

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00207/2017

Date of Order: This, the 26th day of September 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

MES No. 264741
Shri Kitborland Marwein
Son of Late Basu Dev Roy
Junior Engineer (QS&C)
Office of the Commander Works Engineer
Military Engineer Service
Spread Eagle Falls,
Shillong, PIN- 793011, Meghalaya

...Applicant

By Advocates: Mr. A. Ahmed, Ms. R.R. Rajkumari &
Ms. D. Goswami

-Versus-

1. The Union of India
Represented by the Secretary to the
Government of India, Ministry of
Defence, South Block,
New Delhi – 110011.
2. The Chief Engineer
Headquarters, Eastern Command
Engineers Branch, PIN 908542
c/o 99 APO.
3. The Chief Engineer,
Headquarters, Shillong Zone,
PIN- 900332, c/o 99 APO

...Respondents

By Advocate: None

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

When the matter was taken up today, none present on behalf of the respondents. On several occasions also, that is, on 22.12.2017, 08.02.2018, 26.03.2018, 01.05.2018, 06.06.2018, 03.08.2018 and 03.09.2018.

2. Heard Mr. Adil Ahmed, learned counsel for the applicant. It was submitted by Mr. Adil Ahmed that the applicant had joined in the Military Engineer Service on 26.07.2000 as Junior Engineer (QS&C) Group 'B' (Non-Gazetted) in the office of the Head Quarter Chief Engineer, Shillong Zone. Presently, he is working as Junior Engineer (QS&C) in the office of the Commander Works Engineer, Shillong Zone, Shillong in the State of Meghalaya. The respondents by Circular No. 131300/TO/247/Engrs/EiC(1) dated 03.03.2017, circulated the names of officers who were likely to be affected in the Tenure Turn Over Posting (Cut off 30 Jun 2017) where the name of the applicant appeared at Sl. No. 6. Accordingly, applicant submitted his choice station and also highlighted that his wife is a Doctor serving at Civil Hospital, Shillong under the Govt. of Meghalaya. Therefore, the applicant requested for adjustment

in Shillong Complex as per Para 62(h) of letter No. 131306/1/45/Engrs/EIC(I) dated 25.04.2011 issued by the Headquarters, Eastern Command, C/O 99 APO for posting/transfer policy.

3. Applicant also highlighted that his children are very young - first and second are twin, ages 10 years, third one is 08 years and fourth one is just 06 months old. However, by transfer order No. 131322/PO/49/Engrs/EIC(I) dated 23.05.2017, with regard to the applicant, he has been shifted from CWE Shillong to AGE (I) Lekhapani which is not Meghalay State. Accordingly, applicant made representation on 10.06.2017 which has been duly forwarded by the office of the Commander Works Engineer, Shillong by letter No. 1270/148/EIA dated 13.06.2017 along with the recommendation of the Chief Engineer, Shillong.

4. The applicant also annexed the letter No. 70762/9/Admn/JE(QS &C)/14/EIC(I) dated 22.06.2017 in his support. However, his representation was not considered and returned unactioned on the ground that process of the re-consideration has been concluded.

The learned counsel pointed out that the transfer order No. 131322/PO/49/Engrs/ElC(I) dated 23.05.2017, with regard to the applicant, was received by the applicant on 31.05.2017 where he is working and he had made representation on 10.06.2017, that is, as per the provisions of Para 64 of the posting/transfer policy which has not been decided on merits.

5. By referring paragraph 5.4 of the O.A., Mr. Ahmed submitted that in case of similarly situated employees like the applicant, the respondent No. 2 has reviewed their respective posting/transfer order dated 23.06.2017 under cut off Jun 2017 by accommodating them on the basis of their individual representation. However, the respondent No. 2 has not reviewed the case of applicant's posting/transfer though the same is genuine and deserved to be considered as per MES Guidelines and Office Memorandums issued by the Government of India from time to time.

6. Mr. Ahmed further submits that since the applicant's wife is working as a Government Doctor in Health Department, Govt. of Meghalaya, as such, case of the applicant ought to have been considered as per Office Memorandum dated 03.04.1986 where it is provided as hereunder:

"It is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt. (A), dated 3-4-1986 while deciding on the requests for posting of husband and wife at the same station and should ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence."

7. Mr. Ahmed has drew the attention of this court to paragraph 62(h) of department's Posting/Transfer Policy of Group "B" (Non-Gazetted) and Group "C" employees of MES dated 25.04.2011 which reads as follows:

"62(h) Where, one spouse is Employed under the Central Govt. (MES) and the other Spouse is Employed under the State Govt:- The Spouse employed under the Central Govt (MES) may apply to the competent auth and the competent auth may post the said individual to the station or if there is no post in that station, the state where the other spouse is posted."

Mr. Ahmed has further drawn the attention of this Court to the ratio laid down by the Hon'ble Supreme Court rendered in the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666** where the Hon'ble Apex Court has held that – "Transfer of an employee during

mid-academic term is not proper unless exigencies of service are urgent for making such transfer."

8. We have heard the learned counsel for the applicant, perused the pleadings and material placed on record. From the perusal of record, it is evident from Annexure – 6 to the O.A. which is repatriation proforma wherein it was stated by the applicant that – "Wife is a Govt. Doctor serving under Govt of Meghalaya under Health Dept as senior Medical & Health Officer and presently posted in Civil Hospital, Shillong, so I may please be adjusted in Shillong Complex as per para 62 (h) of posting/transfer policy issued vide HQ Eastern Command letter No. 131306/1/45/Engrs/E1C(1) dated 25 April 2011 for posting of husband and wife in the same station. Further Children very small i.e. 1st & 2nd who are twins aged 9 years 9 months, 3rd aged 8 years and 4th is just 3 months old. So kindly consider my case in adjusting my posting in Shillong Complex sp as to enable me to help my wife in looking after our children."

9. However, despite the said request, the respondents issued the impugned transfer order dated 23.05.2017 (so far the applicant is concerned) by transferring him from CWE, Shillong to GE(AF), Lekhapani which is about 700 KM from Shillong.

Against the said impugned transfer order dated 23.05.2017, the applicant made appeal before the respondent No. 2 on 10.06.2017 which was duly forwarded by Commander Works Engineer, MES with due recommendation of the CWE, Shillong on 13.06.2018. However, the respondent No.2 vide order dated 04.07.2017 rejected the said appeal of the applicant (as stated in para 4.10 of the O.A.).

10. As the children of the applicant are very young and school going as well as wife of the applicant is working as Senior Medical Health Office in Civil Hospital, Shillong, we feel that the case of the applicant ought to have been considered by the respondent authority by retaining him at Shillong Complex as per ratio laid down by the Hon'ble Apex Court rendered in the case of **O. Karuppa Thevan (supra)** as well as O.M. dated 03.04.1986 as discussed in the foregoing paragraphs.

11. In view of the above, we direct the applicant to make a detailed representation before the respondent authority within a period of fifteen days from the date of receipt copy of this order. On receipt of such representation, the respondent authority shall dispose of the same and pass necessary orders in the line of foregoing paragraphs by giving

adequate opportunity of being heard within a period of three months thereafter.

12. It is further ordered that whatever decision to be passed by the respondent authorities shall be a reasoned and speaking and shall be communicated to the applicant forthwith. Respondents are further ordered that till disposal of the representation to be submitted by the applicant and till the decision of the respondent authority is communicated, applicant shall not be disturbed from his present place of posting at Shillong that is office of the Commander Works Engineer, Shillong, Spread Eagle Falls, Shillong, Meghalay.

13. O.A. stands disposed of accordingly at the admission stage. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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