

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No. 3562/2015

MA 96/2017

MA 3408/2016

Reserved on 10.02.2017  
Pronounced on 22.02.2017

**Hon'ble Mr. V.Ajay Kumar, Member (J)**

**Hon'ble Mr.P.K.Basu, Member (A)**

Krishna Kumar Singh: JE (CIVIL)  
MES-Ex-JC153692W  
Aged about 54 years,  
S/o Late Sh. Harsh Singh,  
R/o NP-69, MES Colony, Ordnance Depot,  
Shakur Basti, Delhi-110056.

... Applicant

(By Advocate : Mr. M.K.Bhardwaj)

**VERSUS**

1. Union of India  
Through Secretary,  
Ministry of Defence, South Block,  
New Delhi.

2. The Engineer in Chief,  
E-in-C Branch,  
Integrated HQ of MOD (Army),  
Kashmir House, Rajaji Marg,  
New Delhi-110011

3. The Directorate General (Personal) EIB,  
Engineer-in-Chief's Branch,  
Integrated HQ of MOD (Army),  
Kashmir House, Rajaji Marg,  
New Delhi-110011

4. The Chief Engineer,  
Headquarters,  
Western Command,  
PIN 908543  
C/o 56 APO.

5. The Chief Engineer,  
Headquarters,  
Delhi Cantt-10

... Respondents

(By Advocate: Mr. Gyanendra Singh )

**ORDER****Hon'ble Mr. P.K.Basu, Member (A) :**

The applicant, who was serving in the Army, was appointed as Junior Engineer (Civil) in 2001 in Western Command. He has been serving in Base Hospital, Delhi Cantt. w.e.f. 6.11.2014. The applicant was posted to Garrison Engineer (S) (GE(S), Patiala vide order dated 26.08.2015 with instructions to move to new unit at Patiala by 29th September, 2015.

2. He filed a representation dated 1.09.2015 with a request to cancel the posting order dated 26.08.2015 and requested that he be allowed to complete his tenure as per transfer policy. The competent authority rejected his prayer due to the following reasons:

- “(a) Posting has been planned by Board of Officers and approved by the competent authority as per posting policy guidelines 26 May 2008 subsequent amendment/directions from higher HQ.
- (b) Posting has been ordered in accordance with the service condition and as a part of organizational requirement.
- (c) Joining of MES is treated as fresh appointment past service profile while serving in the Army has no bearing as far as posting/transfer of civil subordinate staff in MES is concerned.
- (d) Challenging the posting orders by quoting irrelevant paras of the pasting policy guideline to suit personal requirements is neither appreciated nor understood.
- (e) The guidelines on the subject matter with reference to Para 2 above have not been violated and the directions of Engineer-in- Chiefs Branch, the Head of the Department have been adhered to and there is no departure from the laid down rules in vogue.
- (f) Transfer of the applicant to another station may result in discomfort to one kind or another but all employees have to necessarily accept such transfers, as such, there is no element to malice or malafide intention in these orders and your liability to serve as per service conditions.

- (g) Posting order of the applicant is not issued as an isolated case. It is linked to move of another individual in the overall posting plan and therefore applicant was directed to move as per posting order.
- (h) That on 28<sup>th</sup> January 2015, the Hon'ble CAT, Chandigarh Bench, in OA No.963/00143/2014 was placed to observe as under:-

Para 21: Hon'ble Apex Court in the case of S.C.Saxena V/s UOI and others reported 2006(9) SCC, Page 582 has held as follows:-

"In the first place, a Government Servant cannot disobey a transfer policy by but reporting at the place of posting and then go to court to ventilate his grievances. It is his duty to first report for work where he is transferred and make representation as to what may be his personal problem. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

Para 22: In view of the factuals as well as legal scenario discussed above, these original applications are found to devoid of any merit and as such deserve rejection. The individual has wrongly quoted the policies and hid facts and malafide intention to mislead the Hon'ble Tribunal and in his own interest.

