

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00424/2017

Date of CAV:19.02.2018.

Date of Order :26.03.2018.

Between :

Manish Kumar Singh, IDSE,
s/o Prof.K.K.Singh, aged 44 yrs,
Chief Engineer (Fy), Hyderabad,
Military Engineers Service, SP Road,
Secunderabad-500 003, r/o Hyderabad.

... Applicant

And

1. Union of India, rep., by the Secretary,
M/o Defence, South Block, Govt. of India,
New Delhi-110 011.

2. Engineer-in-Chief, Engineer-in-Chief's Branch,
Integrated HQ of MOD (Army), Kashmir House,
Rajaji Marg, New Delhi-110 011.

3. Directorate General Personnel/EIB,
Engineer-in-Chief's Branch,
Integrated HQ of MOD (Army), Kashmir House,
Rajaji Marg, New Delhi-110 011.

4. The Chief Engineer (Fy),
Military Engineers Services,
M/o Defence, Hyderabad, SP Road,
Secunderabad-500 003. ... Respondents

Counsel for the Applicants ... Mr.Siva

Counsel for the Respondents ... Mr.A.Radhakrishna, Addl.CGSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs. Minnie Mathew, Member (Admn.) }

The facts of the case, according to the applicant, are that he is working as Joint Director in the office of the Chief Engineer (Fy), Secunderabad since June 2014. As per the Cadre Management of MES Civilian Officers' guidelines October 2015, the normal tenure for Joint Director/Director is 4 years. In view of this, the applicant contends that he is entitled to be continued in his present station till June 2018. However, he was transferred to CWE (AF) Leh on 9th May 2017. Being aggrieved by the transfer, he submitted a representation for cancellation of his posting to CWE (AF) Leh, which was also rejected, vide the impugned order dated 30.05.2017.

2. The applicant's case is that since his son had come to XI Class and was preparing for the Medical Entrance, he submitted a request, vide his DO letter to DG (Pers) on 04.08.2016 for considering his retention in his present station till April 2019 on compassionate grounds (child education). The applicant submits that he has not applied for compassionate posting earlier and this was his first request. However, he did not get any reply from DG (Pers). As the Cadre Management Policy specifies that the request for posting on compassionate grounds is liable to be made well before the Annual Turnover/Posting Orders are issued, he submitted another representation on 19.10.2016, which was forwarded by the Chief Engineer duly recommending his retention at Hyderabad on compassionate grounds in connection with the education of his son.

3. The applicant points out that as per Para 12 (b) (iii) of Cadre Management Policy, requests for compassionate ground postings would be placed before the Committee, which would consider the requests and either approve or reject the request. The policy also states that the request for compassionate posting would be

approved as a rule and would be refused only on account of non-availability of vacancy. Further, while rejecting such requests, the policy envisages the passing of a reasoned order. However, in his case, no decision was conveyed to him despite the availability of at least three vacancies in Hyderabad to accommodate him. Since he did not get any reply, he submitted a further representation dated 03.03.2017 reiterating his request for retention at Hyderabad and if that was not possible, to give him one of his five choice stations where he could take care of his son's educational requirement. Without considering his request, the 2nd respondent issued the impugned order dated 09.05.2017 posting him to the Command Works Engineer (AF), Leh, as Deputy Command Works Engineer, further stipulating that the move has to be by 23.06.2017.

4. The applicant contends that this is not a vice posting and that the three officers from Hyderabad have been moved out while only one officer was posted to Hyderabad. Immediately on receiving the posting order, the applicant submitted a representation on 16.05.2017, wherein he pointed out that having been transferred to his present post only in June 2014, he has not yet completed his tenure of 4 years, which is provided for Joint Director/Director. Therefore, moving him out before completion of his tenure was not in order. He also reiterated the circumstances that forced him to seek a compassionate posting as his son is preparing for Medical Entrance along with 10 + 2 studies. He, therefore, requested for cancellation of his posting to Leh and retention at Hyderabad till his son completes his XII Class. It is also contended by the applicant that issuing posting orders to an extreme hard station such as Leh without responding to his earlier applications for retention at Hyderabad is not fair. The applicant therefore seeks a direction to retain him as Joint Director at Hyderabad at least till he completes the present tenure or to post him

to any other station including a hard station which is also a family station so that he can ensure that the education of his son is not adversely affected for lack of parental supervision.

