

OA.No.170/00448/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00448/2017

DATED THIS THE 21st DAY OF MARCH, 2018

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

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

B.M.Vasudeva Murthy
 Aged about 52 years
 Office Superintendent
 Pers.No.1386698K
 O/o. Record Office
 Madras Engineering Group
 Sivanchetty Garden Post
 Bangalore-560042.Applicant

(By Advocate Sri.S.Sugumaran)

Vs.

1. Union of India
 By its Secretary
 Ministry of Defence
 South Block, DHQ Post Office
 New Delhi-110001.
2. The Deputy Director
 O/o.The Additional Directorate General
 MP/MP P-8 [I of R]
 Adjutant General Branch
 Integrated HQ of MOD (Army)
 Army Headquarters
 West Block III, RK Puram
 New Delhi-110 066.
3. Officer-in-Charge Records
 Madras Engineering Group and Centre
 Pin-900 493
 C/o.56 APO.
4. Chief Record Officer
 Records MEG, Pin-900493
 C/o.56 APO.Respondents

(By Advocate Shri K.Gajendra Vasu)

O R D E R

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

The applicant aggrieved by the order of his transfer vide OM dtd.10.07.2017 has filed the present OA seeking the following relief:

- i. *To set aside the order No.A/21018/P&T/MP-8[1 of R] (C), d.10th July, 2017 issued by Respondent No.2 at Annexure-A5.*
- ii. *To set aside Order No.A/21018/P&T/MP-8 [1 of R] (C) dt.04th Aug., 2017 issued by Respondent No.2 at Annexure-A10.*
- iii. *To direct the respondents to retain the applicant at Record Office MEG and not to post outside, in the interest of justice and equity.*

2. According to the applicant, he joined the respondent department as Lower Division Clerk on 28.7.1988 and got promotion to Upper Division Clerk w.e.f. 06.04.2000 and was promoted as Office Superintendent on 01.07.2013(Annexures-A1, A2 & A3). In the year 2015, the respondents carried out a Cadre Review and pursuant to that a revised authorized strength of Defence Civilian Employees in the Record Office was issued(Annexure-A4). Based on the above and on the Revised PE(Permanent Establishment) on being adopted by Record Office, the surplus Office Superintendents were posted out to deficit Record Offices vide order dt.10.7.2017(Annexure-A5). The applicant claimed he is senior both in the All India Seniority list as well as in the seniority list of Record Office MEG and within the revised authorisation strength(3). Therefore, aggrieved by the impugned transfer order he made representation on 18.7.2017 which was not considered vide order dtd.04.08.2017. Aggrieved by the same, the applicant has approached this Tribunal in the present OA seeking the relief as mentioned above.

3. According to the applicant, in terms of the Army Order of Aug.2001, the junior person is to be declared surplus when the PE has been reduced. Hence

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4. The respondents in the reply statement have submitted that right from his appointment as LDC in July 1988 till he became Office Superintendent and thereafter till date, the applicant has been continuously serving at Bangalore i.e for the last 29 years. Consequent upon reduction of authorised post of Office Superintendent in the present unit, he has been transferred to another unit along with many others. Immediately on transfer, he applied for leave on medical ground and got admitted in hospital and subsequently obtained a stay. On his contention that the junior most person in each category shall be posted out, the respondents say that as per the Army HQ Policy dtd.09.06.2017(Annexure-R4) regarding Management of Civilian Manpower in Army, it has to be ensured that the Civilian Employee is not moved from one station to another too frequently and there is no requirement of taking a willingness certificate from an individual to execute a posting. The posting has been ordered on the administrative grounds and considering his longest residual service i.e. he is due for retirement on 30.09.2025 whereas rest all are having very less service. Ladies were also exempted. Moreover, the applicant is a civilian employee who has All India Service Liability and hence cannot question his transfer.
5. The applicant has filed a rejoinder in which he says that he was appointed in the MEG(Madras Engineering Group) which is located only at Bangalore and there is no All India Service Liability up to the post of Office Superintendent. Only in the post of Civilian Gazetted Officer, there is All India Service liability.

6. The respondents have filed an additional reply statement in which they submitted that the employee is having All India Service Liability from the day of appointment up to the date of retirement. Further the Office Supdt. having longest residual service in his Records vis-à-vis his counterparts who are placed on seniority roll of his records have been posted out. The ladies are being exempted. The applicant whose date of retirement being 30.09.2025 is therefore posted to Army Air Defence Records, Gopalpur(Odisha)
7. We have heard the Learned Counsels for both sides. The Ld.Counsel for the applicant while highlighting the points made in the OA stated that in the case of surplus staff, the junior most should have been transferred. Moreover, the applicant does not have maximum station seniority. He is also having medical problems. Therefore, he should not be transferred out from MEG Office and the junior most should have been transferred in his place. Therefore, he submitted that the applicant should be granted the relief prayed by him and retained at Bangalore only.
8. The Ld.Counsel for the respondents, on the other hand, submitted that there was a revision in the cadre strength and as per the details produced along with reply, there are 99 surplus Office Supdts. However, in six stations there exists acute deficits and persons less than the revised strength. Therefore, steps have been taken to transfer employees to the deficit units. Further it was decided to transfer a person who have maximum station seniority. In the seniority roll, the applicant is placed at Sl.No.3 and the person at Sl.No.1 has already retired on superannuation and person at Sl.No.2 has less than 2 years of service left. It was also decided not to transfer the lady employees. Therefore, the applicant who have maximum station seniority and is due to retire only in September, 2025 has been transferred out to a deficit unit.

