

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RESERVED ON: 11.05.2016
PRONOUNCED ON: 22.07.2016

Present

HON'BLE MS. JASMINE AHMED, MEMBER (J)

Original Application No. 3362 OF 2014

(U/s 19, Administrative Tribunal Act, 1985)

Sh. Ram Khilari Meena (IDSE)
MES -196315, Aged about 53 years,
R/o 117-A/C-3A Block, MIG Flat, Janak Puri,
New Delhi-58

... **Applicant**

(By Advocates: Sh. M. K. Bhardwaj)

Versus.

1. Union of India
Through Secretary
Ministry of Defence
South Block
New Delhi
2. Engineer in Chief,
E-in-C Branch,
Integrated HQ of MOD (Army)
Kashmir House, Rajaji Marg
New Delhi-110011
3. Directorate General (Personal) E 1B
Engineer-in Chief& Branch
Integrated HQ of MOD (Army)
Kahsmir House, Rajaji Marg
New Delhi-110011

... Respondents

(By Advocates: Sh. Rajesh Katyal)

ORDER

Hon'ble Mrs. Jasmine Ahmed, Member (J)

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs.

ða) Set aside the transfer- cum-posting order dated 23.07.2014 order dated 15.09.2014 and consequential orders.

b) To declare of respondents in rejecting representation of applicant and denying the posting on compassionate ground is illegal and arbitrary.ö

2. The brief facts of the case is that the applicant, who is working as Director, was selected by the UPSC on the basis of All India Engineering Services Examination, 1985 and treated 1986 batch officer. He was initially appointed as temporary Assistant Executive Engineers (Public works /road) w.e.f. 17.08.1987 under Ministry of Defence, Defence Department Public works Jaipur. The applicant joined the services under the statutory provision called as civilian in defence service (field service liability), 1957. This service covers the provisions of section 2 (a) which prescribes ðCivilian Government Servantö means a Government Servant holding for the time being any civilian post in the Defence Services of the Union specified in Schedule 1. The applicant was subsequently posted as equivalent post at Defence Department, Public Works Tezpur from 29.06.1991 to 23.02.1993. Then, he was promoted from Junior Time Scale Assistant Executive to Senior Time Scale Executive Engineer and posted at Defence Department, Public Works Bhatinda from 24.02.1993 to 19.05.1996 and was transferred at Udhampur in the equivalent post in the same Department where he worked till 02.04.1998. Then, the applicant worked at Jodhpur from 03.04.1998 to 21.10.1999, then at Allahabad from 22.10.1999 to 19.02.2002 in the equivalent post as well as in the same Department. Thereafter, the applicant got promotion on

20.02.2002 as Senior Time Scale Joint Director and posted at Firozpur where he worked till 23.05.2008. In the year February, 2005 the applicant was promoted as Director and posted in DG Map Office Delhi. He was again transferred to Agra in the equivalent post and remained posted at Agra till 09.10.2010.

3. The counsel for applicant contended that the applicant joined Delhi as Director in the Office of DG Map, whereas other similarly situated persons were given choice of posting. The applicant never raised any grievance in that regard and joined in the same Office on 22.10.2010. In between, the wife of the applicant was suffering from some ailment like DKA/ uncontrolled DM-II/ HTN depressive illness. Hence the applicant preferred a representation before the respondents/ concerned authority for posting him near Jaipur or any other nearby station on compassionate grounds. Respondent No. 2 by letter dated 30.05.2014 replied that the case of the applicant in respect of compassionate ground for transfer was considered by the E-IN-C but did not approve. The applicant again submitted another representation before the Defence Secretary, Ministry of Defence for posting on Compassionate ground on 14.07.2014, but without taking into consideration the prayer of the applicant, the respondents have issued the impugned transfer dated 23.07.2014 whereby the applicant has been transferred to CE Srinagar Zone as Director. Being aggrieved by the action of the respondents in not transferring him nearby Delhi or Jaipur but to transferring him to the field area, the applicant again submitted a representation dated 04.08.2014 but as no reply was received from the respondents, the applicant filed OA 2810/2014 before this Tribunal which was disposed of by vide order dated 19.08.2014 with the directions to the respondents to decide the representation of applicant by passing a reasoned and speaking order within a period of four weeks. The counsel for the applicant

