

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**OA No.571/2017
OA No.580/2017
OA No.590/2017
and
OA No.592/2017**

Reserved on: 22.04.2019
Pronounced on: 30.04.2019

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

OA No.571/2017

Vinod Kumar Devatwal S/o Sh. Chhigan Lal, age around 50 years, R/o C/o Vinod Tailors, Factory Area Road, Jhotwara, (Jaipur). At present working as Senior Administrative Assistant (SAA) in the office of Chief Engineer, South West Command, PIN-908546 C/o 56 APO, Jaipur.

...Applicant.

(By Advocate: Shri Mukesh Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General Personnel/EIB, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, South West Command, PIN-908546 C/o 56 APO.
4. Shri Birendra Kumar, SAA, Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur-302006.

(By Advocate: Shri Kinshuk Jain)

OA No.580/2017

Santosh Kumar Sarsunia S/o Sh. Hukam Chand Sarsunia, age around 44 years, R/o 40, Arjun Puri, Imliwala Phatak, Jaipur. At present working as Senior Administrative Assistant (SAA) in the office of Chief Engineer, South West Command, PIN-908546 C/o 56 APO, Jaipur.

...Applicant.

(By Advocate: Shri Mukesh Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General Personnel/EIB, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, South West Command, PIN-908546 C/o 56 APO.
4. Shri Kaushal Kumar, SAA, Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur-302006.

(By Advocate: Shri Kinshuk Jain)

OA No.590/2017

Bal Singh Yadav S/o Sh.Jhabar Mal Yadav, age about 49 years, R/o - Village-Lambi-Ahir, Tehsil Buhana, Distt. Jhunjhunu (Rajasthan). At present working as Senior Administrative Assistant (SAA) in the office of Chief Engineer, South West Command, PIN-908546 C/o 56 APO, Jaipur.

...Applicant.

(By Advocate: Shri Mukesh Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.

(3)

2. Director General Personnel/EIB, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, South West Command, PIN-908546 C/o 56 APO.
4. Shri Rajesh Kumar, SAA, Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur-302006.

(By Advocate: Shri Kinshuk Jain)

OA No.592/2017

G.L.Kodwani S/o Sh.D.R.Kodwani, age about 57 years by caste Kodwani Sindhi, R/o 120/110, Vijay Path Mansarovar, Near SBI Bank, Jaipur. Presently working as Senior Administrative Assistant, GE (U) MES, Kalyan Marg, Bani Park, Jaipur.

...Applicant.

(By Advocate: Shri Mukesh Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Director General Personnel/EIB, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Chief Engineer, South West Command, PIN-908546 C/o 56 APO.
4. Garrison Engineer (South) MES, Jaipur.

(By Advocate: Shri Kinshuk Jain)

ORDER

Per: A. Mukhopadhyaya, Member (A):

These four Original Applications, (OAs), arise out of a single posting and promotion order No.34332/21/E1B dated 12.10.2017, (Annexure A/1), issued by the respondent

(4)

department and essentially seek the same relief; hence they are being disposed of by a single order.

2. The brief facts of these cases are that the applicants were transferred from their present place of posting in Jaipur being "**the senior most stayee in the stations/complexes**" in terms of Para 48 of the SOP issued vide Engineer-in-Chief, (E-in-C), letter No.B/20148/PP//EIC(1) dated 27.08.2007; (Annexure A/5). The applicants contend that vide letter No.B/20860/Clk/EIC(2) dated 21.06.2017, (Annexure A/7), the Director General (Pers) EIC, (Respondent No.2), had conveyed the E-in-C's direction that no Command Manning Level, (CML), postings were to be issued till further orders and that postings already issued and not implemented so far would be held in abeyance till these were reviewed and a final decision taken. Despite this, the Chief Engineer, (CE), South Western Command, (Respondent No.3), a subordinate authority of the aforementioned Respondent No.2, issued the impugned order on 12.10.2017, (Annexure A/1), in violation of the respondent department's transfer policy, as the individuals who were promoted to the Senior Administrative Assistant, (SAA), cadre and continued at Jaipur, had completed more than the three year tenure referred to at para 48 of the Transfer Policy; (respondent department letter No.B/20148/PP//EIC(1) dated 27.08.2007 refers). The applicants state that this para clearly stipulates that

(5)

where no vacancy is available for adjustment of such promotees at the same station/complex, they will be adjusted in one of the three choice stations/complexes as far as possible except for those due for tenure turnover postings. The applicants contend that the promotees posted in their place had all completed their tenure and had put in three years of service or more at Jaipur stations/complexes and therefore, as per Para 48 of the aforementioned transfer policy, they should not have been adjusted in Jaipur at the cost of the applicants. The applicants thus aver that the transfer order issued by a subordinate authority to that which had kept CML transfers in abeyance, was in direct contravention of para 48 of their own transfer policy. The applicants plead that on these grounds, their transfers out of Jaipur, as effected by the impugned order of 12.10.2017, (Annexure A/1), as well as movement orders etc. issued in furtherance thereof should be quashed and set aside.

