

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00062/2018

Jabalpur, this Thursday, the 06th day of September, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prakash Chandra Katare, S/o Late Kamal Kishore Katare, DOB: 07.03.1959, Working as Deputy Director (Contract) O/o-CE, MES Bhopal Zone, Bhopal, R/o-Quarter No.P-1 47, MES Officers Enclave, Gandhi Chowk, Sultania Infantry Line, Bhopal, District Bhopal 462001 (M.P.)
-Applicant

(By Advocate – Shri Vijay Tripathi)

V e r s u s

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi – 110001.

2. Engineer-In-Chief, Military Engineering Services, Integrated Head Quarter of Ministry of Defence (Army), Kashmir House Defence Head Quarter, New Delhi 110010.

3. Chief Engineer, Bhopal Zone, Head Quarter Bhopal 462001 (M.P.)
- Respondents

(By Advocate – Shri Surendra Pratap Singh)

(Date of reserving order : 29.08.2018)

ORDER

By Navin Tandon, AM.

The applicant is aggrieved by order dated 06.10.2016 (Annexure A/3) by which he has been transferred from Bhopal to

Barrackpore and subsequent rejection of his representation by orders dated 27.03.2017 (Annexure A/1) and 16.01.2018 (Annexure A/2).

2. The following submissions have been made by the applicant in this Original Application:

2.1 The applicant was initially appointed as Surveyor Assistant Grade-II on 17.01.1980 with the respondent department and posted at Itarsi. He was promoted as Assistant Engineer (QS&C) on 02.05.2003.

2.2 He was further promoted as Executive Engineer (QS&C) and posted to Jammu on 12.05.2015. The applicant feeling aggrieved with his posting at Jammu, preferred representation. The representation of the applicant was considered by the competent authority sympathetically and the posting order was changed and he was posted at Bhopal by order dated 01.06.2015 as Deputy Director (Contract).

2.3 The applicant was not permitted to complete his normal tenure in Bhopal after promotion as Executive Engineer (QS&C) and he was transferred/posted by order dated 06.10.2016 (Annexure A/3) to Barrackpore.

2.4 The applicant preferred a representation dated 20.10.2016 (Annexure A/4), wherein he stated medical problem of his wife and himself and requested to be retained in Bhopal or post him in Pune. The request was not accepted by the competent authority as communicated vide orders dated 27.03.2017 (Annexure A/1).

2.5 He again preferred a representation on 30.03.2017 (Annexure A/5), which was recommended and forwarded by Chief Engineer Bhopal Zone on 31.03.2017.

2.6 When the grievance of the applicant was not addressed at departmental level, he approached this Tribunal in OA No.357/2017. The O.A was disposed of on 11.05.2017 (Annexure A/9) as follows:

“5. Hence, the applicant is again permitted to make a detailed representation annexing all the medical records to the competent authority of the respondents i.e. respondent No.2 within a period of one week from today. On receipt of such representation, the said competent authority of the respondents/respondent No.2 will pass appropriate order at the earliest. Till then the applicant shall be allowed to continue in the present station provided the applicant has not been relieved earlier and has not reported for duty at the transferred station.”

2.7 Accordingly, the applicant preferred detailed representation on 17.05.2017 (Annexure A/10). However, it

has been rejected by order dated 16.01.2018 (Annexure A/2). The applicant states that the rejection has been done without application of mind.

2.8 It is the case of the applicant that as per guidelines for cadre management of MES civilians framed vide orders dated 25.04.2014 (extracts in Annexure A/7), an officer is to be given last leg posting for a tenure of two years for taking care of family/settlement problems. Such postings can not be on sensitive posting. The posting at Barrackpore is a sensitive posting, which should not be done as per the guidelines. He could be easily adjusted in Pune, Mhow or Bhopal where vacancies exist. Such facilities have been provided to other officers, as demonstrated by order dated 13.04.2017 (Annexure A/8).

