

CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH BENCH

OA No. 060/00766/2017 & MA No. 060/01646/2017 **Date of decision- 29.01.2018**

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)

MES NO. 314658 Surinder Pal, UDC, Aged 58 years Group C working in the office of GE (AF) Adampur Distt. Jalandhar.

...APPLICANT

BY ADVOCATE : Mr. Shailendra Sharma.

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block New Delhi.
2. The Engineer in Chief, Integrated HQ of MOD (Army), Kashmir House, New Delhi.
3. The Chief Engineer, Western Command, Chandimandir.
4. Commander Works Engineer (AF) Chandigarh.
5. Garrison Engineer (AF) Adampur.

...RESPONDENTS

BY ADVOCATE: Mr. Ram Lal Gupta.

ORDER

SANJEEV KAUSHIK, MEMBER(J):-

The applicant has assailed the order dated 08.07.2017 (Annexure A-6) whereby his representation for last leg posting at Adampur in view of Clause 58 of the Guidelines of May, 2008 (Annexure A-1) has been declined on the ground that the applicant had not completed 57 years of service as on 22.04.2016 when transfer order dated 22.04.2016 (Annexure A-2) was issued as the same is totally in contradiction to letter dated 21.06.2017 (Annexure A-5). He further sought issuance of direction to the respondents to continue him at Adampur being last leg posting.

2. Facts which led to filing of the present O.A are that the applicant joined the services of the respondents as Peon in the year

1987 and was promoted as LDC in the year 1997. He is now working as UDC under respondent no. 5. On 22.04.2016, respondent no. 3 issued CML posting whereby the applicant was transferred from GE (AF) Adampur to GE(P) AF Suratgarh. It is the case of the applicant that while issuing transfer order, respondents did not bother to invite options from individuals as prescribed in the transfer policy. Despite issuance of transfer order vide Annexure A-1, applicant was not relieved by respondents due to shortage of staff in the office of respondent no. 5. Since applicant is going to retire on attaining the age of superannuation on 31.07.2019 and has only two years and 6 months of left over service, therefore, he made a representation dated 02.12.2016 to respondent no. 3 in terms of Clause 58 of the Guidelines of 2008 to allow him to continue at his present place of posting. When the same was not decided, he approached this Court by filing O.A No. 060/00678/2017 which was disposed of vide order dated 14.06.2017 (Annexure A-4) at initial stage with a direction to the respondents to decide pending representation by passing a reasoned and speaking order within one month. Till they decide the representation, status quo was ordered to be maintained regarding posting of the applicant. It has also been averred that after passing of Annexure A-4, respondent no. 2 issued letter dated 21.06.2017 to all the Chief Engineers including respondent no. 3 whereby it was conveyed that no CML posting shall be issued till further orders. Despite conveying the above communication, his representation has been turned down vide impugned order dated 08.07.2017 on the ground that the applicant had not completed 57 years of service when transfer order was passed. Hence the present O.A.

3. Mr. Shailendra Sharma, learned counsel for the applicant in furtherance of above plea vehemently argued that action of the respondents in rejecting his representation on the plea that on the date of transferring the applicant i.e. 22.04.2016, applicant had not completed 57 years of age, is totally illegal and arbitrary. He further submitted that the applicant was never relieved to join his new place of posting and continued to work at Adampur due to shortage of staff and he had already crossed the age of 58 years when his representation was considered and turned down by the respondents, therefore, the same is in violation of guidelines and the respondents cannot be allowed to turn down his request by taking date as 22.04.2016 when he was transferred but ignoring this fact that despite his transfer he continued to perform duties at Adampur and had crossed the age of 57, thus, his case is covered under the policy.

4. The respondents have resisted the claim of the applicant by filing detailed written statement wherein they have submitted that the applicant has concealed the material fact from this Court that original order of his transfer dated 22.04.2016 was earlier considered by this Tribunal in O.A No. 060/00821/2016 which was dismissed vide order dated 07.09.2016. By concealing this fact, the applicant filed second petition and got favourable order from this Court to decide his pending representation which the respondents have now turned down vide impugned order. It is therefore, prayed that O.A be dismissed.

5. On merit, it is submitted that on the date of implementation of CLM, the applicant was less than 57 years of age, therefore, he could not be allowed to continue in terms of Clause 58 of the 2008 Policy.

6. In support of above, Mr. Ram Lal Gupta, learned counsel for the respondents submitted that there is a communication dated 21.06.2017 addressed to all Chief Engineers for not implementing the CML postings is also otherwise as that letter talks of not implementing the subsequent order but not that of applicant. He, therefore, prayed that OA be dismissed.

7. Having deeply considered the crux of projected ground, we are in agreement with the submission made at the hands of the respondents that the applicant has concealed the material fact that against his transfer order dated 22.04.2016, he was before this Court in O.A No. 060/00821/2016 which was dismissed on merit vide order dated 07.09.2016. Though in subsequent petition i.e. O.A No. 060/00678/2017, the applicant had sought issuance of direction to decide his pending representation which was filed subsequent to earlier O.A where he impugned his order of transfer dated 22.04.2016. In that petition, the applicant has not disclosed that his earlier O.A impugning his transfer order has already been dismissed on merit. Subsequent O.A was got disposed of vide order dated 14.06.2017 with a direction to the respondents to decide his pending representation. Therefore, there is clear concealment of facts by the applicant. Even in this petition, the applicant has not disclosed this fact that his earlier O.A decided on merit vide order dated 07.09.2016 and the applicant cleverly impugned order of transfer which was passed in furtherance to direction of this Court dated 14.06.2017. Accordingly, above noted fact led to one conclusion that the applicant has not approached this Court with clean hands and have concealed the material fact of dismissal of his earlier petition on merit where same order of transfer was under challenge. Thus, we are not inclined to entertain the petition and same

is hereby dismissed. We also restrain ourselves from imposing heavy cost upon the applicant as he has already crossed more than 57 years of age. Needless to say that the interim order granted on 14.07.2017 automatically stands vacated. MA for vacation of stay also stands disposed of.

8. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 29.01.2018.

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