

Central Administrative Tribunal
Principal Bench: New Delhi.

OA NO.2797/2014

Reserved on: 19.04.2016
Pronounced on: 04.05.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Raj Kumar Shakya, JE (E/M)
S/o Shri B.P. Shakya,
R/o J-4, Rock View, AF Station,
Palam, Delhi Cantt-110 010.

....Applicant

(By Advocate: Sh. A. K. Trivedi)

Versus

1. Union of India through
Secretary,
Ministry of Defence, South Block,
New Delhi – 110 011.
2. HQ Chief Engineer,
Delhi Zone, Delhi Cantt-10.
3. Garrison Engineer (P),
Air Force Station, Palam
Delhi Cantt-10.

...Respondents

(By Advocate: Sh. Ashok Kumar)

ORDER

The applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved with the order dated 17.07.2014 posting him under Local Turn Over-2014 [hereinafter referred to as LTO] to GE(P) East, Delhi Cantt., has prayed for the following relief(s):-

- “(a) Quash/set aside the impugned order dated 17.07.2014 in respect of posting of the applicant to GE(P) East, Delhi Cantt declaring as illegal, unjust, arbitrary and against the guidelines on the subject.*
- (b) Direct the respondents to consider the case of the applicant for his posting at any unit in Air*

Force Area, where the applicant can retain the present Govt. Accommodation J-4, Rock View, Air Force Station, Palam, Delhi Cantt, if required.”

2. The facts of the case, in brief, are that the applicant-a Junior Engineer (E/M) was allotted a General Pool Govt. Married Accommodation No.J-4, Rock View, Air Force Station, Palam, Delhi Cantt and continues to occupy the same, which is governed and controlled by the Air Force Station, Palam. It is the case of the applicant that since he has been moved to GE(P) East, Delhi Cantt, he will have to vacate the present quarter in case he joins the new place of posting being under the jurisdiction of the Station Headquarters (Army), Delhi Cantt.

3. The applicant has adopted a number of grounds in support of his OA, he has been transferred before completion of a mandatory period of three years; his name was not included in the list of personnel for LTO-2014-15 vide orders dated 06.06.2014; availability of accommodation has not been kept in mind while making LTO; his representation dated 22.07.2014 is yet to be disposed of; and he has family liabilities including minor children.

4. The respondents have filed a counter affidavit wherein they have strongly opposed the OA denying all such averments except those which happened to be factual. The

respondents further state that the applicant has all India service liability including field service; the posting has been done strictly in accordance with the Guidelines Management of Group 'C' & 'D' posts of MES [hereinafter referred to as Guidelines, 2008] issued vide communication dated 26.05.2008; the applicant has completed 2 years and 2 months of service at GE (P) Central and more than 2 years in GE (P) AF, Palam which come to more than 4 years of service and, therefore, he is ripe for transfer; he has been again posted on sensitive/executive post in GE (P) East, Delhi Cantt to rationalize the strength of JEs as per Command Manning Level [hereinafter referred to as CML] i.e. GE (P) AF, Palam. The respondents have further submitted that while the applicant will have to vacate the accommodation presently occupied by him, he would be entitled to apply for accommodation at this new place of posting as per rules, and he cannot make allocation of government accommodation a pre-condition for joining the new place of posting. The respondents further submit that his representation has already been rejected vide order dated 19.08.2014 (Annexure R-4). The respondents have, therefore, strongly pleaded for dismissal of the OA on the aforesaid grounds. In support of their claim, the respondents have relied upon the decision of this Tribunal in *Prashant Tyagi V/s. Union of India & Ors.* [OA No.2888/2014 decided

on 28.05.2015] and of the Hon'ble High Court of Delhi in *Union of India & Ors. V/s. Lalit Kumar* [WP(C) No.11495/2015 decided on 02.02.2016].

5. The applicant has filed a rejoinder application wherein he has reiterated the averments as made in the OA. He has relied upon the decision of this Tribunal in *Mrs. Pooja Khullar Arora V/s. Union of India & Ors.* [OA No.2568/2014 decided on 13.01.2015].

6. I have carefully gone through the pleadings available on record as also the documents so adduced and the decisions relied upon by either side. I have patiently heard the oral arguments advanced by the learned counsels for both the parties.

7. The only issue that requires to be dealt with is as to whether the LTO made can be set aside so that an officer may retain the government accommodation allotted to him at his old place of posting.

8. In this regard, I take note of the fact that transfers and postings of officers of Group 'C' & 'D' posts of MES are regulated by a comprehensive set of Guidelines, 2008. These guidelines govern eight kinds of transfers, which are as under:-

“(a) Tenure stations/complexes turnover;

- (b) Compassionate grounds;
- (c) Maint of Command Manning Level;
- (d) Local Turn Over;
- (e) Promotions;
- (f) Mutual Basis;
- (g) Administrative grounds;
- (h) Adjustment of surplus/deficiency.”

