

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 12/2019

Reserved on: 10.05.2019
Pronounced on: 15.05.2019

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

Akhilesh Srivastava (MES) No.471283) S/o Late Sh. Ram Awadh Lal Srivastava, age around 56 years, R/o P-800, Nirman Vihar, Military Station, Jaipur. Presently posted as Director (Planning) in HQ Chief Engineer Jaipur Zone, MES, Jaipur (Group-A).

...Applicant.

(By Advocate: Shri Mukesh Agarwal)

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Director General (Personnel), Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bank Park, Jaipur-302006.
4. Chief Engineer, HQ, South Western Command, PIN-908546, C/o-56 APO.
5. R.S.Dubey, Director (WKS Dte) in the office of HQ, MES E-in-C's, Branch New Delhi-110011.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

ORDER

Per: A. Mukhopadhyaya, Member (A):

This Original Application, (OA), arises from the transfer of the applicant vide respondents' order of 07.12.2018, (Annexure

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A/1), from HQ CE Jaipur Zone as Director in HQ CE Northern Command at Udhampur. The applicant states that this transfer was made despite his prior application dated 25.10.2017, (Annexure A/5 refers), in which he had requested for a posting in Delhi on compassionate grounds in lieu of a last leg posting. The applicant contends that in his representation, which is on record, he stated that both his daughters were pursuing studies in Delhi and therefore his posting at Delhi would be of help in arranging family matters such as a suitable alliance for his elder daughter and also reduce the financial stress of maintaining both his daughters at Delhi. He further states that as provided specifically at para 12 (b), in the respondents' Cadre Management Policy, (Guidelines), for MES Civilian Officers (hereafter called the "**transfer policy**"); (Annexure A/4), he gave an undertaking in the aforementioned representation itself, (Annexure A/5 refers), that he would not lay claim to a "**Last Leg Posting**" of choice in case his request for a posting at Delhi was accepted. The applicant points out that para 12 (b) (iii) of the "**transfer policy**" specifically provides as follows:

....Compassionate ground posting would ordinarily be accepted and would be refused only on account of non-availability of vacancy.

2. The applicant contends that a perusal of the impugned transfer order, (Annexure A/1), at Sl. No. 'al' (J.K.Kapoor), 'aq' (Rajeev Kumar Gupta), 'ba' (Naveen Kumar), 'bb' (R.L.Dubey),

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'bc' (S.P.Dwivedi), and 'bd' (Ajay Rajvanshi), i.e. in a total of six cases, the persons concerned were posted in Delhi thus making it clear that vacancies were available at Delhi and states that had the respondents considered his request, (Annexure A/5), for a compassionate/last leg posting as per their own avowed "**transfer policy**", (Annexure A/4), he should have been accommodated at Delhi as a matter of priority. However, due consideration was not given to his request in accordance with the "**transfer policy**", (Annexure A/4), and the impugned order, (Annexure A/1), was passed in contravention of the same as far as he was concerned. The applicant states that when the impugned orders were issued contrary to his request, he again approached the respondents, but this time they even refused to forward his case to the competent authority and instead vide letter order dated 14.12.2018, (Annexure A/2), stated that they had "**already taken cognisance of the said application and the same has not agreed to by MoD/E-in-C's Branch**". Aggrieved by the aforementioned action of the respondents, he has approached this Tribunal seeking the following relief:

- i) by an appropriate order or direction, the impugned order dated 07.12.2018 (Annexure - A/1), whereby the applicant has been transferred from HQ CE Jaipur Zone to HQ CE Northern Command, Udhampur and letter dated 14.12.2018 be quashed and set aside qua the applicant and respondent no.5. The respondents be directed to provide posting at Delhi on compassionate ground in lieu of last leg posting with all consequential benefits.

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- ii) Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of the case be passed.
- iii) That the costs of this application be awarded.

Interim prayer

During the pendency of the Original Application, the effect and operation of the impugned transfer order dated 07.12.2018 (Annexure A/1), be stayed qua the applicant in the interest of justice.

3. This Tribunal vide its order dated 09.01.2019 issued interim directions to the respondents to maintain *status quo* with regard to the posting of the applicant as it existed on the date of its order.

4. In reply, the respondents point out that the applicant is a Group 'A' officer of a disciplined uniformed force and is liable for all-India transfer as a basic condition of service. They have brought on record the proceedings of the Board of Officers dated 18.06.2018 and subsequent days, (Annexure C-1), which was constituted for the specific purpose of considering "**the compassionate ground/last leg posting application submitted by MES Civ officers (Engr cadre) SE level and above for the period from 01 July 2017 to 31 December 2017.**" In these proceedings, the respondents specifically considered the applicant's case but did not recommend the same for acceptance observing as follows:-

Officer has already served two tenures at Delhi for 05 years 08 months. Both daughters are in higher education. Reasons for compassionate grounds are common in nature. Hence not recommended.

