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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00111/2018

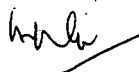
Date of order: 3rd August 2018Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sunil Kapoor MES 270477,
Son of Lila Krishna Kapoor,
Aged about 44 years,
Residing at C/o. Shri Gour Maity,
4/6, Ghosh Para Road,
Siddhanta Para, Nona Chandan Pukur,
Barrackpore – 700 122,
West Bengal and working as JE (QS & C),
Garrison Engineer (AF) Barrackpore,
Pin – 700120.

...Applicant

- VERSUS
1. Union of India,
Service through Secretary,
Ministry of Defence,
South Block,
New Delhi – 110 011.
 2. Adjutant General,
Adjutant General's Branch,
IHQ MOD (Army),
New Delhi – 110 066.
 3. Chief Engineer Eastern Command,
Engineers Branch, Fort Willian,
Port – 908542.
 4. Garrison Engineer (Air Force),
Military Engineer Service,
Barrackpore,
Kolkata – 700 120.
 5. The Chief Engineer,
Central Command,
Lucknow.

.. Respondents



For the Applicant : Mr. L.K. Chatterjee, Counsel
Mr. N. Roy, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant O.A. is a sequel to the earlier O.A. No. 891 of 2017.

2. The applicant has come up in the second stage of litigation by filing an application under Section 19 of the AT Act, 1985 in which he has prayed for the following relief:-

"(i) An order or direction upon the respondents to take appropriate steps by transferring him to Central Command, Lucknow his home town on compassionate posting forthwith and in any case not later than a date to be determined by this Hon'ble Tribunal

(ii) An order/direction setting aside or quashing the alleged speaking order dt. 28th December 2017 order No. 131322/2/2/JE(QS&C)SK/11/Engrs/e1c(1) 2017 issued by the Respondent No. 3 being Annexure A-1 herein

(iii) A consequential order/direction be issued upon the respondents not to give effect or further effect to the impugned order No. 131322/PO/49/Engrs/EIC(I) dated 23rd May 2017 being Annexure A-2 herein;

(v) An order/direction upon the respondents to submit and produce all relevant documents before this Hon'ble Tribunal regarding compassionate posting/transfers granted to others without insisting replacements as per Ann. A-10 herein;

(vi) Any other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. Heard both Counsel, examined pleadings and documents on record.

Written notes have been filed by the applicant citing decisions in **Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa (2009) 4 SCC 299, Union of India v. K.M. Shankarappa (2001) 1 SCC 582, State of Orissa v. Dhaniram Luhar (2004) 5 SCC 568 and State of Uttaranchal v. Sunil Kumar Singh Negi (2008) 11 SCC 205** particularly in the context of principle of natural justice.

4. The case of the applicant, as canvassed by his Ld. Counsel, is as follows:-

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That, the applicant is a civilian employee of the Ministry of Defence and is presently working in the post of Junior Engineer (QS & C) in the office of Garrison Engineer (AF) and had served in tenure/hard posts in Tenga Valley and Dinjan respectively.

That, the case of the applicant is that his aged parents, his son, who suffers from epilepsy and his wife who has respiratory problems, all live in Lucknow. The applicant has submitted various representations commencing from 2005 to be transferred on compassionate ground to Central Command, Lucknow, which is his home town. The applicant, however, has not been relieved on the ground that there was no replacement for him.

That, the applicant had made another representation in January, 2017 for transfer on compassionate ground but instead of considering the same as per the transfer / posting policy for civilians working in defence, he was transferred again vide orders dated 23.5.2017 to Tawang, which is a hard posting.

That, the applicant thereafter approached the Tribunal in O.A. No. 891 of 2017 which was disposed of on 6.11.2017 without going into the merits of the matter with a direction to the respondents to consider the representation of the applicant by passing a reasoned and speaking order.

That, although a reasoned order was passed on 28.12.2017, the same, not being in conformity with the directions of the Tribunal and other judicial pronouncements, the applicant has challenged the said speaking order in the instant original application.

The applicant has further submitted that he had first applied for compassionate posting in July, 2005 and an order was, accordingly issued on 5.1.2006 but he was not released to join the compassionate posting. He had applied once again in March, 2006 and that the Chief Engineer, Central

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Command Lucknow had agreed to accept the applicant in the said Command without any replacement.