9. Denying the averments of the applicant, the respondents submit that the postings at the local level are known as LTO and made to ensure that an individual does not derive undue benefit or indulge in undesirable activities by remaining in the same seat/unit for a considerable period i.e. more than 3 years involving regular turn over from sensitive to non-sensitive appointment. Posting from non-sensitive to sensitive appointments can be ordered after one year as per the organizational requirement. The LTO may also be resorted to rationalizing the staff so as to neutralize the imbalance caused by TTP and CML postings. Proviso 39 of the Guidelines, 2008 provides for the following kinds of sensitive appointments:-

- “(a) JE (Civ) employed on executive appointments;
- (b) JE (E/M) employed on executive appointments;
- (c) JE (QS&C) employed in GEs Division and dealing with contractual matters;
- (d) Supervisor B/S I/II employed on procurement of stores/furniture.
- (e) Storekeeper Gde I/II employed on procurement and holding of stores/furniture;

- (f) Office Supdt employed in GEs Division/CsWE office/CE Zones/CE Commands dealing with promotions, recruitment/appointments, posting/transfer, advances of all types, local purchase of stores, discipline/confidential matters, contractual matters;
- (g) UDCs/LDCs employed on jobs relating to posting/transfer, promotions, recruitment, local purchase of stores, discipline/confidential matters, contracts matters, sub division clerks and Cashier of GE's divisions;
- (h) Posting of JE (QS&C) at CWE office;
- (j) Under no circumstances posting issued under LTO will be allowed to be deferred beyond three months;
- (k) (i) LTO postings will be ordered after the issue of CML and tenure station posting;
- (ii) LTOs to be ordered by a Zonal Chief Engineer. If there is more than one Zonal Chief Engineer at a station, the function will be assigned to one of Zonal Chief Engineers by CEs Command. For Delhi area, LTO will be ordered by CE Delhi Zone;
- (iii) Executive tenure in a station not to be exceeded six years. No Executive should be allowed to stay more than 3 years in a unit.
- (l) JE (Civ) who volunteers for posting as JE (QS&C) or vice-versa may be considered by the competent authority for a short period of one or two tenures in the whole service without affecting the seniority. This will also obviate the acute shortage of JE (Civ) as compared to JE (QS&C)."

The Board proceedings of LTO-2014 provides for –

- “3. *The bd also perused the choice stns and requests/representation recd from the indls. The following criteria have been kept in mind while recommending the names for Local Turn Over during 2014:-*
- (a) Guidelines on management of group ‘C’ & erstwhile Group ‘D’ posts of MES issued in May 2008 by HQ CE WC;*
 - (b) Sensitive/Non sensitive turn over/Tenure>03 years, as applicable.*
 - (c) Holding of Govt. accn.*
 - (d) Indl from E-in-C’s Branch & HQ CE (R&D) considered only if due for turnover and no relief posted as per CE WC letter No.3020/P/153/EIC(I) dt 26 May 2014.*

- (e) CML issued by CE WC.*
- (f) Proximity to the existing place of posting/residence/ choice of complex.*
- (g) Physical disabilities/Medical grounds/Widow.*
- (h) Date of retirement (upto 30 Jun 2015) i.e. one year left for retirement.*
- (j) One to one change wherever feasible to ensure ease of implementation.*
- (k) All indls superannuating on or before 30 Jun 2015 have not been turned over. Clarification obtained from Col (Pers)/SO-1 (Pers) of CE WC on subject telephonically.*
- (l) Posting from non sensitive vacancy to another non sensitive vacancy as per seniority on completion of 3 yrs tenure, in case sensitive vacancy not available. Clarification obtained from Col (Pers)/SO-1 (Pers) of CE WC on subject telephonically.*
- (m) List of persons not to be considered as issued vide HQ CE WC letter no.30203/P/144/EIC(I) dt 02 May 2014 and addl names as fwd by HQ CE DZ vide letter No. 15000/LTO/2014/54/EIB(S) dt 03 Jun 2014."*

10. I find the argument that the period of stay being less than three years is not sustainable as the total period was more than 4 years. I also find that the transfer has been made as per the Guidelines, 2008 and the respondents have worked systematically to rationalize and streamline the transfer procedure. I further find that for LTO-2014, the Board has considered all the cautions that have been laid down and cannot be faulted on that ground. Therefore, the only issue that survives for consideration is that whether the issue of retention of quarter will dominate over other forms of requirements of the respondent organizations.

