the transfer order. According to the learned counsel, the application has no merit and is liable to be dismissed.

3. The applicant suffered leg injury in the war front and as a result he could not be continued as a soldier in Army. Subsequently, he had been re-employed as a LDC in the MES. There is no dispute to ~~exempted~~ his claim that he suffered from a 40% disability for life. There cannot also be any dispute that for such disabled employee there are guidelines in the matter of their transfer and posting. The guidelines of 17.12.1992 as reproduced by the applicant in para 4.x of the application read -

"the case of the following nature must be report to this HQs while forwarding proforma particular of the individual to take appropriate action by this HQs at the time of planning of posting -

(a)

(b)

(c) Handicapped personnel with disability of 40% and above (necessary M.C. should be enclosed)."

Further, the guidelines of 28.1.1994 read :

" 14. Disabled persons should not be posted to a tenure station if the disability prohibits his free movement/functioning. The case shall be decided by CE Commands on merits. However, if disabled individual is willing to go to a tenure station, he should be allowed such posting."

Both these guidelines show that a decision to transfer a disabled employee is to be arrived at by the competent authority after evaluating the current facts and that can be done only by means of physical examination of the physically handicapped employee concerned. In this particular case no such exercise seems to have been undertaken by the competent authority. In particular in this case it is also seen that there has been no order issued by the CE Eastern Command disposing of the representations of the applicant though under the guidelines he is bound to dispose of the same. Moreover, in this case of the applicant discrimination in transferring him out of his station is established. The GE Narengi in his letter dated 7.12.1993 addressed to CWE Shillong wrote -

"..... that one Shri D.K Dey, LDC working at GE Narengi is senior to Shri H.S Bakshi in stay at Guwahati complex. It is recommended that posting orders of Shri HS Bakshi therefore be considered for cancellation."

An able bodied employee had been preferred to a disabled employee though the former had stayed longer than the latter

in the same station. Secondly, letter No.S(34/92-D (Appts) dated 30 August 1993 written by the Section Officer of

the Defence Ministry to Shri T.S.Pandey, General Secretary, All India MES Clerical Grade Employees Association, New Delhi Says :

"..... not to post out the LDCs and UDCs to to avoid hardship to them and their families."

This is not denied by the Respondents. So, if this is the policy pertaining to transfer and posting of LDCs and UDCs in general, the applicant who has suffered 40% disability as a soldier and also working as LDC deserves a more sympathetic consideration from the respondents. It is true that the above mentioned guidelines and letters were issued after the impugned order of transfer dated 27.10.1992 was issued. The respondents can be justified if they pleaded that these guidelines and policies were not available for consideration at the time of issue of the transfer order. But the applicant has been pursuing for reconsideration of his case by the departmental authorities. Here also the respondents cannot be blamed for not taking action on the request of the applicant as the matter is pending with this Tribunal. In the light of the above facts and circumstances this application is disposed of with the following directions-

(1) The applicant may, if he chooses, submit a fresh representation to the Chief Engineer(Eastern Command), Calcutta, Respondent No.2, through proper channel within 30 days from the date of receipt of this order requesting for cancellation of his order of transfer to Shillong and for his retention in Guwahati Complex.

(2) The Chief Engineer(Eastern Command) Calcutta, Respondent No.2, shall on receipt of such representation, if any, from the applicant evaluate the facts pertaining to the applicant and having regard to the same and the

transfer policy as narrated above dispose of the representation of the applicant with a speaking order within 30 days from the date of his receipt of the representation.

(3) Till such order is not received from the Respondent No.2, the Chief Engineer (Eastern Command), Calcutta the respondents shall allow the applicant to continue in the present station.

(4) If the order of the Respondent No.2 referred to above is adverse to the applicant, the respondents are directed to allow reasonable time to the applicant for his compliance with the impugned transfer order.

(5) If the applicant chooses not to submit the fresh representation as indicated in clause (1) above, the respondents are at liberty to enforce compliance by the applicant to the impugned order of transfer at their convenience.

(6) Stay order dated 19.7.1994 shall stand vacated on expiry of 30 days from the date of receipt of copy of this order by the applicant.

Application is disposed of. No order as to costs


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(G.L.SANGLYINE)
MEMBER (A)