

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Original Application No.200/00594/2017

Jabalpur, this Friday, the 15th day of February, 2019

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

A.K. Choudhary, S/o Shri J.P. Choudhary
Aged about 43 years Presently working as U.D.C.
Garrison Engineer R/o M.E.S. Colony CTC Line
Morar, Gwalior (M.P.) **-Applicant**
(By Advocate –**Ms. Somya Chaturvedi proxy counsel for**
Shri Alok Kumar Sharma)

V e r s u s

1. Union of India, Through it's Secretary
Ministry of Defence, Room No.155
E-Block South Block New Delhi 110001

2. Directorate General (Pers.)
Military Engineer Services
Integrated HQ of Ministry of Defence
Engineer-in-Chief's Branch Kashmir House
New Delhi 110001

3. Chief Engineer Headquarters,
Southern Command,
Pune (Maharashtra)-411001

4. Chief Engineer Bhopal Zone,
Military Engineer Services
Sultania Infantry Lines,
Bhopal (M.P.) 900236

5. Garrison Engineer Military Engineer Services
PO Morar Gwalior (M.P.) 474006 **- Respondents**
(By Advocate –**Shri Akshay Jain**)
(Date of reserving the order: 06.02.2019)

ORDER**By Navin Tandon, AM:-**

The applicant is aggrieved by his transfer order dated 22.03.2017 (Annexure A/1) whereby he has been transferred from Garrison Engineer Gwalior to Garrison Engineer (A) Jaisalmer.

2. The applicant has made the following submissions:-

2.1 He is working with the respondent-department since 1996. He has been transferred to many places and being an obedient employee has obeyed all the transfer orders.

2.2 He has joined the current posting at Gwalior on 23.07.2014 as Upper Division Clerk (UDC), after completion of Hard Station and Tenure Posting at Dhana.

2.3 He moved an application dated 14.12.2015 (Annexure A/5) for posting on compassionate ground (own expenses) for Garrison Engineer, Saugor. In the said

application, he has mentioned about the family conditions that his wife is working in a Government M.L.B. School Saugor and his two minor children are also studying at Saugor (Annexure A/6 & A/7).

2.4 A warning list for first tenure postings of UDCs was issued on 22.10.2016 (Annexure A/3) wherein the applicant's date of posting at the present place has been indicated as 28.03.2005, whereas he has joined Gwalior in the year 2014.

2.5 The respondent No.3 was duly informed by the immediate authorities of the applicant i.e. Garrison Engineer, Gwalior vide letter dated 12.12.2016 (Annexure A/9) about the date of complex and date of posting at Gwalior. The said detail was again forwarded by respondent No.5 vide letter dated 16.01.2017

(Annexure A/10) to respondent No.3 regarding the correct dates of his postings.

2.6. He has been transferred from Gwalior to Jaisalmer in terms of order dated 22.03.2017 (Annexure A/1).

2.7 Being aggrieved by the action of the respondents, the applicant has submitted his representation dated 24.03.2017 (Annexure A/12), which has been rejected by the respondent No.3 vide order dated 19.07.2017 (Annexure A/2). Hence, this Original Application.

3. The applicant has prayed for the following reliefs:-

“8.i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

8.ii) Quash and set aside the impugned order dt. 22.03.2017 (Ann-A/1) as far its relates to the applicant rejection order dated 19.07.2017 (Annx-A/2) and order dated 22.10.2016 (Ann A/3) as far as it relates to applicant.

8.iii) After quashing the impugned order direct the respondents to accommodate the applicant in Gwalior Dhana or Saugor;

8.iv) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper.

8.v) Award the cost of the instant lis to applicant."

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

4.1 The applicant has not raised any ground as to violation of any rules. He has only raised some of his personal grounds which cannot be a ground for interference in the transfer order.

4.2 The application for compassionate posting to GE Saugor was not received by the respondents. Hence his case for compassionate transfer was not considered.

4.3 The applicant was due for tenure posting in the year 2017. He did not submit three choice stations. But tenure station being mandatory posting hence he was posted at GE

(A) Jaiselmer in organization interest as it was deficient in clerical staff.

