

OA.No.170/00189/2017/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00189/2017

DATED THIS THE 06TH DAY OF NOVEMBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Lankesh Fulchand Tembhurkar
 S/o.Fulchand Maroti Tembhurkar
 Aged 33 years
 Office Address:
 Defence Civilian/Chowkidar
 Now at: No.3 Training Battalion (MT)
 2 A.S.C.Training Centre
 Bangalore-560 007.
 Permanent Address:
 At Tuyypar, P.O. Belda
 Tah Ramtek, Dist.Nagpur
 Maharashtra-441401.Applicant

(By Advocate Sri B.Veerabhadra)

Vs.

1. Union of India
 Represented by Secretary
 Ministry of Defence
 South Block, Central Secretariat
 New Delhi-110011.
2. The Commandant
 No.2 ASC Training Center
 Bangalore-560 007.
3. Director General of Supplies & Transport
 Quartermaster General Branch
 Integrated Headquarter of MoD (Army)
 Sena Bhavan
 New Delhi-110 105.
4. Dy.Comdt.,
 No.2 ASC Training Center
 Bangalore-560 007.Respondents

(By Advocate Sri M.Rajakumar)

O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking a direction on the respondents to consider his application for transfer from Bangalore to Nagpur on compassionate ground without insisting on transfer on mutual basis.

2. It appears from the records that the applicant was appointed in December, 2012 on temporary basis as Chowkidar in A.S.C.Centre, Bangalore. He was put under probation for two years i.e. up to December 2014. However, it appears that his probation was extended by another six months by the respondents on account of unsatisfactory performance and his probation was completed in June 2015. According to the applicant, he submitted a representation to the 4th respondent in January 2015 seeking transfer to Nagpur on compassionate grounds. He submits that his parents met with a road accident in 1995. While his father died on the spot, his mother who was severely injured is under constant medical treatment. In view of the medical condition of the mother, he requested for transfer to Nagpur on compassionate ground which has not been considered by the respondents as yet. He further submitted representations on 24.07.2015, 30.12.2015 and 28.04.2016 but the same are yet to be considered.
3. The stand of the respondents as evident from the reply statement is that the application for transfer on medical grounds was received from the Headquarters but the same was returned with the observation that the Medical certificate needs to be obtained from Government Hospital and countersigned by CMO. The applicant is also having a younger brother who is looking after his mother. The applicant should also need to submit a certificate stating employability status of his younger brother and an affidavit that his

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mother is solely dependent on the applicant. But no further communication has been received from the applicant till date. The respondents further submitted that the applicant's mother met with an accident in 1995 and after 17 years the applicant has joined as a defence civilian employee with an undertaking to serve anywhere in India. Contrary to said undertaking the applicant even before the completion of his probation period started submitting representations for posting at hometown on medical grounds. Further the ASC centre is authorised 19 Chowkidars and posted with only 14 and there is deficiency of 25% staff. Hence his claim for compassionate posting could not be considered.

4. The applicant has also raised a contention that his request was not forwarded to the Headquarters and while others who had submitted the applications at a later stage had been forwarded. Moreover even though the respondents have raised the issue of shortage of Chowkidar, he has been engaged in other activities like dispatcher, gardener etc. and hence the point raised regarding shortage of personnel is not justified.
5. The respondents have submitted that on completion of probation period, the applicant had made request for a married accommodation and stayed with his family from 2014 to 2016. If the applicant is so concerned about the welfare of his mother he could have kept his family at home town to look after his ailing mother. But the applicant continues to stay with his family in Bangalore while his mother is left at home station. Moreover Bangalore is having sufficient medical treatment and he could have brought and kept his mother along with him in Bangalore. On the issue of discrimination mentioned by the applicant, they submit that there is a Civilian Welfare Committee (CWC) based on whose recommendation, it was decided to forward transfer applications of two

staff to Integrated Headquarters of Ministry of Defence every year so that the requirement of the staff is fulfilled without heavy deficiency to the organisation.

Further Chowkidar comes under the category of Multi-Tasking Staff(MTS) and as such he was temporarily assigned other jobs also. The transfer of the applicant to the home town will be considered on mutual transfer basis.

6. During the hearing, both sides made submissions on the lines mentioned in the OA, rejoinder, reply statement as well as additional reply which has been highlighted in the preceding paras.
7. From the records as well as submissions made by both sides that the issue pertains only to transfer of the applicant to his hometown on compassionate grounds. The applicant cited his mother's illness due to an accident while seeking transfer to Nagpur. It has been pointed out by respondents that the accident took place in 1995 i.e almost 20 years back and 17 years after the accident, the applicant joined the service having All India transfer liability. Therefore, it is to be accepted that the applicant had joined the post considering all the aspects and cannot simply ask for posting to hometown immediately after joining a post. It is also to be noted that while the applicant cited his mother's illness as primary reason for seeking transfer, he requested for married accommodation and is staying at Bangalore with family. As highlighted by the respondents, the applicant would have left his family with his mother in case the situation warrants his presence at home town. Moreover he has a younger brother to look after his mother.
8. Therefore the reasoning given by the respondents appear to us as quite justified. It has been held by the Hon'ble Apex Court in several cases that the Courts should not interfere in the matter of transfer unless it is in violation of any mandatory statutory rules and on the ground of malafide. Further a

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Government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to the other. Interference by the Courts in the transfer matter should be made only in exceptional circumstances. Considering the factual position in the present OA, we are not inclined to interfere with the decision of the respondents.

9. The respondents have also raised the issue of shortage of staff for which they are unable to send the applicant's case on compassionate ground but are willing to consider his case on mutual transfer basis so that there would not be the issue of shortage of staff. Therefore, it is up to the applicant to submit application on mutual transfer basis.
10. On detailed consideration of the facts and circumstances of the case, we are of the view that the contention made by the applicant does not merit any consideration and hence the OA being devoid of any merit is dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in the OA.170/00189/2017

Annexure-A1: Copy of the appointment letter dated 17th December 2012

- Annexure-A2: Copy of the Hospital records of the applicant's mother
- Annexure-A3: Copy of the letter dated 31.12.2016 addressed to the respondent No.2 seeking permission for filing case
- Annexure-A4: Copy of letter dated 24.7.2015 requesting transfer on compassionate ground
- Annexure-A5: Copy of letter dated 30.12.2015 requesting transfer on compassionate/medical ground
- Annexure-A6: Copy of letter dated 28.4.2016 requesting transfer on compassionate/medical ground

Annexures with reply statement:

- Annexure-R1: Copy of temporary order
- Annexure-R2: Copy of confirmation order
- Annexure-R3: Copy of letter dated 19.3.2016
- Annexure-R4: Copy of movement order
- Annexure-R5: Copy of movement order

Annexures with rejoinder:

-Nil-

Annexures with additional reply statement:

-Nil-