Para 23: It goes without saying that the interim orders shall stand vacated automatically."

According to the respondents the order was issued in terms of para 34, 35 and 37 of the said policy and, therefore, the posting order is in accordance with the transfer policy of the respondents.

3. The applicant had filed OA No.3562/2015 against his transfer order dated 26.08.2015 posting him to Patiala. The OA was dismissed vide order dated 5.09.2016 holding that the transfer/posting of the applicant was in accordance with the posting guidelines dated 26.05.2008, subsequent clarification dated 18.09.2014, HQ convening order dated 20.06.2015 and in light of the law laid down by the Hon'ble Supreme Court in **State of U.P. Vs. Goberdhan Lal** (2004) 3 SLJ 244(SC), Delhi High Court in **Vinod Kumar, JE (OS&C) etc. Vs.**

**Union of India and Others etc.** (Writ Petition (Civil) 3772/2016) and connected writ petition and Tribunal's order in **Sunil Kumar Mishra Vs. Union of India and Others** (OA No. 3210/2015).

4. The applicant approached the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 8298/2016 and the matter was remanded back to the Tribunal with further direction that the interim protection granted to the petitioner shall continue till the hearing of the OA or till such time the Tribunal modifies the order. The matter has, therefore, come up before us in compliance of the order of the Hon'ble High Court as above.

5. The prayers in this OA are as follows:-

- a) Set aside the posting-cum-transfer order dated 26.08.2015 qua applicant.
- b) To declare the action of respondents in posting the applicant from Delhi to GE (South) Patiala as illegal and arbitrary and direct the respondents to follow the existing policy dated 26.05.2008.
- c) To allow the OA with cost.
- d) To pass and other further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

6. The grounds based on which the prayer has been made are the following:

- (1) The order dated 26.08.2015 has been issued by incompetent authority, as applicant can be transferred by CE (WC) with due approval of competent authority, whereas the impugned transfer order has been issued without such approval.

- (2) The impugned order dated 26.08.2015 has been issued as per letter dated 26.05.2008 as well as clarification dated 18.09.2014, without considering that the letter dated 18.09.2014 was already withdrawn vide letter dated 31.03.2015. It is stated that when the main order itself was withdrawn, how the transfer order could be issued on the basis of such withdrawn order.
- (3) As per para 56 of the existing policy contained in letter dated 26.05.2008, the transfer order should be issued in March-April whereas the applicant's transfer order has been issued in August.
- (4) According to the policy inter complex posting can be done only to meet the exigency of services i.e. to meet the deficiency at a particular complex and to adjust the surplus. According to the applicant, two persons have been wrongly shown deficient at the present place of posting.
- (5) As per letter dated 31.03.2015, the minimum tenure in one complex is 6 years, whereas the applicant has completed only two years.
- (6) As per the policy dated 26.05.2008, no JE who has completed more than 52 years of age can be posted out and the applicant is above 52 years of age.
- (7) According to para 35-D of the policy, preference was required to be given to volunteers and newly recruited employees. Though newly recruited

employees were available, the applicant was sent out.

- (8) Similarly placed persons with longer stay have been ignored and the applicant posted out. It is argued that this is violation of the Articles 14 and 16 of the Constitution inasmuch as the respondents have not transferred the longest stayee.
- (9) The respondents failed to consider that the applicant has been transferred 6 times in a period of near about 14 years.
- (10) The respondents have ignored the law laid down by Hon'ble Supreme Court in the case of **T.S.R.Subramaniam** Vs. **UOI** based on which DOP&T issued OM dated 09.01.2014 stating therein that all the cadre controlling authorities should frame policies in respect of Group A, B and C officers for effecting transfers but no such policy have been framed by the cadre controlling authority.

