

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.61/1356/2017

Date of decision: 09.01.2019

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

1. MES No. 510026 Sh. Kuldeep Raj s/o Sh. Krishan Kumar working as Mate Elect. (Group D).
2. MES. No.506092 Sh. Raju Singh S/o Sh. Govind Singh working as VEH/Mech(SK) (Group C).
3. MES No.508868 Sh. Salinder Paul S/o Late Sh. Charan Dass, working as Elect(HS) (Group C).
4. MES No.509643 Sh. Parshotam Lal S/o Sh. Kesho Ram working as VEH/MECH (SK).
5. MES No.509642 Sh. Kuldeep S/o Sh. Madho Ram working as Mate Elect. (Group D).
6. MES No.510036 Sh. Vijay Kumar S/o Sh. Bana Ram working as Mate Elect. (Group D).
7. MES No.510620 Sh.Ranjeet Kumar S/o Sh.Ram Sagar Yadav working as Mate Veh/Mech. (Group D).
8. MES No.510621 Sh. Satish Kumar S/o Sh. Prabhu Dayal working as Mate Carp. (Group D).
9. A/No.13751235F Sh. Parshotam Kumar S/o Late Sh. Chand Lal Mate FGM. (Group D).
10. MES No.510028 Sh. Vijay Kumar S/o Sh. Suram Chand working as Mate FGM. (Group D).
11. MES No.510031 Sh. Subhash Chander S/o Sh. Vackil Chand working as Mate FGM. (Group D).
12. MES No.510022 Sh. Sanjay Kumar S/o Late Sh. Salo Ram working as Mate Elect. (Group D).
13. MES No.510025 Sh. Sudesh Raj s/o Sh. Mangat Ram working as Mate FGM. (Group D).
14. MES No.510653 Sh. Narayana Rao S/o Sh. Ramayya working as Mate Elect. (Group D).
15. MES No.510650 Sh. Jitender Kumar S/o Sh. Mahavir Singh working as Mate REF/MECH. (Group D).
16. MES No.510017 Sh. Manohar Lal S/o Late Sh. Munshi Ram working as Mate FGM. (Group D).
17. MES No. 510159 Om Paraksh S/O Late Sh. Bhader Singh, working as Mate (FGM). (Group D).
18. MES No.510034 Sh. Gopal Krishan S/o Late Sh. Bishan Dass, working as Mate Elect. (Group D).
19. MES No.510664 Sh. Vinod Kumar S/o Sh. Sukh Dayal working as Mate (FGM). (Group D).

20. MES No.510663 Sh. Ramesh Kumar Manotra S/o Sh. Madan Lal working as Mate (Veh Mech). (Group D).
21. MES No.510145 Sh. Mintu S/o Sh. Franti Ram working as Mate (Elect). (Group D).
22. MES No.510141 Kuldeep Singh S/o Sh. Mangal Singh working as Mate (Elect). (Group D).
23. MES No.510148 Kuldeep Kumar S/o Late Sh. Kashitu Ram working as Mate (FGM). (Group D).
24. MES No.510136 Parsotam Lal S/o Late Sh. Gari Ram working as Mate (FGM). (Group D).
25. MES No.509514 Gautam Singh S/o Late Sh. Roshan Lal working as Elect (SK) (Group C).
26. MES No.510153 Prem Singh S/o Late Sh. Sant Ram working as Mate (FGM). (Group D).
27. MES No.510163 Manmohan Kumar S/o Sh. Om Parkash working as Mate (Elect). (Group D).
28. MES No.509582 Joginder Singh S/o Sh. Harnam Singh working as Elect (SK) (Group C).
29. MES No.508346 Pritam Chand S/o Sh. Raghu Nath working as Elect(HS) (Group C).
30. MES No.509032 Satpal Singh S/o Late Sh. Dewan Singh working as Mate (FGM). (Group D).
31. MES No.510618 Ankit Kumar S/o Sh. Satpal Singh working as Mate (V/Mech.). (Group D).
32. MES No.510623 Madan Lal S/o Sh. Bodhraj working as Mate (Carpt). (Group D).
33. MES No.510349 Sanjay Kumar working as Mate (FGM). (Group D).
34. MES No.509510 Raj Kumar working as Elect.(SK) (Group C).

All working in the office of Garrison Engineer, Air Force, Leh. Jammu.

