

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 374/2017

Reserved on: 03.08.2018

Date of decision: 23.08.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

S.K. Agarwal S/o Shri Radhey Lal Agarwal aged 56 years R/o Near Pareek Dharmshala, Sambhar Lekh, Jaipur. Presently working on the post of UDC, Group-C at Military Engineering Services, Niwaru, Jaipur.

...Applicant.

(By Advocate: Shri Raghunandan Sharma)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief Engineer, E-in-c's Brach Hq of MOD Kashmir House, New Delhi 110011.
3. Chief Engineer, South Western Commands, C/o 56, Apo, Jaipur Pin 908546.
4. Garrison Engineer, (I) (P), Military Engineering Services, Newaru, Jaipur.

...Respondents.

(By Advocate: Shri Kinshuk Jain)

ORDER

Per : A Mukhopadhaya, Member (A)

The present OA arises out of an order No.34304/CML-2017/01/E1B(S) dated 04.04.2017, (Annexure A/1), vide which

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the applicant Shri S.K.Agarwal, UDC was transferred from Niwaru, Jaipur to Chiloda in the State of Gujarat.

2. The brief facts of the case, as stated by the applicant, are that he has been working at Jaipur as UDC in the MES, (Military Engineering Service). Although he was promoted to the post of OS, (Office Superintendent), in 2014, he decided to forego the promotion and remained at Jaipur owing to family circumstances. Thereafter, when he was asked vide letter No.34304/CML-2017/01/E1B(S) dated 03.03.2017, (Annexure A/3), to indicate his choice of stations for Command Manning Level, (CML), posting, he indicated Jodhpur, Bharatpur, and Mount Abu in order of preference for the same reasons as above. Despite this, he was transferred from Niwaru, Jaipur to Chiloda, Gujarat, i.e. at a station not listed among his choices whereas other employees were transferred to the stations for which they had indicated their choice. Feeling aggrieved by the impugned transfer order dated 04.04.2017, the applicant submitted a representation dated 19.04.2017, (Annexure A/5 Colly), in which he requested for reconsideration of his transfer on humanitarian grounds and cancellation of the posting made at Chiloda, Gujarat. This application was rejected vide letter No.34304/CML-2017/24/E1B(S) dated 05.06.2017, (Annexure A/2), and thus provided him the cause of action for this OA which was filed on 20.06.2017. On the date of filing the OA, this Tribunal, as a

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measure of purely provisional interim relief, directed the respondents not to relieve the applicant in pursuance of the impugned order in case he had not been relieved already; (Annexure A/7). The respondents, according to the applicant, then effectively bypassed the Tribunal's order first by keeping the original order in abeyance, (Annexure A/8), and thereafter issuing a fresh order No.34332/21/E1B(S) dated 12.10.2017, (Annexure A/2A), posting him yet again to the same station, as earlier, viz Chiloda, Gajarat. This, the applicant alleges, was done so as to specifically bypass the Tribunal's order of 29.08.2017, (Annexure A/9), in which, while vacating the interim relief granted to the applicant on 20.06.2017, (Annexure A/7), nevertheless made it clear that the respondents, while reviewing and finally deciding the matter, would abide by the final outcome of the OA. The applicant thereafter again represented against his transfer to Chiloda, Gujarat vide the order dated 12.10.2017, (Annexure A/2A), on 24.10.2017, (Annexure A/10), but this representation has not been decided so far.

3. In support of his OA, the applicant repeatedly referred to the Standard Operating Procedure, (SOP), for the management of Group 'C' and 'D' Posts of MES stating in particular that his transfer is violative of the spirit of Rule 59 of the SOP, which stipulates that **"all Group C & D employees will generally not be transferred preceding three years of their retirement**

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except at their request to stations/complexes of their choice.” Since he was about 56 years old at the time of the transfer, he should not have been transferred to a station other than that of his choice. The applicant has also claimed that some other persons, who are, according to him, senior to him as regards length of stay at Jaipur, have not been transferred out of Jaipur, whereas, despite moving an application for cancellation of his transfer on compassionate grounds, he has been transferred by the respondents and his representation against the same has again gone unheeded. Thus, having exhausted all remedies available to him departmentally, the applicant has again been forced to seek the intervention of the Tribunal to set aside the impugned orders both of 04.04.2017 and 12.10.2017 passed by Respondent No.3 transferring him from Niwaru, Jaipur to Chiloda, Gujarat, and allow him either to continue the present place of posting, or, if so required, transfer him to one of the stated stations of his choice.