5. This Tribunal had, at the time of admission, granted an interim stay of the impugned transfer order.

6. The respondents have filed a reply statement contesting the OA. They point out that the applicant has completed 4 1/2 years tenure at Hyderabad, as he was initially posted to GE (Air Force), Hakimpet in Hydreibad Station on 10.01.2013 and subsequently side stepped to CE (Fy), Hyderabad in June 2014. For the purpose of counting a tenure, the total time period served by an individual in various formations of a station has to be considered. As the total duration of service rendered by him in GE (Air Force), Hakimpet, and CE (Fy), Hyderabad, is more than 4 1/2 years, he has already stayed at Hyderabad in excess of his tenure. Further, they have produced the Annexure.R-3 noting sheet in which the applicant's case has been rejected. They submit that as per Para 12 (e) (iii) of the Cadre Management of MES Civilian Officers Guidelines October 2015, only those officers whose children are in XII Standard are eligible for retention in the same station for a period not exceeding one year and in such case the officer will have to intimate two years in advance to the Personal Directorate of E-in-C's Branch in this regard duly authenticated by the Principal of the School. Since the applicant is not eligible as per Para 12 (e) (iii) of the Policy as his son is in Class XI and as he had completed 4 1/2 years tenure at Hyderabad, his retention for compassionate posting has been rejected by the Board of Officers at E-in-C's Branch, New Delhi. Further, he is due for a posting to a hard station.

7. The respondents submit that there is no provision for writing DO letters to DG (Pers) as per Cadre Management of MES Civilian Officers Guidelines, October 2015, and that it is not obligatory on the part of DG (Pers) to reply to such DO letters. The representation of the applicant dated 19.10.2016 has been considered and put up to the Board of Officers at the time of finalizing the postings. His representation has been rejected by the Board of Officers as he is not eligible for retention since his son is in Class XI and not in Class XII and as he completed 4 1/2 years of tenure at Hyderabad and is due for a posting in hard station.

8. It is also submitted by the respondents that there is no provision in Cadre Management Guidelines to issue a reasoned order as contended by the applicant. Hence, no such order has been issued by the respondents. The representation in the form of a DO letter dated 03.03.2017 which has been sent after the cut off date of 31.12.2016 cannot be taken on record. The applicant's representation dated 19.10.2016 has been considered and rejected by the Board of Officers and the vacancies in Hyderabad are planned to be filled up in due course of time by posting eligible officers. Further, the postings are based on organizational requirement in the interest of the State. Therefore, the contention that the action of the respondents is illegal and arbitrary and unjust is not based on facts. Thus, no Articles of Constitution have been violated as contended by the applicant. It is also pointed out that the applicant is entitled to retain Government Married Accommodation as he is posted to a hard station so that his son can continue with his studies without any hindrance.

9. The applicant has filed a rejoinder stating that the Cadre Management Guidelines contemplates two different Boards for the purpose of transfers and for considering the cases/requests for Compassionate/Last Leg Postings. He states that

his case has been considered only by the Board of Officers that decided the postings. Further, the Board of Officers have met for considering the requests of Compassionate/Last Leg Postings much earlier than 09.05.2017, which is vouched by the fact that the approved list of officers whose requests for such posting has been acceded has been published on the website in February 2017 itself. Further, the Cadre Management Guidelines makes it clear that the area of operation of Para 12 (e) is different from the scope and ambit of the Compassionate/Last Leg Posting. This distinction has been ignored.

10. The applicant has also contested the contention of the respondents that he has completed 4 1/2 years of tenure at Hyderabad. In the order by which he was posted out from Hakimpet, there is no mention that he has been side stepped. At the same time, against an officer at Serial No.17 of the same order, it has been specifically stated that the said officer was side stepped. It was also mentioned that the tenure of the said officer would be counted duly taking into account the earlier posting. However, no such mention has been made in his case. This would falsify the averment of the respondents that the period he served at Hakimpet is liable to be taken into account for the purpose of determining his tenure for posting him out of his present station.