states that in a similar type of case an order was passed in the case of Sh. Rameshwar by the Jodhpur Bench of this Tribunal on 08.10.2012 in OA No. 404/2012. After receiving the order, respondents were required to pass necessary order within three months but in the said case neither order has been passed nor said Sh. Rameshwar posted as Director has been relieved till date. The counsel for the applicant states that the representation of the applicant has been rejected vide orders dated 15.09.2014 and 16.09.2014 illegally and arbitrarily without application of mind and without taking into consideration the condition of the wife and also respondents have rejected the representation of the applicant by misinterpreting the rules and relevant instructions more so the movement order has also been issued with threat of loss of lien for not joining. The counsel for the applicant states that the action of the respondents is nothing but misuse/abuse of power. He states that the applicant is a civilian officer holding post of Director therefore in terms of Ministry of Defence office order No. 9/DEF SECY/96 dated 17.05.1996, he was not required to be transferred without consideration of his case by Secretary on the proposal prepared by JS (Estt.) and submitted by Additional Secretary. He contends that the applicant has been transferred without following the aforesaid procedure. He also contended that Srinagar is a field area which is evident from Ministry of Defence letter dated 14.01.1994, therefore, the applicant could not have been posted in the aforesaid area being more than 45 years of age and having been completed 27 years of service.

4. In this regard, he mentioned about SRO 92 dated 26.02.1957 wherein it is stated that the civilian government servants who have completed 20 years of continuous service and attained the age of 45 years, are not expected to be posted to any field area. In fact the officers in this category have been exempted from

rendering field service after 45 years of age. In this regard, the counsel for the applicant drew my attention to page No. 58 annexure A-14 which has been published by the Ministry of Defence vide order dated 09.03.1957. Page No. 59 of the OA deals with SRO 92 dated 26.02.1957. He drew my attention to page No. 60 paragraph 3 which states about medical standards of physical fitness of civilian government servant and the relevant portion are quoted below:

- 1) All civilian government servants liable for field service under these rules shall be required to satisfy the medical standards set out in schedule II and shall be liable to undergo medical examination in accordance with the provisions of the following sub rules.
- 2) All civilian government servants shall be on the basis of the medical examination referred to in Sub Rule (1) be classified into the following categories namely:
 - (i) Those who are found fit for field service ó category ó I
 - (ii) Those who are found temporarily unfit for field service but fit for service in peace station ó category ó II
 - (iii) Those who are permanently unfit for field service but fit for service in peace station- category- III and
 - (iv) Those who are found permanently unfit for service even in peace station ó category- VI

5. Provided that these sub rule shall not be applied in the civilian government servant who has completed 20 years of continuous service or who has attained the age of 45 years. The counsel for the applicant states that Srinagar has been treated as field area and as per this SRO 92 dated 26.02.1957, the applicant has completed 20 years of continuous service and also attained 45 years of age. Thus, the

applicant cannot be posted in the field area. He also states that these rules have also been examined by the tribunal as well as Hon'ble High Court of Allahabad and Hon'ble High Court of Punjab and Haryana in the case of A. Arul Dhas and Sh. Sanjay Ekbote which was passed on 30.11.2011 and 09.12.2013 and it is very much clear from these two judgments that Director like the applicant being the Civilian Officer cannot be posted to field area on completion of 20 years of service and on attaining the age of 45 years.

6. Counsel for respondents vehemently objected the contentions of the counsel for the applicant and states that by transferring applicant nothing malafied or arbitrary against the rules has been done by the respondents. Counsel for the applicant states that applicant his having all India transferring liability and can be posted at any placed in India and place his reliance on the various judgments passed by the Hon'ble Apex Court in Silpi Bose & Ors. Vs. State of Bihar, UOI vs. S. L. Abbas, State of U.P. & Ors. Vs. Goverdhan Lal and also on the judgment passed by the Hon'ble High Court of Delhi in Sujata Kohli Vs. High Court of Delhi. He categorically stated that the transfer order is not in violation of service conditions of the applicant neither against any statutory rule nor on account of any malafied or bias. He states that as per various judgments as especially as per judgment of Hon'ble Apex Court in S. C. Saxena vs. UOI & Anr. reported in 2006 SCC (L &S) 1890 the applicant should have joined first in the place of posting then give representation to the respondents for consideration of his situation instead of filing the OA before this Tribunal. He states that though the applicant has stated that he has never been posted on compassionate ground but in the year December 1997 taking a sympathetic view on his problems, he was posted to Jodhpur on his request. In October 1999, the applicant was posted to Allahabad

on executive appointment. Again giving sympathetic view to his request the Department posted him to Delhi in February, 2005 to January, 2008, he was posted to Agra on executive appointment.