7. The applicant further relied on the following:-

- (1) **Sarvesh Kumar Awasthi** Vs. **U.P. Jal Nigam and Others** (2003) 11 SCC 740) - the Hon'ble Supreme Court has held as under:-

"3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers

concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.”

- (2) Order dated 13.05.2016 in OA 3210/2015 in which the Tribunal made the following observation:

“Any policy made by Government (respondents) is not a single day job. Before making a policy various discussions on various problems take place and after putting deliberate consideration any policy is made. In this eventuality, when any policy is made and some guidelines are framed, it is for the respondents to follow as it is made by themselves, and if they have to deviate from their own policy, they have to give a reason as to what circumstances have necessitated for deviation from their own guidelines framed.”

It is argued that since the respondents have not undertaken the transfer strictly in terms of the policy, as pointed above, the order is not a legal order.

- (3) Letter dated 24.09.2015 issued by Director (for E-in-C) of Integrated HQ of MoD (Army), Engineer-in- Chief’s Branch addressed to HQ CE WC and copy to all Chief Engineers which contained the following instructions:-

- “1. Ref your HQ letter No. 30303/JE (CIV)/CML-15/20/EIC(1) dt 26 Aug 2015.
2. It is observed that the posting orders have been issued by your HQ considering the instructions issued by this HQ vide letter No. B/20148/PP/E1C(1) dt 18 Sep 2014.
3. It may please be noted that the instructions have been issued by this HQ vide letter no.B/20148/PP/FR1/E1C(1) dt 24 Apr 2015 as amended vide letter no. B/20148 /PP/51/E1C(1) dt 14 May 2015. In Para 5 of this HQ letter no.B/20148/PP/FRI/E1C(1) dt 24 Apr 2015, it is mentioned that this HQ letter no.B/20148/PP/E1C(1) dt 18 Sep 2014 has been superseded.

4. In the light of the above the complete posting order be reviewed as per the instructions issued by this HQ vide letter no. B/20148/PP/FR1C(1) dt 24 Apr 2015 as amended vide letter no. B/20148/PP/51/E1C(1) dt 14 May 2015.
5. In view of above, the complete posting order be cancelled and a confirmation be given by return FAX.
6. The similar instructions also applies to the postings in respect of JE (E/M) and JE (QS&C) if any issued.
7. This has the approval of DG (Pers)."

(4) Letter dated 17.05.2016 addressed again by the same authority to the same addressees which contained the following instructions:

- "1. Ref E2 Wks (AF) letter No.27025/Gen/15/T&C/E2 Air dt 19 Apr 2016 and this HQ E2 (Army) letter No. A/00105/Staff Corres/E2 Army/Adm dt 25 Apr 2016 (copy of both letters enclosed)
2. The application in respect of Ex JC-153691N Shri MS Malik, JE (Civ) and Ex JC-156341M Shri Madan Lal Sharma, JE (Civ) has been forwarded by the respective Dte for cancellation of posting/transfer issued by your HQ which has been duly recommended by DDGW (AF) and ADGW (Army) of this HQ.
3. It is requested to consider the points brought out by the individuals and take necessary action as per instruction/posting guidelines on the subject and requested therein."

It is stated that despite again this clear cut order, no action was taken.

(5). The transfer order violates the following provisions of the policy which are quoted below:

32. Posting from peace to peace stations/complexes

An individual who is to move from one peace station/complex to another peace station/complex to make room for a tenure completed individual will be posted to one of his/her three choice stations/complexes, as far as possible. This facility will not be available to other type of postings.

57(a). No JE shall spend more than six years continuously in any station/complex at a time, with not more than 03 years in any one unit at a time.

56. Due to exigencies of service, situation may arise when officers/works units are asked to move enblock to other locations. In such cases the personnel to be moved will be selected based on their length of service in the station/complex i.e. the longest stayee will moved by making local adjustment.

36(d) The preference will be given to volunteers and newly recruited employees including Ex-servicemen and those recruited under DCRE by E1A should be posted to stations having more deficiency.