11. The applicant also points out that the noting sheet produced by the respondents would reveal that the proceedings lack objectivity and that extraneous considerations have crept into the decision making process. He cited the instance of one officer whose request was considered favourably, inspite of his tenure having been extended for one more year on the ground, that he wanted to be continued in his home town. Likewise, the request of another officer was considered for posting him at his choice

station on the ground that his primary school going children needed to be admitted into a School of repute. Therefore, while such cases have been considered, his request for compassionate posting in view of the fact that his son was in XI Class has been rejected, which only goes to show that the respondents have not shown any reason either in law or on fact or in equities for denying the relief prayed for by him.

12. The respondents have filed an additional reply statement stating that both the Board of Officers for the purpose of considering requests for compassionate postings as well as postings have been convened and proceedings finalized in January 2017 and May 2017 respectively. The applicant's request for extension of his tenure at Hyderabad on the educational grounds of his son has been considered by both the Board of Officers as there is a mention of the same in both the Board proceedings. Further, even though the application has not been received through proper channel by DG (Pers), his application was considered. His request, however, was not accepted as his son is in XI Class against Class XII, which is a requirement for extension of tenure at Hyderabad. They also state that in case of compassionate/last leg posting as per Para 12 (b) (i) of Cadre Management Guidelines, an individual has to seek a posting to a station of his choice whenever he is likely to complete his tenure at the present station. Further, the extension of tenure is only in connection with the education of children when the child is in Class XII. In the present case, the applicant is seeking extension of tenure and not a posting to another station. Hence, his representation was rejected. Further the applicant is trying to seek extension of tenure in the garb of compassionate posting and mixing up Para 12 (b) (i) and Para 12 (e) (iii) of Cadre Management Guidelines.

13. The applicant has filed an additional rejoinder contending that the respondents cannot improve their stand by supplementing reasons by way of counter affidavits and additional reply statements as no reasons have been given in the impugned order for rejecting his request.

14. We have considered the rival submissions and also perused the record. We have also taken on record the written arguments filed by Mr.A.Radhakrishna, learned Standing counsel for the Respondents stating that the mere existence of vacancies at Hyderabad does not entitle the applicant for retention at Hyderabad and that he is due for posting to a hard station as he had already completed 4 1/2 years at Hyderabad. He has also cited the judgment of the Hon'ble Apex Court in Mrs.Shilpi Bose & Others vs. State of Bihar & Others in which the Hon'ble Apex Court had held that "*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.*" He has also cited the judgment of the Hon'ble High Court of State of Punjab & Haryana in State of Punjab & Others vs. Joginder Singh Dhatt and in Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Others and in State of UP & Others vs. Gobardhanlal in support of his contention that transfer of an employee is an essential condition of service and cannot be interfered with unless the order of transfer is shown to be an outcome of a malafide exercise of power and that a transfer made even in transgression of administrative guidelines cannot be interfered with.

15. A perusal of the Annexure.A-7 Cadre Management Guidelines of MES Civilian Officers shows that the guidelines have been issued with a view to achieving optimum efficiency in the services provided to the Defence Forces by the department "in concert

with the career progression of officers and also looking after personal concerns of individuals to the extent feasible within administrative limitations". Organizational requirements and interests will, however, be supreme in the entire HRM. Para 12 (b) provides for Compassionate/Last Leg Posting, which shall be limited to two years duration and two such compassionate postings can be allowed in total service including one in lieu of last leg posting by foregoing the right to avail last leg posting. It has also been stated that the applications for compassionate postings received after issue of Posting orders will not be entertained. Further, applications without specific recommendations of CE Comd/Establishment also will not be entertained. The proposals shall be scrutinized by an appropriate Board of Officers at E-in-C's Branch based on merit of the case. On the recommendations of the Board, postings shall be planned subject to availability of vacancies. As part of the administrative measures to introduce more transparency, officers were allowed to write DO letters to DG Pers)/DDG (Pers) (M) prior to their anticipated posting indicating their preferences for posting with the reasons thereof. However, these DOs shall not be considered as representations from the individual. It has also been stipulated that compassionate posting would ordinarily be accepted and would be refused only on account of non-availability of vacancy.