...APPLICANTS

VERSUS

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer in Chief, Army Headquarters, Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer, Headquarters, Northern Command, C/o 56 APO.
4. Headquarters 138 Works Engineer, C/o 56 APO.
5. Garrison Engineer, 865 Engineer Work Section, PIN 913865 C/o 56 APO.

...RESPONDENTS

PRESENT: Sh. R.K. Sharma, counsel for the applicants.
Sh. Sanjay Goyal, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed seeking the following reliefs:-

- i) Quash para no.66 and 67 of the Policy Guidelines dated 17.04.2010, copy attached as Annexure A-1, to the extent it provides that as far as possible Industrial/non-industrial persons will not be posted out of station/complex, being discriminatory and violative of Article 14 and 16 of the Constitution of India.
- ii) Quash Order dated 06.02.2014, copy Annexure A-2, passed by Respondent No.3 whereby claim of the applicants for posting out of Leh area has been rejected inspite of orders passed by this Hon'ble Tribunal dated 07.10.2013 in O.A. No. 439/JK/2013, order dated 06.12.2013 in O.A. No. 1077/JK/2013 and order dated 24.09.2015 passed in O.A. No. 060/01172/2014, whereby Respondent No. 1 and 2 were directed to consider the matter regarding the request of the applicants for transfer out of Leh complex in accordance with Policy Guidelines for management of Group 'C' & 'D' Posts of MES circulated by Respondent No.2 vide No. 41623/Policy/69/EIC(I) dated 17.04.2010 and to pass a reasoned and speaking order in the matter.
- iii) Quash speaking order issued vide No. 90237/3657/EIC (Legal-B) dated 28th April, 2016, copy Annexure A-3, whereby claim of the applicants for transfer out of Leh has been rejected without considering the fact as to whether persons posted in the high altitude area such as Leh, Ladakh and Kargil etc. can be given rotational posting to the plain areas so that they do not have to work in such areas for unduly long periods of time.
- iv) Issue directions to the respondents to consider the matter regarding the request of the applicants for transfer out of Leh complex after completion of two years tenure at hard station as has been allowed in the case of administrative staff.

2. Learned counsel for the applicant submitted that earlier also a view has been taken by this Court vide order dated 24.9.2015 passed in O.A. No.6/1172/2014 titled **Raju Singh & Ors. Vs. UOI & Ors.** that respondents have to post persons out of higher altitude areas like Leh Ladakh and Kargil, on rational posting, to plain areas and direction

was issued to them to frame guidelines to cover the categories of staff such as the applicants therein for rotational transfers within the Command or elsewhere as may be considered appropriate. The order dated 24.09.2015 was challenged before the Hon'ble Jammu and Kashmir High Court which was decided on 08.5.2016, wherein division Bench of the Hon'ble High Court recorded finding in para 8 holding that policy is in violation of Articles 14/16 and 21 of Constitution of India.

3. Sh. R.K. Sharma, learned counsel for the applicants submitted that the applicants are continuing since 1982 but despite finding recorded by the Hon'ble High Court, as further upheld by the Hon'ble Supreme Court, respondents have turned down their request for posting. Therefore, he made a prayer that let a direction be issued to respondents to formulate a policy so that applicants can be posted on rotational basis in plain areas instead of forcing them to continue indefinitely at hard station. He also apprised that even in Military services these areas have been declared as hard station and persons are posted on tenure posting only. He drew our attention to letter dated 27.06.2017 (Annexure A-10), where a policy has been issued by Director (Pers) C&M for MES civilian employees where the tenure of 24 months has been fixed to post at Leh Complex/Region. Therefore, he submitted that the view taken by the respondents in rejecting claim of the applicants is arbitrary.
4. We have given our thoughtful consideration to the entire matter.
5. It being a policy matter, it would not be incumbent upon us to pass any order. What the Court can do is to examine the rationality of a policy decision. It is within the domain of the respondents to frame a

policy, and suitably modify paras 66 and 77 of transfer policy dated 27.06.2016 (Annexure A-10) so that persons like the applicants will not be at hard stations indefinitely and they can be given rotational posting at plain areas under their Commands. Accordingly, we dispose of this O.A. in the above terms with direction to the respondents to reconsider the matter and pass appropriate order within a period of three months from the date of receipt of a copy of this order. We expect that they will rationally pass order without arbitrarily rejecting the plea of the applicants. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 09.01.2019.
Place: Chandigarh.

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