That, once again he had represented on 23.11.2016, 27.1.2017 and 27.5.2017 followed by a reminder dated 8.6.2017 but his prayer for compassionate posting was never considered, although his representation dated 27.1.2017 (Annexure A-5 colly. to the O.A.) was recommended by the Chief Engineer, Eastern Command.

The grounds advanced by the applicant in support of his prayer are as follows:-

- (i) That, the transfer order, as impugned, dated 23.5.2017 violates the policy of the respondents dated AO 22/2001.
- (ii) That, despite his various representations for compassionate posting, the respondents have not followed the principles of natural justice prior to issue of his transfer order/speaking order.
- (iii) That, his prayers were based on domestic grounds and the policy on compassionate posting on domestic grounds ought to have been taken into consideration.
- (iv) That no verification and screening of his representation were done thereby violating the policy decisions contained in AO 22/2001.
- (v) That, earlier Chief Engineer of Eastern Command had recommended his representation for compassionate posting.
- (vi) That, his prayer for compassionate posting is pending for 12 years.
- (vii) That, the policy AO. 22/2001 enunciates that recommendations will be made without replacement, which has been violated in the speaking order.
- (viii) The policy AO 22/2001 refers to maintenance of chronological lists/records of such prayers for compassionate appointment, which has been violated in his case.

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The applicant has also cited the Civil Appeal No. 82 of 2011 (T.S.R. Subhramanian & ors. V. Union of India & ors.) and the consequent recommendations on placement committee which, according to the applicant, has not been adhered to in his case.

5. On the contrary, the respondents have filed a detailed written statement, in which, the position of the respondents has been argued as follows:-

That, the applicant was appointed under the vacancies of JEs of Eastern Command of MES and is presently working in the office of Garrison Engineer (AF), Barrackpore which is declared as Peace Station for more than 3 years 5 months. There are guidelines and posting policies which stipulate that an incumbent can stay at a peace station for three years only has to serve and for two years at hard/tenure station. The applicant, having overstayed in the peace station, is subject to rotation of posting within his parent command i.e. Eastern Command.

That, the applicant was ordered for transfer from Garrison Engineer (AF), Barrackpore which is peace station to AGE (I) Tawang which is a tenure station where persons, who have completed their tenure, are overstaying for more than two years due to non-reporting of relievers.

That, the applicant has prayed for mutual permanent transfer on compassionate ground to Lucknow under Chief Engineer, Central Command. He has applied for mutual transfer from the area of Chief Engineer, Eastern Command to Chief Engineer, Central Command on 27.1.2017. As per policy, the application was forwarded to Chief Engineer, Central Command for their consent and for replacement of Shri Sunil Kapoor from Chief Engineer, Central Command, on account of 30% deficiency of JE (QS & C) at Chief Engineer, Eastern Command.



That, the AO 22/2001, amended in AO 7/2011/MP (restricted documents) refers to "Adjustments of surplus and issue of NAC for filling of deficiencies for Group "C" and "D" regular civilian employees under the Ministry of Defence." and that postings of all basic subordinate staff of CEEC are governed by posting policy formulated by CEEC. JEs are classified under the category of Group "B" civilian employees. Moreover, as per Para 28 of AO 22/2001, Specialist category which are specific to the respective Corps/Service only, as shown D to this Order (JE(QS&C)/SA-I, ii included) will be exempted from the purview of this Order.

That, the applicant's name was due for tenure posting in TTP (Tenure Turnover Posting) in Jan, 2017 as he had completed 03 years 05 months at peace station. The applicant was directed to submit his choice posting and although all other persons had submitted their choice postings, the applicant had not submitted his choice posting within the scheduled date. Hence the Board of Officers had taken decision ex parte, as per policy in vogue and have posted him to a tenure station (AGE (I) Tawang).

The respondents have, therefore, argued that the O.A. is liable to be dismissed.

ISSUE

6. The issue before us is whether the speaking order dated 28.12.2017 (Annexure A-1 to the O.A.) as impugned as well as the transfer order dated 23.5.2017 (Annexure A-2 to the O.A.) are violative of the policy guidelines of the respondents and, hence subject to judicial review.