2.9 Further, the applicant is due for retirement on 31.03.2019 and therefore, less than two years are remaining for retirement of the applicant.

2.10. It has also been brought out that nobody has been posted in his place. The posting orders of Shri Yogesh Mittal, who was posted in place of applicant at Bhopal, have already been cancelled on 09.12.2016 (Annexure A/11).

3. The following relief has been sought by the applicant in this Original Application:

“8. Relief Sought:

It is therefore prayed that this Hon’ble Tribunal may kindly be pleased to:

- 8.1 Summon the entire relevant record from the possession of respondents for its kind perusal;
- 8.2 Quash and set aside the order dated 27.03.2017 (Annexure-A/1) 16.01.2018 Annexure A/2 and order dated 06.10.2016 (Annexure-A/2) to the extent it transfers the applicant from Bhopal to Barrackpore with all consequential benefits;
- 8.3 The respondents be directed to consider the request of the applicant for posting him either Bhopal, Mahu or Pune.
- 8.4 Any other order/orders, direction/directions may also be passed.
- 8.5 Award cost of the litigation to the applicant.”

4. The respondents, in their reply, have submitted as under:

4.1 The present O.A is barred by res judicata since similar petition OA No.200/00035/2017 (sic OA No.200/357/2017) has already been disposed of on 11.05.2017.

4.2 The applicant was posted at Bhopal as AAD (Contracts) on compassionate grounds and reported on 01.08.2014. Subsequently, he was promoted to EE (QS&C) on 28.05.2015 insitu, in continuation of present tenure with total tenure restricted to two years. After completion of 2 years and 2 months tenure at Bhopal, applicant was posted to Barrackpore.

4.3 The applicant has been intimated that extension of tenure under Compassionate Grounds posting is not possible.

4.4 Regarding concern of the applicant to get proper medical treatment, it is stated that he has been posted to Barrackpore under CE Kolkata zone located in Metropolitan city. Excellent super speciality hospitals including Ruby Hospital exists in Kolkata, where applicant can continue his medical treatment.

4.5 The applicant has all India service liabilities. He has exhausted compassionate ground posting, a facility admissible as per policy, by availing posting at Bhopal w.e.f. 02.08.2014 and hence posting again can not be granted. Reference has been made to para 12(b) of the policy. Copy of the posting policy approved by MoD on 09.10.2015 is enclosed as Annexure R/1 with the reply.

5. The applicant has filed rejoinder wherein he has quoted the case of Shri Ramesh Kumar Yadav, who has been transferred twice on compassionate ground between 27.04.2012 and 13.06.2016.

6. Heard the arguments of both the parties and pleadings available on record.

7. The relevant para of the document “Cadre Management of MES Civilian Officers : Guidelines” (Annexure R/1) is extracted below:

“12(a) **Tenure Station Posting**. Three Yrs for service less than ten yrs and two yrs for service over ten yrs. The service yard stick will be seen at the time of issue of posting. However, on request of the individual or on account of non-availability of vacancy in any of the three choice stations for repatriation, extension of tenure beyond this normal period could be considered.

12(b) Compassionate/Last Leg Posting

(i) The compassionate posting term shall be limited to two yrs duration and two such compassionate posting can be allowed in total service including one in lieu of last leg posting, foregoing right to avail last leg posting. Applications for compassionate postings received after issue of Postings (EEs/equivalent and below)/after forwarding proposal to MoD (for SEs/equivalent and above) will not be entertained. The officer can apply thereafter from next duty stations after a physical stay of minimum six months.

xxx

xxx

xxx

(vi) Officers with ten years or less residual service can avail only one compassionate/last leg posting.”