5. The respondents contend that since the applicant has been in Jaipur for more than four and a half years, he is routinely liable for transfer from this station and that while his problems had been given due consideration and weightage, the administrative exigencies of the working of the Department had to be given priority. They further contend that in any case, as reiterated by the Apex Court in a catena of cases, the applicant cannot stay at one place of his choice indefinitely as a matter of right. Some of these judgments, (cited below), explicitly rule that officials like the applicant who are liable for all-India transfer and are transferred in the public interest cannot claim any legal right to be posted at a particular place indefinitely. The only exception warranting intervention in such transfers would be on grounds of malafide exercise of power or the violation of statutory provisions which is not the case here:-

- i) **Union of India & Ors. vs. S.L.Abbas**, AIR 1993 SC 2444.
- ii) **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Another**, (2001) 8 SCC 574.

iii) **Rajendra Prasad vs. Union of India**, 2005 (2) ESC 1224.

iv) **Union of India. vs. H.N.Kirtania**, AIR 1989 SC 774.

v) **Bank of India vs. Jagjit Singh Mehta**, AIR 1992 SC 519.

6. In the present case, the applicant's request was considered but not recommended for the reasons stated earlier as the problems he referred to were "**generic**" in nature and a "**majority of officer(s) in similar service profile are having these grounds**"; (para 5.2 of Reply to the grounds refers). They claim that in the absence of transfer/posting on compassionate grounds as a result of the negative recommendations of the Board of Officers, (Annexure C/1), the applicant has been posted at Udhampur, (Northern Command), as per his service profile as he has served least in the Northern Command.

7. Learned counsel for the parties were heard and the material available on record was perused.

8. While reiterating the facts and arguments pleaded in the OA, learned counsel for the applicant also stated that it was not open to his immediate superior authorities amongst the respondents

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not to forward his representation to higher authority as has been done; (Annexure A/2 refers). He reiterated that the respondents' "**transfer policy**", (Annexure A/4), itself confirmed, as mentioned earlier, that ordinarily such transfer would not be refused unless there was a problem with the vacancy position which was not the case here.

9. *Per contra*, the learned counsel for the respondents, while reiterating the points made and the citations referred to in the reply drew the Tribunal attention to the preamble of the respondents "**transfer policy**", (Annexure A/4), reiterating the following provisions:-

- i) That these guidelines policy had been revised in view of "**increased work load of infrastructure development of all services and other organisations, expanding the cover of MES towards Border areas**"..... (Para 1 refers).
- ii) "**In any organisation there will be times when organisational requirements and individual aspirations do not coincide..... In case of any reconciliation organisation requirement will performe take precedence**"; (Para 2 refers).
- iii) "**It is therefore, imperative that they gain experience in these differing environments and**

therefore the turnover is essential and accordingly planned.”.... (Para 3 refers).

10. He also pointed out that in para 5 of the **“transfer policy”**, which refers to the aim of the guidelines, there is a specific provision that the personal concerns of the individuals affected would be considered only **“to the extent feasible”** and **“within administrative limitations. Organisational requirements and interest will however be supreme.....”**. Coming to para 12 (b) of the policy relating to compassionate/last leg posting relied upon by the applicant, respondents’ counsel pointed out that the procedure for considering such requests had been laid down in the **“transfer policy”**, which specifically states, [para 12 (b) refers], that **“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”**. He argued that the applicant’s representation prior to his transfer was duly considered by the Board of Officers constituted by the respondents but was not found appropriate for acceptance for the reasons detailed in its proceedings; (Annexure C/1 refers). On the question of applicant’s post transfer representation not being forwarded, respondents’ counsel stated that this was in the nature of a second representation in the case and therefore as provided specifically vide para 24 (e) of the **“transfer policy”**,

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such a representation could be forwarded to the next higher authority **"only after implementation of the move"**. He further pointed out that in this case, following upon the interim direction issued by this Tribunal the move in question was yet to take place. Finally, learned counsel for the respondents drew this Tribunal's attention to the specific provision at para 34 of the **"transfer policy"**, which states as follows:

The guidelines are for planning purposes to ensure transparency in the system and to generate a congenial working environment in the department to achieve optimum productivity levels in the MES. These guidelines are not statutory in nature and are not to be considered as a matter of right. The interest of the organisation takes precedence.

11. Respondents' counsel argued that in these facts and circumstances, this transfer made in the public interest and in the exigency of service was completely in accordance with the **"transfer policy"** and therefore the OA should be dismissed.

12. In this case, it is undisputed that the request for compassionate posting in lieu of last leg posting given by the applicant, (Annexure A/5), was duly considered by the respondents but was not accepted by its Board of Officers constituted to consider the same; (Annexure C/1). These proceedings further returned an explicit finding, (para-4 refers), as given below:

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There were 12 Nos of compassionate grounds cases out of these only 01 case has been recommended and remaining 11 cases are of general in nature hence not recommended. From the 10 Nos of last leg posting cases 09 Nos. cases recommended. Officers who have residual service less than three years and are seeking Last Leg Posting have been recommended.

13. It is clear from the above that the Board of Officers in question considered the competing claims of various requests for compassionate/last leg transfer and therefore, in view of the detailed reasons given qua the applicant it cannot be said that his case was not given due consideration.

14. In a catena of cases, the Hon'ble Supreme Court has ruled that employees with an all-India or other kind of transfer liability as a condition of service do not have any legal right against such transfers unless they can show that the transfer was made in an arbitrary or malafide manner or in express violation of some kind of mandatory or statutory provision. In the present case, the applicant has not been able to adduce any evidence of such malice or violation. Consequently, the OA lacks merit and is dismissed.

15. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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