FINDINGS

7. The policy decision on AO 22/2001 which the applicant has heavily relied upon (annexed as Annexure A-4 to the O.A.) is examined in detail. The said circular has laid down the procedure for transfer of defence civilians on compassionate ground or on mutual basis. The relevant extracts of the said

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circular insofar as it relates to compassionate postings, are recorded below for better understanding of the issue at hand:-

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2. In case transfer is sought on domestic grounds, facts of the case will be verified in consultation with the Civil authorities. If, however, the Officer Commanding of the unit/establishments is satisfied about the genuineness of the grounds submitted by the individual, verification from civil authorities may be dispensed with. In case transfer is sought on medical grounds, the application must be accompanied by a medical certificate from the prescribed medical authority indicating the nature of illness and justification for transfer of the individual to the station of his choice.

3. The unit/establishment forwarding the application will render a certificate that on receipt of the posting order and after ascertaining availability of the vacancy from the receiving unit, the individual will be relieved of his duties within seven days and directed to report to his new unit of posting. Move of the individual will not be withheld awaiting relief. The resultant vacancy will be reported for adjustment in the normal manner as per SAO.

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5. Applications received at Army Headquarters will be scrutinized and those found complete in all respects will be registered on the waiting list and allotted registration number strictly in accordance with the date of receipt of the application. The registration number will be intimated to the unit concerned for information of the individual. In case no intimation is received by the unit within a month of forwarding an application, a reminder will be sent to Army Headquarters asking for registration number.

6. All cases will be treated alike and a person whose application is accepted and registered first will be placed senior to another person brought on the waiting list subsequently. Hence transfers will be ordered strictly in order of the seniority on the waiting list and requests for granting priority to any applicant over others will not be entertained under any circumstances."

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From the above it is inferred that in case the individual official, who is seeking transfer on domestic grounds, the factual details of the case will be verified in consultation with the authorities. According to the applicant, no such verification had been conducted in his case although he had prayed for compassionate posting on numerous occasions.

The said circular also states that after receipt of posting order and ascertaining availability of vacancy from the receiving Unit, the individual will be relieved of his duties within seven days and the movement of the individual will not be withheld awaiting relief. According to the applicant, although he was

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transferred to Lucknow on 5.1.2006, he was not relieved to join the post and the provisions of the circular has been violated in his case.

The circular further states that the applications would be scrutinized and accorded a registration number. The applicant has not acknowledged that any registration number had been issued to him on receipt of his application. According to the circular, the transfers are to be ordered strictly in order of seniority. Seniority, however, is not under challenge in the instant O.A.

Per contra, the respondents, relying on Annexure R-1 to the reply, have stated that the AO. 22/2001 amended in AO7/2011/MP refers to "Adjustment of surplus and issue of NAC for filling of deficiencies for Gr. 'C' and 'D' regular civilian employees under the Ministry of Defence" and, hence the said circular is not applicable to the applicant concerned. Moreover, as per Para 28 of AO 22/2001, Specialist category which are specific to the respective Corps/Service only are to be exempted from the purview of such order. As the applicant is a Junior Engineer (QS & C), the said category as shown in D to the said order is exempt and hence the A.O. 22/2001, as amended, is not applicable in the case of the applicant.

The applicant has not furnished the complete details / contents of AO 22/2001 as amended vide AO7/2011/MP in his pleadings and hence, we find no reason to disagree with the contentions of the respondents, who have placed the circular before us.

The respondents have also denied that any Inter Command posting order was issued in favour of the applicant on compassionate ground on 5th January, 2006 as claimed in para 4(k) of the pleadings.

Hereafter, we refer to an Annexure to the reply at "R-2", which is titled as "POSTING/TRANSFER POLICY : GROUP 'B' (NON-GAZETTED) AND GROUP 'C' PERSONNEL OF THE MES."



The relevant extracts therefrom with special reference to compassionate posting is noted as below:-

"b. Applications on domestic grounds shall be verified, if required, in consultation with civil authorities, if the CWE/CE zone is not satisfied of the genuineness of cases on ground. All compassionate cases have to be recommended without replacement in the chain.