38. In order to maintain manning level in all units/formations evenly within the Command or vis-à-vis Command, the longest stayee in the particular post/grade will be transferred from one region to another. For this purpose the stations/complexes and approximate number of vacancies available, will be published by CEs Command to enable the longest stayee to opt for three stations/complexes of choice from amongst such regions. If the number of optees for a particular region is more than the number of vacancies available **posting will be considered in the order of seniority i.e. longest stayee will get first opportunity to be adjusted as per option given.** Those who could not be accommodated at the station/complex of their choice for want of vacancies will be posted as per job requirement."

The learned counsel for the applicant primarily argued that as per the policy those persons should be transferred first who have longest stay in that particular station, in this case Delhi.

8. Counsel for the respondents pointed out that:

- (i) The transfer has been strictly according to the guidelines of 26.05.2008 and the relevant

paragraphs have also been mentioned in order dated 26.08.15 which are para 34, 35 and 37 of the policy guidelines, quoted below:

34. (a) If a person applies for posting from one Command to another, the Command to which he belongs shall ascertain his acceptability from the Command to which he wanted to be posted without mentioning any reference to E-in-C's Branch. In case of agreement between the two CE's Command, the relieving Command will issue the posting order under intimation to all concerned formations.

(b) Validity of cases once approved by the Compassionate Board will remain for one year. In case the individual is not posted to his choice station/complex during this period he/she is required to forward an application for revival of his/her claim on expiry of the validity of the Board. If the revival applications are not received, the names of such individual included in the Compassionate Board will be deleted from the list.

35. Command Manning Level posting (CML) is a type of posting on Administrative Grounds in organizational interests. CML involves parity of manning levels between different CE's Command or manning as per actual ground requirement, dictated by work load. It has been noticed from the past that the satisfaction level on account of job requirement is vastly varying from one CE Command to another basically on account of the geographical location and the quality of life therein.

37. Inter-Command Posting

(a) Inter command posting will be for CML tenure postings & Compassionate grounds posting. The postings will be issued by CE's Command.

(b) All the inter command postings ordered in the interest of organization for sharing shortages should protect interest of the individuals and will be considered as tenure stations for the purpose of tenure and repatriation.

(c) CE NC will remain Parent Command of CE Pathankot Zone."

- (ii) The posting order dated 26.08.2015 is an inter-complex posting (Command level) and is governed by the paragraphs of the policy quoted above.

The gist of these paragraphs is that these postings are dictated by work load in the interest of the organization for sharing shortages.

9. It is stated by the learned counsel that those who are seniors to the applicant are on a completely different footing and many of them are on hard tenure posting in Jammu and Kashmir, Assam and Andaman & Nicobar Islands etc. The status of these JEs are as follows:-

Ser No	Name & Design	Remarks
(a)	Sh K P Singh, JE (Civ)	The individual was in promotion zone and presently promoted & posted on Hard Tenure as AGE (B/R) to GE (AF) Srinagar, J&K, vide DG Pers, (E-in-C's Branch letter No. MES/79/2016 dated 13 Oct 2016.
(b)	Sh.Manmoon Ahmed,JE (Civ)	The individual was in promotion zone and presently promoted & posted on Hard Tenure as AGE (B/R) to GE (AF) Chabua, Assam, vide DG Pers (E-in-C's Branch letter No.MES/79/2016 dated 13 Oct 2016
(c)	Sh. Amit Govil, JE (Civ)	The individual was in promotion zone and presently promoted & posted on Hard Tenure as AGE (B/R) to GE (P) No.2 Leh, J&K, vide DG Pers (E-in-C's Branch letter No. MES/79/2016 dated 13 Oct 2016.
(d)	Sh. Sandeep Bhardwaj, JE (Civ)	The individual was in promotion zone and presently promoted & posted on Hard Tenure as AGE B/R to GE (1) Campbell Bay, Andaman & Nicobar Islands, vide DG Pers, (E-in-C's Branch letter No. MES/79/2016 dated 13 Oct 2016.
(e)	Sh Rajendra Kumar, JE (Civ)	Individual was not considered by the BOO on the grounds of treatment of his mentally retarded son.
(f)	Sh Gajendra Singh, JE (Civ)	Individual was considered for posting but posting could not be carried out due to pending court case.