11. In this regard, the applicant has placed reliance on *Pooja Khullar Arora's* case (supra) wherein similar issues were raised and similar grievances had also been redressed and the Tribunal took a bridge over the fact that the respondents had adjusted as many as 16 groups of employees so that they could retain their accommodation while denying the same to the applicant. For the sake of clarity, relevant portion of the decision is being extracted as under:-

"9. Learned counsel for respondents could also not dispute that the respondents could readjust the posting of as many as 16 other Group 'C' employees to facilitate them to retain the government accommodation allotted to them. It is not controverted by the respondents that on her transfer from CE (AF) Palam to CWE (O) Delhi Cantt., the applicant will have to surrender the government accommodation allotted to her. Once the respondents have evolved a policy that in LTO of Group 'C' employees they need to be facilitated to retain their accommodation and the benefit of such policy has already been extended to sufficient number of employees, the applicant cannot be singled out. It is not so that the applicant has questioned her posting but she has only asked for an accommodation/ posting at such place / in such office where she can retain the government accommodation, i.e., 86/5, Old Pinto Park, Delhi Cantt. She has espoused such claim only when the respondents have evolved a policy in this regard and have benefited the other Group 'C' employees. As has been extracted by SO-1 (D&V) from CE (AF) WAC Palam letter dated 15.5.2014, the appointment of Stenographers has to be considered under LTO. The ramification of such provision is that when there may be precipitation that certain other Group 'C' employees may derive undue benefit or indulge in undesirable activities by remaining at the same seat/unit for considerable period, i.e., more than three years, there may not be any possibility for Stenographers to derive such undue benefit or indulge in undesirable activities. Paragraph 38 of Guidelines dated 26.5.2008 (ibid), as quoted by both the parties, reads thus:-

"38. With a view to ensure that an individual does not derive undue benefit or indulge in undesirable activities by remaining in the same seat/unit for considerable period, i.e. more than three years, regular turnover from sensitive to non-sensitive appointment will be carried out. Posting from non-sensitive to sensitive appointments can be ordered after one year as per organization requirement. This will provide

training and experience equally to all employees. The LTO may also be resorted to rationalizing the staff so as to neutralize the imbalance caused by TTP and CML postings.”

12. On the other hand, in case of *Prashant Tyagi’s* (supra) the decision in *Pooja Khullar Arora’s* case (supra) had been discussed. The Tribunal had also taken note of the fact that father of the applicant was a cancer patient and mother was physically handicapped whereas no such possibility has been pleaded in the instant OA. Education of children is a ground which would be there in almost all the families. The Tribunal, while disposing of the case of *Prashant Tyagi’s* (supra), observed as under:-

“5. Accordingly, in the peculiar circumstances of this case, the following orders are issued:

a) The applicant will be allowed to retain his present quarters till he is allotted another quarter by Army and then within two weeks of which, he will shift to the new quarter.

b) He may be relieved from the present responsibility on 10.06.2015 by which time the copies of the orders will be available to both the parties.”

13. In *Union of India & Os. V/s. Lalit Kumar* (supra), the respondent had expressed his willingness to join which he was allowed with the stipulation that his prayer for accommodation at the new place of posting would be considered.

14. In view of the above, the instant OA is well covered by the afore decisions. I take note of the fact that the postings

have been made as per well laid down policy guidelines which this Tribunal has considered comprehensively and since the applicant has completed more than 4 years of service, he cannot draw parity with Vinod Kumar, JE and Ram Kumar Sehrawat, JE (QS & C) as their postings had been cancelled in the interest of organizational requirement and exigencies of service for retention of their accommodation upto the maximum period of three years. The applicant also cannot draw parity with the decision in Pooja Khullar Arora's (supra). I also find that the instant OA is well covered by the decision in *Prashant Tyagi's* case (supra) and *Union of India & Ors. V/s. Lalit Kumar* (supra).

15. In totality of facts and circumstances of the case and the decisions discussed above, I unequivocally hold that joining new place of posting by the applicant cannot be made subject to bargain. It is true that in *Union of India & Ors. V/s. Lalit Kumar* (supra) the applicant had indicated his willingness to join, whereas the same is not forthcoming in the instant OA. It is also well recognized that pleadings with regard to instances of cancer or disability in the applicant's family do not apply to the facts of the instant case and hence are distinguishable. Yet taking a lenient view, I dispose of this OA with the following directions:-

- a) The applicant is directed to join his new place of posting as expeditiously as possible or preferable within a period of one week from the date of receipt of certified copy of this order.
- b) The applicant will be allowed to retain his present quarter till he is allotted another quarter by Station Headquarters (Army), Delhi Cantt.
- c) No costs.

(Dr. B.K. Sinha)
Member (A)

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