16. Therefore, what clearly emerges from the above, is that every officer in the respondent department is entitled to at least one compassionate posting limited to a duration of two years in his career and that applications without the specific recommendations of the CE/CMD Establishment will not be entertained and that officers were permitted to write DO letter to the DG (Pers) before their posting orders. The only ground for refusing a compassionate ground posting is the non-availability of a vacancy.

17. In the instant case, admittedly the applicant has never availed of a compassionate posting earlier. He has satisfied all the conditions governing compassionate postings such as submission of his application on 19.10.2016 through proper channel, which is well within the time stipulated for the April turnover postings. His request has been recommended by the CE, CMD and forwarded in November 2016 well before the last date. Knowing that he would not be eligible for retention at Hyderabad, as his son was only in the XI Class, he has chosen to exercise the other option of a compassionate posting available to him as per the guidelines.

18. It is pertinent to observe that the guidelines neither defines the grounds which alone would qualify for a compassionate posting nor excludes any particular ground. In other words, there is no mention as to what would constitute a ground which would qualify for compassionate posting. In these circumstances, the applicant has chosen to opt for compassionate posting for ensuring the continuity of his son's education at Hyderabad, since the + 2 stage is very crucial in a child's educational career. The applicant has truthfully presented the reason for seeking a compassionate posting. There is no attempt at all to falsify or disguise the real reason for seeking compassionate posting. Thus, when the guidelines have neither defined the grounds for compassionate posting nor expressly prohibited the ground of children's education for seeking compassionate posting, there is no justification for denying the applicant's request, particularly when the guidelines state that a request for compassionate posting would ordinarily be accepted and would be refused only on account of non-availability of vacancy.

19. The respondents have also contended that the applicant has completed his tenure at Hyderabad as he was earlier posted at GE (AF), Hakimpet. The applicant

has, however, pointed out that in the order dated 3.6.2014 transferring him from GE (AF), Hakimpet, to CE (Fy), Hyderabad, there is no mention of any side stepping against his name. On the other hand, this has been specifically mentioned in the case of an officer at Serial No.16 of the same list as having been side stepped. According to the respondents, even though the word side stepping was not used, this aspect has been highlighted under the Unit Master as clearly mentioned in the Board proceedings at AnnexureR-2 at page 15 Column Unit Master. A perusal of page 15 would reveal that this is an internal statement, which has been prepared by the authorities for consideration of the Board of Officers for considering the posting proposals of EE. The applicant has never been informed that he has been side stepped from GE (AF), Hakimpet. Therefore, an internal proforma prepared by the respondents without putting the applicant on notice is of no help as the transfer order dated 3.6.2014 makes no mention that the applicant was already side stepped and that his tenure would count from the time of his posting at GE (AF), Hakimpet. The respondents have also not produced any supporting instructions regarding the date from which an officer's tenure would be reckoned.

20. The respondents would contend that extension of tenure in the same station is not contemplated in a compassionate posting and that the applicant has not indicated any choice of stations. This contention *prima facie* cannot stand the test of a scrutiny because by asking for retention in Hyderabad, the applicant is undoubtedly exercising his option for a posting in Hyderabad. Notwithstanding this, even if there is an unwritten policy that retention at the same station is not envisaged in a compassionate posting, the respondents should have at any event informed the applicant that his request is not acceptable and directed him to communicate his choice stations. Instead they have remained silent and not responded to his representations made to

the DG (Pers) dated 4.8.2016 and his subsequent representation dated 19.10.2016 submitted through proper channel. This fact has also been highlighted by the applicant's Controlling Officer while forwarding his representation against posting to CWE (AF) Leh, stating as follows:

"Since no reply has been received from E-in-C's Branch for his application for extension of tenure at Hyderabad in October 2016, issuing posting order after six months to extreme hard station (Leh) without responding his application is not fair. Hence, recommended for extension of tenure at Hyderabad."