(g)	Sh Raj Kumar, JE (Civ)	<p>i. In complex posting, Ambala complex as a whole was having deficiency of 03 JEs (Civ). Accordingly no posting was issued in Sep 2015.</p> <p>ii. Now, individual has already been posted to GE (AF) Bhisiana vide HQ CE Western Comd letter No.30303/JE(Civ/CML-16 /04 /E1C (1) dt 22 Apr 2016.</p>
(h)	Sh Balwinder Singh, JE (Civ)	<p>i. In complex posting, Ambala complex as a whole was having deficiency of 03 JEs (Civ). Accordingly no posting was issued in Sep 2015.</p> <p>ii. Now, individual has already been posted to GE (AF) Bhisiana vide HQ CE Western Comd letter No.30303/ JE(Civ/CML-16/04/E1C (1) dt 22 Apr 2016.</p>
(i)	Sh.Amit Verma, JE (civ)	<p>i. In complex posting, Ambala complex as a whole was having deficiency of 03 JEs(Civ). Accordingly no posting was issued in Sep 2015.</p> <p>ii. Now, individual has already been posted to GE (P) (AF) Sirsa vide HQ CE Western Comd letter No.30303/JE(Civ)/CML-16/04 /E1C (1) dt 22 Apr 2016.</p>

Ser No	Name & Design	Remarks
(i)	315842 Sh K P Singh, JE (Civ)	Promoted as AE (Civ) and presently posted in E-in-C's Branch.
(ii)	315849 Sh.Manmoon Ahmed,JE (Civ)	Promoted as AE (Civ) and presently posted in CE Delhi Zone.
(iii)	315851 Sh.Amit Govil, JE (Civ)	Promoted as AE (Civ) and presently posted in CE (AF) WAC, Palam.
(iv)	315838 Shri Sandeep Bhardwaj, JE (Civ)	Promoted as AE (Civ) and presently posted in CE (AF) WAC, Palam.

10. Learned counsel for the respondents also clarified that Patiala, where the individual has been posted is not a tenure station. Moreover, those over 52 years can also be posted for a short tenure but none will be retained at tenure station/complex beyond the age of

55 years. Learned counsel for the respondents also filed order of this Tribunal in OA No. 2143/2015 with batch cases, pronounced on 18.04.2016 which was also filed by JEs like the applicant and against their transfer order dated 20.05.2015 to tenure stations. The Tribunal held as follows:-

“In catena of judgments, Hon’ble Supreme Court has ruled that transfer of an employee is an incidence of service and lies exclusively within the domain of the employer. Courts/Tribunals should not interfere in the same until and unless there has been violation of any statutory rule or the transfer is found to be as a result of any mala fide. Reliance can be placed in this regard on several judgments, such as, **Rajinder Singh Vs. State of UP**, 2009 (15) SCC 1351 and **Shilpi Bose (Mrs) and Ors Vs. State of Bihar and Ors.**, 1991 Supp(2) SCC 659. In the instant case, no mala fide against the respondents has been alleged. The only claim made by the applicants is that their posting was in violation of the policy, which also has been vehemently denied by the respondents. On their part, the applicants have failed to advance any evidence in support of their claim.

The OA was dismissed.”

11. It is stated by learned counsel that in OA 2179/2016 (**Ranbir Singh Attri, LDC Vs. UOI & Others**), order dated 06.09.2016, again transfer order in the same organization of an LDC was sought to be under challenge on the ground that each individual has to undergo his tenure posting which the applicant had not completed and para 35(d) of the transfer policy which states as follows:-

“36(d) The preference will be given to volunteers and newly recruited employees including Ex-servicemen and those recruited under DCRE by E1A should be posted to stations having more deficiency”.