8. Learned counsel for the applicant argued that as per para 12(b)(i), the applicant is entitled to two such compassionate grounds posting in the career. However, learned counsel for the respondents was quick to point out that such application cannot be entertained after issue of postings as stated therein. Also, as per para 12(b)(vi), this facility can be availed only once by officers with ten years or less residual service. Undisputedly, the officer is

due to retire on 31.03.2019 and had availed compassionate ground facility w.e.f. 01.08.2014. Hence, he has already availed this facility once in the last 10 years of his service and is not entitled to another round of compassionate ground/last leg posting. The tenure is also limited to two years. Therefore, the respondents have rightly concluded (para 3(a) of Annexure A/2) that the applicant cannot get the advantage of para 12(b) anymore.

9. Learned counsel for the applicant placed reliance on the orders dated 15.10.2013 passed by coordinate Bench of Tribunal at Mumbai in OA No.215/2013 in the case of **S. Bharathi vs. Union of India**. We find that the applicant in the quoted case, had not completed his three years in present posting and there are two more officers working in Mumbai without any transfer for more than 20 years.

9.1 In the instant case, the applicant has completed 2 years and 2 months as against stipulated 2 years tenure. Also, he has not given any example of officers staying beyond stipulated tenure. Therefore, the instant case is distinguished from the case cited by learned counsel for applicant.

10. The main grounds on which the applicant is seeking quashing aside of the transfer order from Bhopal to Barrackpore

are the health related issues of the applicant as well as his wife. The respondents have stated that there are excellent medical facilities in his new place of posting including super speciality hospitals, where they can take medical treatment.

11. Learned counsel for the respondents places reliance in the orders dated 16.07.2018 by coordinate Bench of this Tribunal in case Diary No.332/1927/2018, wherein interim relief of grant of 4 months of joining time has been refused, citing judgments of Hon'ble Apex Court.

12. Learned counsel for the respondents further places reliance on the judgment dated 23.02.2018 in Writ Appeal No. 50/2018 passed by Hon'ble High Court of Madhya Pradesh, where it has held:

“We find that humanitarian considerations for posting of employee cannot outweigh the administrative exigency in posting of an officer. Every employee has some problem or the other in the family. Some employees have ailing parents or some other employees have school going children. But if such considerations are taken into consideration, probably the functioning of the State Government will be seriously prejudiced. If the son of the petitioner is not well, the petitioner is at liberty to take leave and take care of his ailing child. But that will not entitle him to choose his place of posting.”

13. The applicant has raised the issue of posting of Shri Ramesh Kumar Yadav in his rejoinder. The extracts of the relevant para in applications, reply and rejoinder, are given below:

13.1 Para 4.4 of O.A:

“4.4 That, it is respectfully submitted here that the applicant was not permitted to complete his normal tenure in Bhopal after promotion as Executive Engineer (QS & C), and he was transferred/posted by order dated 06.10.2016 (Annexure-A/2) in the office of CWE (Sub) Barrackpore.”

13.2 Reply of para 4.4 by respondents:

“Averments of this Para is not based on correct facts of the case, hence denied. It is submitted that the applicant was posted to Bhopal as AAD (Contracts) on Compassionate Grounds and reported on 01 Aug 2014, subsequently promoted to EE (QS&C) on 28 May 2015 insitu, in continuation of present tenure with total tenure restricted to two years. After completion of 02 years and 02 months tenure at Bhopal, applicant was posted to CWE (Sub) Barrackpore, as per posting policy dated 09 Oct 2015. It is further submitted that there is no provision for extension of tenure under Compassionate Grounds posting. Request of applicant was not agreed by the competent authority as per posting policy and applicant was intimated accordingly on 27 Mar 2017.”

13.3 Rejoinder by the applicant:

“7. As to Para 4.4:

Contents of this para are denied. The respondent department has extended the tenure of Mr Ramesh Kumar Yadav. He was transferred to GE E/M BH Delhi to GE (U) Bhatinda as GE(C) on 27.04.2012

Annexure RJ/1 however, his posting was changed on Compassionate Ground on 30.07.2012 **Annexure RJ/2** from Bhatinda to Bhopal by order dated 13.06.2016 **Annexure RJ/3** he was posted from Bhopal to Porbandar on Compassionate Ground. It is worthwhile to mention here that Shri Ramesh Kumar Yadav has been transferred from Bhopal to Porabandar in the year 2014 and the moment order was issued on 23.02.2015. Copy of the order dated 23.05.2015 is enclosed here with as **Annexure RJ/4.**”

13.4 During the argument stage, learned counsel for the applicant failed to show that transfer orders dated 30.07.2012 (Annexure RJ/2) of Shri Ramesh Kumar Yadav was changed from Bhatinda to Bhopal on Compassionate Ground, as stated in rejoinder. It was clearly in the interest of State.