7. In the year April 2010 he once again requested the department to post him to Delhi on compassionate ground posting due to his domestic issues . In June 2010 he once again requested the department to post him to Delhi in lieu of his last leg posting and accordingly he was posted to Delhi in August 2010. He also denied that the applicant was never given choice posting as he was given choice posting by the Department. The counsel for respondents also stated that on the request of the applicant only applicant was sidestepped locally from HQ DG MAP to E-in-C Branch vide letter dated 07.09.2011 on medical ground of his wife's health. He contended that although compassionate ground posting is of two years but the officer has been retained in station for almost four years which clearly indicates that the Department has been more than considerate towards officer's request. The applicant has again applied vide application dated 30.05.2014 for compassionate ground posting on medical grounds of his wife and for arranging marriage of his daughters. Same points were again raised by him vide his letter dated 14.07.2014. His application dated 30 May 2014 was disposed off vide letter No. B/17003/SE/MON/411/E1B dated 13 June, 2014 and his application dated 14 July, 2014 and 04 August, 2014 were disposed of vide letter dated 19.08.2014 as reasons for compassionate posting were of routine nature and his proposed place of posting had adequate medical facility. Therefore, his request for compassionate ground posting was rejected.

8. The counsel for respondents states as the applicant had already availed compassionate grounds posting in August, 2010. Hence, as per Cadre Management of MES Civilian Officer guidelines- April 2014 the officer can avail of only one compassionate ground posting and one last leg posting and compassionate postings are not a matter of right but should be approved on merit subject to availability of vacancy. He states that on account of his personal issues the applicant has already availed of compassionate ground posting/request posting repeatedly in December 1987, 2005 August, 2010 and September, 2011 respectively. Hence, the officer has been accommodated by the respondents more than what is envisaged in the guidelines. He also contends that the posting of applicant to CE Srinagar Zones does not come under field area. He states that it has been declared counter insurgency peace area for the units deployed in Counter Insurgency Operations.

9. Counsel for the respondents states that contention of the applicant that the CI Ops peace area is field area in terms of Govt. Of India MOD New Delhi letter No. 37269/CI/AG/PS 3 (a) /121/D (Pay/Services) dated 14 January, 1994 is not correct. He states that applicable only for units actually deployed in Counter Insurgency Operations. The applicant had been posted to a unit that has no role in Counter Insurgency Operations. In this regard, counsel for respondents states that during the period of militancy in Punjab, the states of Punjab was never declared a field area though it was under Counter Insurgency. Field area relates to degree of difficulty and availability of facilities and not counters Insurgency. He states that "Field Area" where troops are deployed near the border operational requirement and where imminence of hostilities and associated risk to life exists. Troops in

such areas are located for reasons of operational consideration alone and were not living in cantonments. Hence, applicant's posting to Headquarters Srinagar Zone does not entail posting to the unit or deployment in counter insurgency operations. An officer being paid from defence account does not constitute as "Troops" as covered under the above definition and nor he has been deployed with troops. Accordingly SRO 95 is a statutory order which is applicable to all the officers of Indian Defence Service of Engineers which states that the officer appointed to the service shall be liable to serve anywhere in India or outside. SRO 95 is a statutory order hence applicable to all the officers of Indian Defence Service of Engineers. Accordingly SRO 95 is applicable to the applicant and is liable to serve anywhere in India or outside.

10. Counsel for respondents states that the comparison of the applicant with Sh. Rameshwar is also misplaced as the fact and circumstances of Sh. Rameshwar is rather different than from the applicant as Sh. Rameshwar was never accommodated like the applicant on various occasions. The Counsel for respondents vehemently states that the applicant has always been posted in and around Delhi i.e. Bhisiana, Uhampur, Jodhpur, Allahabad, Ferozpur, Delhi, Agra and again Delhi. Hence the applicant cannot say that he has been transferred to Srinagar arbitrarily or illegally.