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d. This HQ will order a Board of Officers to assemble every six months in Jan & Jul to screen and recommend the applications.

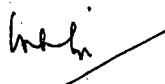
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I. Compassionate Ground postings from Eastern Comd to other can be granted either on permanent basis or on tenure basis for the Pers seeking posting on permanent basis out of Eastern Comd. However, inter-comd postings on Compassionate Ground basis for three years, though will be offered with replacement granted in very exceptional cases, without replacement also discretion of CE Comd on case to case basis depending on emergency/compassion, defi state, org requirement, etc. Pers applying inter-comd Compassionate Ground postings will specifically men application is for permanent posting or tenure basis for three years applying on tenure basis for three yrs will give a undertaking will not ask for extension after expiry of three yrs. Such pers will back after three yrs. To any station in CEEC either in tenure or pers org requirement."

From the said transfer policy, the following transpires:

- (i) Applications on domestic grounds with requisite verification have to be recommended without replacement in the chain.
- (ii) More particularly para "I" states that for inter-command posting for compassionate ground posting for three years will be offered with replacement granted. In very exceptional cases, such posting may be allowed without replacement also at the discretion of CE Command on case to case basis depending on emergency / compassion, defi state, org. requirement.

Hence, as admitted by the respondents themselves by annexing their own transfer policy, a prayer for compassionate posting on domestic grounds may be recommended without replacement by the CE Command depending on the urgency of the case.



The applicant has undisputedly been representing for compassionate posting for a very long time and on more than one occasion and on domestic grounds.

Hence, the respondents, could have considered his case without replacement for an inter-Command transfer for a period of three years as provided in their own transfer policy subject to his seniority and other Rules in vogue. In the speaking order, however, the respondent authority has stated that,

"(b) Your application for posting/tfr to Lucknow dt 27 Jan 2017 was recommended "With Replacement" by the CEEC, as per policy....."

This is clearly contradictory to their transfer policy (para "I" at R-2).

The respondents have also taken the stand in para 4 of their reply that the applicant had prayed for mutual transfer vide his representation dated 27.1.2017. Upon a close perusal of the applicant's representation dated 27.1.2017, both in the narrative or in the prescribed proforma, nowhere there has been any reference to mutual transfer. Rather the applicant, in para f of his representation had referred to the fact that his application had been recommended *"Without Replacement"* by many officers under the chain of Eastern Command, Kolkata. It is hence, not understood from where the respondents have discovered that the applicant had prayed for mutual transfer. If not, the respondents were duty bound, according to their own transfer policy, to consider his case without replacement. In that event, if so, the Central Command would not be under obligation to search for a replacement for the applicant. The other arguments of the respondents on his overstay in the peace station, the applicability of tenure turn over posting and 30% deficiency in Eastern Command are not relevant for adjudication in this matter, as the applicants' representation were confined to his payers for compassionate posting only.

8. Accordingly, in our considered view, the transfer policy guidelines have not been strictly adhered to while issuing the transfer order dated 23.5.2017 and also in the speaking order dated 28.12.2017, and, accordingly, as held in *Union of*

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India v. S.L. Abbas, (1993) II LLJ 626 and more particularly in *N.K. Singh v. Union of India, (1995) I LLH 854* that if the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer as contained in the respondents' transfer policy, this matter calls for intervention in judicial review.

We hence set aside the transfer order dated 23.05.2017 (Annexure A-1 to ^{with respect to the applicant} the O.A.) and direct the concerned competent respondent authority to consider his representations for compassionate posting in the light of their transfer policy particularly para "I" of the same without insisting on any replacement.

We also find that despite orders of the Tribunal dated 23.3.2018, the applicant has not indicated whether he had preferred any choice posting. The directions of the Tribunal will, hence, not preclude the applicant from indicating his choice stations to the competent respondent authority, who may take the same into consideration, if applicable, while finally disposing of the representations of the applicant in the light of their transfer policy guidelines.

9. The O.A. hence succeeds on merit and is disposed of with the above directions. There will be no order as to costs.

10. M.A. No. 118 of 2018 praying for stay of the transfer order dated 23.5.2017 is disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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