This OA was dismissed in view of the law settled by the Hon’ble Supreme Court in S.C. Saxena (supra) in which it has been held by their Lordships that any person who is aggrieved by any order of transfer has to first join the new place of posting and then make a

representation before the competent authority. Similarly, OA no. 2180/2016 was also disposed of vide order dated 06.09.2016 in an identical matter.

12. Heard the learned counsels and perused the pleadings and the judgments cited by both sides.

13. The Hon'ble Supreme Court has laid down in several judgments that transfer of an employee is an incidence of service and lies exclusively within the domain of the employer and Courts/Tribunals should not interfere in the same until and unless there has been violation of any statutory rule or the transfer is found to be as a result of any mala fide. The relevant judgments have already been quoted above and these need not be repeated. In S.C. Saxena (supra), the Hon'ble Supreme Court had settled the law that the transferred employee must join the new place of posting and then represent, if he chooses. Clearly the applicant has no respect for the law settled by the Hon'ble Supreme Court.

14. The main contention of the applicant seems to be that as per the policy, those having longer stay in the particular station have to be considered for command posting first. Let us deal with this contention. An employee joins the service and let us say there are 12 people senior to him. A requirement arises for command posting due to shortage/surplus division and in exigency of administration. According to the applicant the senior most has to be sent. If there is again such requirement, the person next senior is sent and so on. This has to happen according to the applicant even if the seniors have held command level/ tenure postings earlier. This logic is absolutely flawed

and we reject this argument of the applicant. In any case, as the respondents have shown, many of the so called seniors are on hard tenure posting in J&K, Assam and Andaman and Nicobar Islands etc., some have been promoted as AE and there are specific reasons assigned for the rest. So there is no ground to claim even discrimination or malafide. The respondents have also clarified that the so called six transfers which the applicant is claiming were within Delhi.

15. On the question of competence, the order dated 26.08.2015 has been issued by the Chief Engineer in accordance with the policy. Para 64 of the policy guideline states as follows:-

“64. Irrespective of what is stated here-in-before, CE Western Command will have over riding power to cancel, modify or hold in abeyance posting orders issued by CE Zones/CWsE.”

These guidelines are issued by Major General, Chief Engineer and, therefore, this ground of the applicant is baseless. The question of withdrawal of letter dated 18.09.2014 is not relevant as order dated 26.08.2015 has been issued clearly in terms of para 34, 35 and 37 of the policy guidelines which permits the respondents to issue such transfer order.

16. As regards the contention that transfer order should only be issued in March-April, it is a general guideline. Surpluses, shortages and administrative exigency can happen and it does not mean that the respondents will have to wait till coming March or April in the next year if such an exigency arises in May. This is a ridiculous argument and cannot be accepted. Similarly minimum tenure in one complex is subject to administrative exigencies. On the ground of applicant being

more than 52 years of age, the respondents have clarified that officer can be considered till the age of 55 years.

17. As regards learned counsel for applicant reference to OM dated 09.01.2014, we have already clarified that the transfer was in accordance with the existing policy of the Government framed in 2008 and provisions of that shall be binding and rule the field.

18. We, therefore, find absolutely no merit in this Original Application. The OA is dismissed. MAs also stand disposed of.

19. We are rather surprised that the applicant, who has served in the Army has chosen to defy a genuine transfer order which is against the discipline that an Army officer is well known for. To our mind, this is nothing but a frivolous litigation entered into by the applicant and in order to discourage such defiance of routine transfer orders, we impose a cost of Rs.25,000/- (Rupees Twenty five thousand only) on the applicant.

**( P.K.Basu )**  
**Member (A)**

**( V.Ajay Kumar )**  
**Member (J)**

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