3. In addition, one of the applicants, Shri G.L.Kodwani, (OA No.592/2017), has also argued that his transfer out of Jaipur is also in violation of DoP&T guidelines issued vide OM No.28034/9/2009-Estt.(A) dated 30.09.2009, (Annexure A/6), since these guidelines provide that where the husband and wife are both in service in the Central Government or one spouse is in the service of a State Government, then, as far as possible, both will be posted at the same place. This applicant states that his

wife is an employee of the Government of the Rajasthan working as a Teacher in the Government Senior Secondary School, Khonagorian, District Jaipur; (Para 4.2 of OA No.592/2017 refers). In all these cases, the applicants have essentially sought the same relief as summarised below:

- i) That the impugned order dated 12.10.2017 (Annexure A/1) be quashed and set aside and that the applicants be allowed to continue to serve at the station, (Jaipur), in which they were posted prior to the issue of the impugned order.
- ii) Any other order, direction or relief in favour of the applicant which is deemed fit, just and proper under the facts and circumstances of the case.
- iii) That the costs of this application be awarded.

4. In reply, the respondents, while referring to the same para 48 of the guidelines issued vide E-in-C's Br. letter No.B/20148/PP//EIC(I) dated 27.08.2007, (Annexure A/5), point out that the promoted employees who have been adjusted at Jaipur station by posting out the applicants had only completed around four years of service at Jaipur at the time of issue of the impugned order whereas the applicants have been serving at Jaipur for more than twice that period and in some cases for more than three times that period, i.e., for 8 to 12 years or more. Thus, they contend that the transfer policy of the respondent department was implemented vide the impugned order in its true spirit so as to do justice with all the employees serving in the

(7)

headquarters of the South Western Command. They point out that keeping in view the extremely long period of stay at Jaipur station by the applicants and the exigencies and requirements of public service, the transfers were effected in accordance with the goals and spirit of the department's policy in this regard. The respondents further aver that the issue of the transfer order in question did not represent any divergence from the instructions of the superior authority, (Respondent No.2), Director General Personnel, (E-in-C's Branch), because, in this case, the impugned order clearly shows that the CML postings earlier issued with regard to the applicants on 04.04.2017 were specifically cancelled, (para 8 of impugned order refers), and that the posting order now issued vide para 9 of the same were made on the basis of the applicants being "**the senior most stayee in the station**" in terms of para 48 of the transfer policy of 27.08.2007. The respondents further contend that despite the requirements dictated by administrative exigencies, the choice of place of posting as given by the applicants have been kept in overall view where possible while issuing these transfer orders. Therefore, these are neither arbitrary nor in violation of departmental policy. Rather, the impugned order is entirely in the public interest in order to deal with the exigencies and requirements of public service.

5. Learned counsels for the parties were heard and the material available on record was perused.

6. While reiterating the pleadings made in the OAs, learned counsel for the applicants cited the Apex Court's judgment dated 16.12.2008 in the case of **Somesh Tiwary vs. Union of India and Others** and argued that in this case also, there is evidence of malice in law as the impugned transfer order was not based on any factor germane to passing such an order and was in fact in violation of the department's own transfer policy of 27.08.2007; (Annexure A/5).

7. Per contra, learned counsel for the respondents, while reiterating the points made in the reply, drew this Tribunal attention to its order dated 23.08.2018 in **OA No.374/2017**, (S.K.Agarwal vs. Union of India & Others), in which the same impugned order of 12.10.2017 had been challenged by that applicant. He specifically pointed out the fact that the applicant in that case finds mention along with the applicants in the present case both at paras 8 and 9 of the impugned order. That OA challenging the same impugned order of 12.10.2017 was dismissed by this Bench of the Tribunal. Learned counsel further pointed out that the said Shri S.K.Agarwal, the applicant in that case, approached the Hon'ble Rajasthan High Court at Jaipur against this Tribunal's order vide **D.B.Civil Writ Petition**