4.4 The date 23.08.2005 was inadvertently written in Annexure A/3 instead of 17.06.2014.

As per policy, tenure posting is mandatory in nature upto 52 years of age. As applicant was due for posting to tenure station and he did not submit his choice stations, his posting was taken out to GE (A) Jaisalmer in organization interest due to clerical deficiency of clerical staff at Jaisalmer.

4.5 After posting of applicant to Jaisalmer was taken out, he represented and he gave his posting choice as Dhana and Saugor. His application was considered but was not agreed to on merit basis as individual was due for tenure posting and since tenure posting is mandatory, he was informed to move on posting.

5. Heard the learned counsel for both the parties and have perused the pleadings and documents available on record.

6. Learned counsel for the applicant has placed reliance on Office Memorandum dated 30.09.2009 (Annexure A/8) issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, on the subject of posting of husband and wife at the same station, wherein Para 4 (vii) reads as under:-

“Where one spouse is employed under the Central Govt. and the other spouse is employed under the State Govt. :-

The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.”

6.1 Learned counsel for the applicant also places reliance on the order dated 15.05.2013 (Annexure A/13) passed by this Tribunal in O.A. No.418/2013 wherein the respondents were directed to take a

decision on applicant's representation keeping in view Paragraph 4(vii) of the consolidated guidelines issued by the Government of India vide O.M. dated 30.09.2009.

7. Learned counsel for the respondents submits that the DoPT's guidelines are always kept in view, and employees are adjusted to the extent possible. However, the interest of the organization is also to be looked into. The respondents brought our attention to compassionate ground posting application form filled in by the applicant himself (Annexure A/5), wherein information about his posting from the date of his appointment i.e. 05.02.1996 till date has been furnished. He has served only in M.P., namely Saugor/Dhana, Gwalior/M'Pur and Jabalpur.

7.1 Learned counsel for the respondents further submitted that there has been no violation of the transfer guidelines dated 27.08.2007 (Annexure A/11) and neither there is any malafide.

7.2 Learned counsel for the respondents relied upon the order dated 23.03.2017 passed by this Tribunal in O.A. No.202/923/2016 wherein it has held that the Court cannot interfere with the order of transfer unless the same has been shown to be out of malice or arbitrary exercise of power. No employee has a right to continue at a particular station indefinitely. The employer is the best judge who can depute an employee to a particular station to utilize his services for smooth functioning.

8. In the matters of ***Bank of India*** vs. ***Jagjit Singh Mehta*** (1992) 1 SCC 306, the Hon'ble Supreme Court has held as under:-

“There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at

*different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places **No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.***

(emphasis supplied)

9. The applicant relied upon the order passed by this Tribunal in O.A. No.418/2013 whereby direction was given to the respondents to take a decision in respect of applicant's representation keeping in view Para 4(vii) of the consolidated guidelines dated 30.09.2009. In the instant case, the applicant has represented the matter vide representation dated 24.03.2017 (Annexure A/12) which was duly forwarded by his immediate superiors giving full details of his posting. This representation was rejected by the respondents vide letter dated 19.07.2017 (Annexure A/2) stating that the case has been examined in detail and not agreed to as the choice station given by the individual is at par. As far as considering the matter in the light of consolidated guidelines dated 30.09.2009, the same has been discussed in the matters of *Jagjit Singh Mehta* (supra).

10. It has been specifically submitted by the respondents that the applicant has not furnished his three choice stations. Tenure stations being mandatory posting, he has been posted to GE (A) Jaisalmer in organization interest as there was deficiency in clerical staff at Jaisalmer.

11. It is settled law that transfer of a government servant in a transferable service is a necessary incident of the service career. 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. 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”.

12. 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.

13. Since there is no allegation of mala fide against any officer of the respondents nor any allegation with regard to competency of the officer who has passed the impugned orders of transfer or violation of any statutory provision in the impugned transfer, we do not find any justification for interfering with the impugned transfer order dated 22.03.2017 (Annexure A/1) and impugned orders dated 19.07.2017 (Annexure A/2) and 21.10.2016 (Annexure A-3).

14. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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