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Hence, there is nothing irregular or unjustified in the action taken by the respondents in transferring the applicant who has been at Bangalore for last 29 years.

9. We have carefully considered the facts of the case and submissions made by either side. It is an admitted fact that the applicant who was working as Office Supdt.(OS) has been in Bangalore since his joining as LDC and have been working at Bangalore for the last 29 years. It is evident from Annexures-R4 & R5 communications that the respondents have prepared a Revised Authorised Strength of Civilian Employees in Records Offices for OSs, UDCs and LDCs and 99 surplus OSs have been indicated unit wise. However, out of 45 units of record offices in case of 6 record offices there is deficiency in the strength of Office Supdt. numbering about 12. Therefore, the respondents have taken action to transfer 12 OSs from surplus units to the deficit units. It also appears from the seniority roll of Office Supdts. placed at Annexure-A7 that there are 8 OSs in the record office of MEG out of which 5 are woman employees. Out of the remaining 3 employees two are having only 2 years or less of service left whereas the applicant has more than 7 years of service left. The stand taken by the respondents to exclude the lady officials and also the persons who are about to retire soon from the purview of the transfer appears to us as justified. The applicant has highest station seniority since the persons at Sl.No.1 in the seniority list has already retired and Sl.No.2 has less than two years of service left. Therefore, he has been transferred to another unit. We do not find anything wrong in the approach of the respondents in this regard.
10. The applicant has raised another contention that he does not have All India Service Liability. We are not inclined to agree to the said contention since the

authorised cadre strength has been prepared for all the units and a consolidated list has been prepared. Since there is deficiency of manpower at some units as compared to other units, there has to be re-allocation. An employee cannot take a stand that because he has been working at a particular station, he should not be transferred to any other place. In regard to the contention of the applicant that he is under constant medical treatment, we do not agree that to be a valid ground for refusing transfer as proper medical facilities is available at other places as well.

11. It has been held by various Courts that transfer of an employee is part of his service conditions and the Courts should not interfere unless the order of transfer is shown to be an outcome of a *mala fide* exercise of power or violative of any statutory provision or passed by an authority not competent to do so. The Hon'ble Apex Court in *State of UP and Others vs. Gobardhan Lal* [(2004) 11 SCC 402] held vide para-7 & 8 as follows:

*7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a *mala fide* exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by *mala fides* or is made in violation of any statutory provision.*

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they

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*are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of *mala fides* when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.*

12. Further in case of *Shilpi Bose and others vs. State of Bihar and others* [AIR 1991 SUPREME COURT 532] in Civil Appeal No.5418 of 1990, the Hon'ble Apex Court vide para-4 of its order held as follows:

4. *In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department.*

13. We do not find anything *mala fide* or unjustified in the action taken by the respondents in transferring the applicant from a surplus unit to a deficit unit which would necessitate any interference by this Tribunal. Therefore, we hold that there is no merit in the contention made by the applicant and hence the OA being devoid of any merit stands dismissed. The interim order of stay stands vacated. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

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

Annexures referred to by the applicant in OA No.170/00448/2017

Annexure A1: Appointment order of LDC dt.28.7.1988
Annexure A2: Confirmation order dt.14.3.1991
Annexure A3: Promotion order to OS dt.13.11.2013
Annexure A4: Revised authorisation strength dt.12.7.2017
Annexure A5: Impugned posting out order
Annexure A6: Seniority roll of OS in Army Records Offices
Annexure A7: MEG seniority roll of OS
Annexure A8: Representation dt.18.7.2017 with MC
Annexure A9: Forwarding of representation on 21.7.2017
Annexure A10: Impugned rejection order dt.04.08.2017
Annexure A11: Copy of extract of Army Order 22/2001
Annexure A12: Army HQ direction dt.05.01.2001

Annexures with reply statement:

Annexure-R1: Transfer of Employees
Annexure-R2: Request for cancellation of Transfer
Annexure-R3: Transfer of Employees
Annexure-R4: Management of Man Power
Annexure-R5: Revised strength of defence Civil Clks.

Annexures with rejoinder:

-Nil-

Annexures with Addl.reply statement:

Annexure-R1: Management of Civ.Man Power
Annexure-R2: Posting/Transfer of Def.Civ. Employees
Annexure-R3: Revised authorised strength of defence Civilian Employees
Annexure-R4: Communication dtd.31.8.2017
Annexure-R5: Statement of service
Annexure-R6: Civilian Staff Part II orders