No.19913/2018 but that the High Court, vide its judgment dated 05.09.2018, dismissed the Writ Petition observing that the Supreme Court in **Syndicate Bank vs. Ramachandran Pillai & Ors** (2011) 15 SCC 398 has gone so far as to hold that even if there has been any violation or breach of such non-statutory guidelines, it will not confer any right on any member of the public to seek a direction in a court of law for compliance with such guidelines. Respondents' counsel therefore argued that the order passed by this Tribunal in **OA No.374/2017**, (supra), as upheld by the Rajasthan High Court in its judgment dated 05.09.2018 in **D.B. Civil Writ Petition No.19913/2018**, (supra), squarely covers the present cases as the transfer order challenged in that case was the same and also because the ratio and principles governing the issue of this impugned order were fully analysed and adjudicated upon in the two judicial proceedings in question. Respondents' counsel pointed out that the Rajasthan High Court, while upholding the Tribunal's order in that case, specifically ruled that transfer policy and guidelines "**cannot be enforced through writ of mandamus**" as these are non-statutory and do not confer any right on any member of the public to seek a direction in a court of law for compliance with such guidelines. Respondents' counsel further cited the cases of **Ms. Shilpi Bose and Others vs. State of Bihar and Others** AIR 1991 SC 532 and **Gobardhan Lal vs. State of U.P.** (2004) 11 SCC 402, in both of which the Apex Court has ruled that the

(10)

courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory rule or are made in a malafide manner. In the latter case, the Apex Court has reiterated that the transfer of an employee is not only an incident inherent in his terms of appointment but is also implicit as an essential condition of service in the absence of any specific indication to the contrary in the law or conditions governing such service; (para 7 of judgment refers). The Apex Court here goes on to state that even when an order of transfer is made in transgression of administrative guidelines, it cannot be interfered with as such guidelines do not confer any legally enforceable rights, unless, such an order is shown to be vitiated by mala fides or is made in violation of any statutory provision. Learned counsel for the respondents contended that in the present case there is no evidence of malafide or arbitrariness on any count but, on the contrary, the very same impugned order of transfer issued with reference to the said Shri S.K. Agarwal has been judicially examined and found to be completely in order in all respects by both this Tribunal, (in OA No.374/2017 supra), and by the High Court of Rajasthan in related CWP No.19913/2018 supra.

(11)

8. In considering these OAs, we have also referred to Para 48 of the transfer policy of 27.08.2007, (Annexure A/5), relied upon by both the parties. Para 48 of the transfer policy reads as under:

"Staff on promotion will be adjusted in the same station/complex (not necessary in the same unit) provided vacancies are available. However, if no vacancy is available in the same station/complex, the promotees will be adjusted in one of the three choice stations/complexes as far as possible except for those due for tenure turnover postings. However, the individuals who have been repatriated from tenure stations/complexes and have not completed three-year stay in the stations/complexes, will not be moved on promotion and will be adjusted by posting out the other senior most stayee in the station/complex. If vacancy is not available at any of the choice stations/complexes, the individual will be posted as per organizational requirement."

9. We have also confirmed the respondents' contention that the very same transfer order had indeed been challenged by one Shri S.K. Agarwal before this Bench of the Tribunal in **OA No.374/2017** and that the order impugned in this case had been upheld in that case both by this Tribunal as well as by the Rajasthan High Court in its judgment passed in **D.B.Civil Writ Petition No.19913/2018**; (supra). Thus, it is clear that the ratio and principles involved with the issue of the same impugned order in these cases are not materially different from those adjudicated on in **OA No.374/2017**. The higher courts and the Apex Court have ruled in a catena of cases that any transfer or placement policy issued by the Government are not statutory in

(12)

nature and therefore cannot be held to be mandatory or legally enforceable. The higher courts and Apex Court have also ruled in a number of cases that transfers purportedly made in public interest or in the exigencies of service are best left to the wisdom of the employers/departments unless it can be demonstrated that some specific statutory provision has been violated or that the transfer has been made with clear malafide intention. Such is not the case here. Thus, the assertions made by the learned counsel for the applicant that these cases are covered by the principles laid down by the Apex Court in the case of **Somesh Tiwary vs. Union of India and Others**, (supra), have no force here as there is no finding of malafide of any kind in the impugned transfer order in these cases. Even in the case of the applicant Shri G.L.Kodwani, (**OA No.592/2017**), learned counsel for the respondents has drawn our attention to the reply given by the respondents to paras 4.5 to 4.10 of the OA in which it has been averred that the applicant was serving at Jaipur since 16.08.2005, (i.e. for more than 12 years and three months), at the time the impugned order of transfer was issued. The respondents nevertheless sought his choice of station before planning the CML postings later cancelled by the impugned order. However, this applicant did not submit any station of choice at that time. Therefore, looking to the fact that the post of CWE (AF) Jamnagar was vacant because none had submitted this as

(13)

their choice of station and the administrative need to man this position, the applicant was posted there.

10. In the result, we do not find any force or merit in any of these OAs which are accordingly dismissed.

11. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/