

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 061/00048/2018 Date of order:- 30.5.2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

MES No.507625 Anil Gupta s/o late Sh. Charan Dass Gupta, working as Assistant Administrative Officer in the office of Garrison Engineer, Air Force, Jammu-180003.

.....Applicant.

(By Advocate :- Mr. K.B.Sharma)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Headquarter, Chief Engineer, Northern Command, Jammu c/o 56 APO.
3. Garrison Engineer, Air Force, Jammu-180003.

...Respondents

(By Advocate : Shri V.K.Arya).

ORDER

Sanjeev Kaushik, Member (J):

Applicant has filed the present OA for quashing the impugned transfer order dated 13.4.2017(Annexure A-1), letters dated 16.6.2017, 15.9.2017, 27.11.2017 & 21.12.2017 (Annexures A-6, A-8 to A-10) qua him being illegal and against the spirit of transfer policy. He has further prayed that respondents be directed

to post him to one of his choice stations (Rajouri, Bhadarwah, Srinagar) as per transfer policy.

2. Facts in brief of the case are that the applicant joined the service of the respondents as Lower Division Clerk on 5.11.1986 and was promoted as UDC on 15.6.2004 and thereafter as Office Superintendent on 16.6.2013. Applicant is working at Jammu since July 1, 2015 and has completed 2 years & 8 months tenure at his present place of posting. Applicant has stated that he had rendered about 31 years service with the department and remained posted on various stations including hard tenure stations/high altitude area as per details given in Annexure A-2. Respondents issued warning list who were due for posting for the year 2016-2017, wherein the name of the applicant find mention at sr.no.20 and he submitted his three choice stations i.e. Rajouri, Bhadarwah & Srinagar which were tenure stations for posting as per para 16 of the transfer policy dated 17.4.2010. Applicant has stated that instead of transferring him to tenure stations, respondents vide order dated 13.4.2017, inter-alia, transferred the applicant to Leh high altitude area.

3. Against his transfer, the applicant submitted representation on 17.4.2017 for modify his transfer order and post him to one of his choice stations as he had already served the high altitude area and vacancies at his tenure stations are available as he is going to complete 50 years on 27.11.2017. Applicant has stated

that without considering his pleas raised in his representation, his request was rejected vide letter dated 16.6.2017, whereas request of other individuals namely Rakesh Kumar, Ganesh Kumar, Deep Raj Chibber were considered and their transfer orders were cancelled/modified without assigning any reason. Applicant again submitted another representation dated 18.7.2017 for considering his case for posting him at choice station as he is suffering from LBA pain C radiating left leg and has been advised not to undertake long journey and avoid cold climate and avoid walking/continuous journey in hilly terrain areas. Again, the respondents have rejected the representation vide letter dated 15.9.2017. Thereafter, respondent no.2 issued movement order on 27.11.2017 by directed respondent no.3 to relieve the applicant by 15.12.2017. Aggrieved by the order dated 27.11.2017, applicant again submitted representation on 27.11.2017 for considering his request for transfer to his choice of tenure stations as per paras 16 & 20 of the transfer policy as he is now above 50 years of age, but that too was also rejected vide letter dated 21.12.2017 on the ground that age for posting to tenure station is to be calculated as on 30th June of each year and the individual was within age as on date of posting.

4. Applicant has alleged that the action of the respondents is discriminatory and violative of Articles 14 & 16 of the Constitution of India as on one hand, respondents stated that age is to be seen on 30th June of the year and on the other hand, they are accommodating

their favourite one by transferring them at their choice stations.
Hence the present OA.

5. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they have stated that applicant is serving with GE(AF) Jammu from 1.7.2015 and posting to tenure station is issued by HQ Northern command based on the seniority of employees due for tenure liability. Seniority list was circulated vide Chief Engineer Northern Command letter dated 17.10.2016 and his posting order from Jammu to Leh zone was issued by Chief Engineer Northern Command, vide letter dated 13.4.2017 as the applicant was 49 years 6 months old as on 30.5.2017. Moreover, age for posting to tenure station is calculated as on 30th June each year and employees eligible for posting to tenure station upto 30 June of respective year are considered, as such, the applicant was within prescribed age for posting to Leh complex on tenure. They have further stated that movement of the applicant was delayed by more than 9 months as he made number of representations to delay his movement order with a motive to attain the age of 50 years. In order to repatriate the employees in terms of paras 29 & 30 of posting policy serving in hard tenure station after completing two years of stay, it is mandatory to replace them by other employees. Since applicant was due for tenure station and he was posted as per his turn, therefore, he is not entitled to any relief and his services are required at tenure station.

6. They have further stated that transfer is an incident of service and to provide staff to formations located in field/high altitude area, it is the responsibility of Chief Engineer Northern Command to post adequate staff in such locations to ensure work/services are functioning smoothly to support the armed forces operating in such locations, whereas the applicant is trying to run away from bonafide government duty by misleading the Tribunal. They have relied upon the following judgments, wherein it has been held that transfer is an incident of service is not to be interfered with by courts until arbitrary and violative/mala fide :-

- i) Avani Kanta Roy vs. State of Orissa (1995(Suppl) S.C.C Page 169);
- ii) State of U.P. & Ors. vs. Govardhan Lal (2005 S.C.C. (L&S) Page 55);
- iii) Union of India vs. H.M.Katania (1989(3) SSC 445);
- iv) Mrs. S.Bose & Ors. vs. State of Bihar & Ors.
- v) State of M.P. & Ors. vs. S.S.Kourav & Ors. (1995(3) S.C.C. Page 270).

They have thus prayed for dismissal of the OA.

7. Applicant has filed a rejoinder by generally reiterating the averments made in the OA. He has stated that the respondents are duty bound to follow the transfer guidelines in view of of the judgment passed by the jurisdictional High Court in the case of Dr. Dev Parkash Chugh versus State of Punjab & Ors. (2005(4) S.C.T. Page 726).

8. We have heard the learned counsel for the parties and have perused the material placed on record.

9. As far as his contention that since he has completed 50 years of age, the fact remains that strictly speaking at the time of passing of impugned transfer order, he had not completed 50 years because he had completed 50 years of age in November, 2017, whereas the transfer order was issued on 13.4.2017, therefore, he cannot claim that transfer policy has been violated. Moreover, his successive representations have been dismissed by passing detailed order. Merely that the applicant was not allowed to complete the tenure at a particular station will not give him any right to invalidate the impugned order because there is no bar for the department to transfer a person before completion of tenure. It is for the department to see where the services of the particular person is to be utilized.

10. Change of place of employment within an organization, is an incident of public service does not require the consent of the employee. This has been so held by the Hon'ble Apex Court in the case of **V.Jagannaddha Rao** versus **State of A.P.** (2001(10) S.C.C. Page 401). The scope of intervention by the Tribunal in transfer cases is, rather limited. The law in this matter is almost settled which discourages the Tribunals to interfere in the administrative prerogative of employers to transfer their employees unless the

transfer is so blatantly against the rules or creates a situation where the transferred employee is put to extreme hardship. We are not inclined to conclude that this particular case is either against the rules or qualified as an extreme hardship case. Among many rulings in support of this contention, we may cite the case of **State of Haryana** versus **Kashmir Singh** (2011(1) S.C.C.(L&S) Page 376) where the Apex Court in para 12 has held that " Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal". The Hon'ble Court in para 14 has further held that " Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hand tied by judiciary behind its back".

11. In view of above discussion, we find no merit in the OA and the same is accordingly dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- May 30 , 2018.
Kks