13.5 Of course, transfer orders of Shri R.K. Yadav dated 13.06.2016 (Annexure RJ/3) from Porbandar to Bhopal are on Compassionate Ground.

13.6 Annexure RJ/4 is incomplete document with only two pages being filed. However, it is immaterial, as the order is presumably of Shri R.K. Yadav being transferred from Bhopal to Porbandar. The first time of the order reads, “The following postings are hereby ordered in the interest of organisation”.

13.7 It has not been demonstrated that the respondent department has extended the tenure of Shri Ramesh Kumar Yadav.

14. We take exception to the fact that the applicant has tried to mislead this Tribunal by making false statement in the rejoinder that Shri Ramesh Kumar Yadav has been transferred twice on compassionate ground, or his tenure has been extended.

15. The argument of the applicant that he cannot be posted on a sensitive post in his Last Leg posting, is not relevant because his posting in Barrackpore may be his last posting, but his posting has not been made as per provisions of “Last Leg Posting” of para 12(b) of Annexure R/1.

16. In the matters of **Union of India vs. S.L. Abbas**, (1993) 4 SCC 357, the Hon’ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of **State of M.P. vs. S.S.Kourav**, (1995) 3 SCC 270, the Hon’ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take

appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation.

16.1 In the matters of **National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan**, (2001) 8 SCC 574, the Hon'ble Supreme Court has held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

16.2 The Hon'ble Supreme Court in **N.K.Singh vs. Union of India**, (1994) 6 SCC 98 have observed that, "Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless

the decision is vitiated by malafides of infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated.”

17. It is clear from the judicial pronouncements of Hon’ble Apex Court cited in the above paragraphs that it is for the Administration to decide the postings/transfers. Tribunals/Courts of law can interfere only if there is any malafide, which has not been shown in the present case.

18. We cannot fail to notice that though the official stand of the respondents is to transfer the applicant from Bhopal to Barrackpore, but the actions indicate that he is being helped to remain at the present place of posting. It took only 3 weeks (12.05.2015 to 01.06.2015) to modify the transfer order to retain him at Bhopal on his promotion as Executive Engineer. However, it took more than 5 months to reject his first representation by a one line order. The second representation, preferred on the directions of this Tribunal, was decided after more than 8 months.

18.1 Further, it is not understood why the applicant was not relieved when the transfer order dated 06.10.2016 were issued. This Tribunal, while disposing of earlier O.A of the applicant on 11.05.2017, did observe in para 4 that, “....If not joined there, the applicant must have been allowed to continue in the present station itself for nearly five months.”

18.2 As has been clearly demonstrated in the preceding paragraphs, the Administration has been vested with all the powers of transfers of personnel under their control. Who is to be posted where is not to be decided by Tribunals/Courts but by the Administration. If the respondents want to help the applicant considering his circumstances, there is nothing wrong in it. However, the same should be done overtly and not covertly. It is beyond comprehension as to why the ball was put in this Tribunal's Court unless it was to deliberately avoid following due and available procedure of the department itself.

19. Accordingly, the Original Application is dismissed being devoid of merits.

20. We impose a cost of ₹1,000/- on the applicant for trying to mislead the Tribunal as brought out in para 14 above. The

respondents are directed to deduct ₹1,000/- from his salary and deposit it in Prime Minister's Relief Fund. An affidavit to this effect may be filed by the respondents with the Registry of this Tribunal within 60 days.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-