4. In their reply, the respondents have stated that in the interests of the organisation, the applicant was correctly posted by the competent authority, as per rules and guidelines and that he was considered for this transfer well before he crossed 57 years of age. The representation of the applicant against his transfer dated 19.04.2017, (Annexure A/5), was duly considered by the competent authority and rejected with a speaking order

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dated 05.06.2017, (Annexure A/2 amended OA). The applicant is surplus at the moment as per the existing placement orders in force at Niwaru. The foregoing of the promotion to OS by the applicant does not confer upon him any right to special consideration that by foregoing this promotion he will always be retained at Jaipur station. The respondents further state that vide their letter No.34304/CML-2017/01/E1B(S) dated 03.03.2017, (Annexure A/3), the applicant was asked to specifically to indicate the maximum number of choice stations in order of his favourites, but the applicant did not indicate any choices beyond Jodhpur, Bharatpur and Mount Abu. The four vacancies at Jodhpur, Bharatpur and Mount Abu were filled up by posting some other individuals, who were station senior to the applicant and gave these stations as their choice. Since it was not possible to accommodate the applicant at the stations, he chose, he was posted to a station where vacancies remained unfilled in the interests of the organisation and keeping in view administrative exigencies.

5. The respondents further state that while vacating the interim relief order made earlier in favour of the applicant on 29.08.2017 (Annexure A/9), two weeks' time was given to the applicant to file his rejoinder but instead of filing such a rejoinder, the applicant chose to file another OA bearing No.291/612/2017 which the Hon'ble Tribunal vide its order dated 01.12.2017

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dismissed as withdrawn with liberty to file again. The respondents averred that the applicant is serving at Jaipur since 13.09.2008 and had thus completed 8 years and six months at Jaipur station at the time of issue of his transfer order and he was transferred being both surplus and station senior at Jaipur Station in accordance with the available vacancies and administrative exigencies. While the original order of his transfer dated 04.04.2017, (Annexure A/1), was duly held in abeyance in compliance of the Tribunal's directions, the promotion panel of JAAs to SAAs were issued in the meantime and thus planning the postings due to this became necessary. Postings were therefore planned in the true spirit of the posting policy issued by E-in-C's Branch, (Para-48 of Annexure MAR/1, which is identical to Para 49 of the SOP), and since a vacancy was not available at any of the choice stations/complexes indicated by the applicant, he was posted as per organisational requirements. The applicant was at the time of serving at Jaipur Station for the last 8 years and six months and he was transferred being the station senior and longest stayee at Jaipur station.

6. During the course of arguments, counsel for both the applicant and the respondents reiterated and detailed the points mentioned earlier in the OA and the reply respectively. Respondents' counsel also referred to a judgment in the case of

Rajendra Singh vs. State of U.P. & Ors. [2009] INSC 1351 (July 2009) wherein Hon'ble Supreme Court observed in Para-5 of the judgment that **"a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires."** It has also been observed in Para 6 of the judgement that **"the courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafides."** It has further observed in Para 7 of the judgment that **"this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."**

7. The respondents' counsel has argued that the transfer of the applicant has been fully in consonance with departmental policy and administrative exigencies and rejection of his representation against the transfer was also made by a reasoned order a reading of which clearly demonstrates that the act was neither arbitrary nor vindictive. Therefore, the respondents are the best judge of administrative exigencies, which led to the order. This Court should not intervene in the same.

8. We have carefully considered the facts and arguments detailed by both the applicant and the respondents' counsel. The Standard Operating Procedure relied upon by both counsel is admittedly only in the nature of policy guidelines and even here the various stipulations made with regard to regulating transfer come with a caveat that administrative exigencies and the operational needs of the organisation can supersede the same. In the present case, while noting that the respondents' orders of 04.04.2017, (later held in abeyance) and 12.10.2017 do, in effect, if not by intent, circumvent this Tribunal's orders of 20.08.2017 read with 29.08.2017, we do not find substantive evidence of malafide in view of the explanation given by the respondents and on perusal of the respondents' letter dated 05.06.2017, (Annexure A/2), rejecting the applicant's representation against the transfer. Again, while noting that the

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applicant has cited some other cases where applications for cancellation of transfer were accepted by the respondents, we are constrained to state that the assessment of the weightage to be given to competing applications for transfers and postings is best left to the wisdom of the department and their appreciation of the sometimes competing considerations of staff welfare and operational or organisational requirements.

9. In the result, we find that sufficient grounds for allowing this OA do not exist and therefore the same is dismissed.

10. There will be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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