21. In this context, it may not be out of place to refer to Annexure-II instructions issued by DG (Pers) dated 16.05.2016, which has been filed along with the additional rejoinder. Clarifying Para 30 of the Policy Guidelines on Cadre Management of MES Civilian Officers, DG (Pers) has in Para 3 (c) of the letter directed as follows:

"3 (c) Choice station should be other than the previous station and home station, except on compassionate and last leg postings."

From this, it is sufficiently clear that the applicant is entitled to be retained at his previous station as he is asking for a compassionate posting. Thus, the contention of the respondents that extension of tenure in the same station is not permissible in compassionate posting is untenable.

22. We are conscious that administrative transfers are not to be interfered with lightly. In the instant case, however, we find that the HRM policy of the respondent-department, which provides Engineering/Technical services to the Defence Department, has certain distinct and exceptional conditions which are not normally seen in transfer policies. Para 10 (e) of the Policy specifically provides for at least one

compassionate posting in a service career. Further while admittedly organizational interest would prevail, the policy unequivocally states that "*compassionate ground posting would ordinarily be accepted and would be refused only on account of non-availability of vacancy*". There is no case that there are no vacancies in Hyderabad. The respondents only contention is that the vacancies are planned to be filled up in due course. This contention is not an adequate justification for rejecting the applicant's request.

23. The respondents in their reply statement have stated that the representation of the applicant dated 19.10.2016 through proper channel has been considered and rejected by the Board of Officers as he is not eligible for retention. But a perusal of the minutes of the Board of Officers constituted for considering compassionate ground postings, which have been reproduced by the respondents themselves in their additional reply statement, reveals the following:

COMPASSIONATE GROUND POSTINGS/LAST LEG POSTINGS ENGR CADRE (EEs) FOR THE PERIOD FROM 01 JUL 2016 TO 31 DEC 2016 .

ENGINEER CADRE (COMPASSIONATE GROUND POSTINGS)

SL. No	MES No. .Rank and Name	Unit	Applica- No.& Date	Type of Request	Fwd By	Stn	Depart- ment posting allowed/ not	Date of TDS	Date of Retirement	Remarks	Recommen- of DOO
11	MES -602097 Manish Kumar Singh EE	CE (FY) Personal Hydera- bad	CG appl No. 602097/ Pers/ CE (FY) Hyd dt 19 Oct. 2016	-	Hyderabad	No	21 Jan 2013	31 Aug 2033	For studies ded. Applica- of his son who tion has not been received will be through proper admitted channel. In class XI in in Apr 2017.	Not recommen- ded. Applica- of his son who tion has not been received will be through proper admitted channel. In class XI in in Apr 2017.	

24. A plain reading of this would show that no reason has been recorded for rejecting the applicant's request. The only remark against him is that his application has not been received through proper channel. No other reasons have been given for rejection of the applicant's request for compassionate posting. This observation/recommendation of the Board of Officers is erroneous as the applicant's application dated 19.10.2016 for compassionate posting on the ground of his child's education has been forwarded by his Controlling Officer in November 2016, with the following endorsement:

“An application dated 19 Oct 2016 submitted by MES-602097 Shri Manish Kumar Singh, Jt Dir, CE (Fy) Hyderabad addressed to E-in-C's Br New Delhi is fwd herewith duly recommended by offg ADG (OF & DRDO) Secunderabad for our further necessary action please.”

Thus, we cannot but hold that the application of the applicant for compassionate posting has been rejected on an erroneous ground and an order passed based on an erroneous appreciation of facts warrants interference.

25. In the result, the impugned order rejecting the applicant's representation is quashed and set aside. There shall be a direction to the respondents to retain the applicant in his present station in terms of the provision for compassionate posting in the transfer policy.

26. The OA is allowed accordingly. There shall be no order as to costs.

**(MINNIE MATHEW)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated: this the 26th day of March, 2018

Dsn.