11. Counsel for applicant placed his reliance on the judgment passed the Jodhpur Bench of this Tribunal in OA 404/2012 and states that the case of the applicant is similarly situated as of the case of in OA 404/2012 Sh. Rameshwar. He states that in that OA also the appointment and service conditions was subject to

field service liability Rule 1957, herein in this case also the applicant has been appointed under the same service conditions and hence in that judgment the Tribunal as opined that as the applicant their completed 25 years of service and attained 45 years of age he was not supposed to be posted in any field service area. The applicant therein took the plea that as the applicant was more than 45 years of age and also completed more than 25 years of regular service hence the impugned transfer order was made in violation of the provisions of the above Rules which have been framed under article 309 of the constitution. In OA 404/2012 in para 2 it was stated as under:

“Coming to the main issue, the provision of the Civilian in Defence Service (Field Service Liability Rules), 1957 are clear as under:

(2) They shall apply to Civilian Govt. Servants in the Defence Services of the Union, in the category specified in scheduled.

Provided that the civilian Govt. Servants who have not completed 25 years (other than those employed in Central Transport Companies) who are in service immediately before the commencement of these rules and who are not liable for field service under conditions of service applicable to them shall have the option exercisable within six months of such commencement to decide whether these rules shall not apply to them and these rules shall cease to apply to any one who exercise the option within the said period.

Provided that the Central Govt. May if it is satisfied that a Civilian Govt. Servant who has completed twenty five years continuous service or who has attained that the age of forty five years is willing to undertake the liability of field service, permit such servants to undertake such liability subject to the condition that such servant on the basis of medical examination is placed in category I referred to in.”

12. In that judgment coming into the conclusion that as the rules have been framed under article 309 of the constitution hence, beyond substitute and it was transpired from the representation that the applicant had crossed age of 45 years and 25 years of continuous service. Madras Bench of Central Administrative Tribunal in a similar issue has quashed the transfer order. The OA was disposed of at the admission stage itself with the direction to the respondents remanding back

the matter to the Defence Secretary to decide the representation of the applicant with a period of three months from the date of receipt of a copy of that order in accordance with the relevant rules by means of a reasoned and speaking order, It was also directed that the applicant will not be disturbed from his present place of posting till the decision of his representation by the competent authority.

13. Counsel for the applicant states that this direction by the Tribunal in OA 404/2012 Sh. Rameshwar was not transferred nor relieved any further. He states that the applicant is similarly situated and fully covered by SRO 92. Hence, the same treatment be given to him also as he has also completed 45 years of age and more than 25 years of long service.

14. Heard the rival contentions of the parties and perused the documents on records and gone through the judgments relied upon by the counsel for the parties.

15. It is not disputed that the applicant was appointed under the `Civiliansø in Defence Service (Field Service Liability) Rules, 1957 and the service conditions of the petitioner as would be governed by 1957 Rules for all the purposes, and his posting liability would also be governed by the 1957 Rules as specified in the appointment letter/order itself. Accordingly, as per the applicability of Rules, 1957, which have been framed under the Article 309 of the Constitution, is beyond substitute. The applicant has crossed age limit of 45 years and also completed more than 27 years of service. Taking into account the judgment passed by Honøble High Court of Allahabad and also Judgments passed by other Benches of this Tribunal, the transfer order is liable to be quashed and set aside.

16. It is evident from the letter dated 18.1.2014 that Srinagar falls under counter insurgency area, though classified as SCC1A in Peace area w.e.f 1.1.2014. But as the Hon'ble High Court of Allahabad has observed in the case of *A. Arul Dhas Vs. U. O. I and Others Civil Misc. Writ Petition No. 60610 of 2011* that counter insurgency area is a field area and also submitted by the counsel for the applicant that the decision of the Hon'ble High Court of Allahabad in the above mentioned case has attained finality, respondents are directed to take a sympathetic view on the representation of the applicant as by this time he has became more than 55 years of age and also having two marriageable daughters aged about 26 and 29 years.

17. In view of the above, the original application is allowed. The transfer order dated 23.7.2014 and order dated 15.9.2014 are quashed and set aside in regard to the applicant. However, the respondents are at liberty to post/transfer him at any other place in accordance with their own policy as enumerated in SRO 92 of 1957.

(Jasmine Ahmed)
Member (J)

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