

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00356 TO 358/2018

DATED THIS THE 13TH DAY OF JUNE, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

1. SMT.ARCHANA S.J
W/o Sri.Kiran Kumar.S,
Aged about 30 years,
MES/190109,Working as JAA,
O/o CWE (Army),
No.101, Dickenson Road,
Bangalore– 560 042.
Residing at: No.16,
Jnanakshi Nilaya,
BHEL Layout, 2nd Stage,
Pattanagere,
Raja Rajeshwari Nagar,
Bangalore-560 098

2. SMT.MANJULA
W/o Sri.C.Manjunatha,
Aged about years,
Working as SAA,
MES /604395,
O/o Garrison Engineer (I) R&D (West)
DRDO complex,
CV Raman Nagar,
Bangalore-560 093
Res: No.511, 1st Cross,
ThimmaReddy Colony,
Jeevan Bhimanagar,
Bangalore-560 075.

3. SMT.M.VILASINI NANDAKUMAR
W/o Sri.C.Nandakumar,
Aged about 56 years,
Working as SAA,
O/o Garrison Engineer (I) R&D (West)
DRDO complex,
CV Raman Nagar, Bangalore-560 093
Res: No.38,Nandavilas,
1st Main C Cross, Brindavan Estate,
Marathahalli Post,
Bangalore-560 037

... APPLICANTS

Vs.

(By Advocate Shri K. Hanifa)

Vs.

1. Union of India
Rep by its Secretary,
Room No.234,
Ministry of Defence,
South Block,
New Delhi-110 015.
2. Engineer in Chief,
IHQ, MOD (Army),
Kashmir House,
Rajaji Marg,
New Delhi-110 001.
3. Chief Engineer,
HQ, Southern Command,
Pune-411 001.
4. Garrison Engineer (I) R&D (West),
DRDO Complex,
C.V.Raman Nagar Post,
Bangalore-560 093.
5. Commander Works Engineer (Army),
No.101, Dickenson Road,
Bangalore- 560 042.

RESPONDENTS

(By Standing Counsel Shri K. Gajendravasu for Respondents)

ORDER (ORAL)

HON'BLE DR.K.B.SURESH ...**MEMBER(J)**

Heard. Persons on the verge of retirement or under other issues are the applicants. It seems vide order L.13229/CCB/486/EIB dated 06.03.2018, produced as Annexure A-19, HQ Chief Engineer, Chennai Zone was informed by

the Commander Works Engineers(Army), certain issues with regard to the applicants, we quote from it:

Commander Works Engineers
(Army)
Military Engineer Services
101, Dickenson Road,
Bangalore-560 042.

L.13229/CCB/486/EIB

06 Mar 2018,

HQ Chief Engineer
Chennai Zone
Island Grounds
Chennai-09.

POSTING TRANSFER: SUBORDINATE
ON ADMINISTRATIVE GROUNDS

1. Please refer HQ CE SC Pune Posting Order No. 03/2018 dated 22 Feb 18 issued vide letter No.132404/2/CCB Jul 2017/134/E 1B(S)/A1 dated 22 Feb 2018.
2. Representations for cancellation of posting order received from the following individuals of our area is fwd herewith duly recommended by CWE please:-

Ser No	MES No, Name, Designation & Unit	Remarks
a	MES-130690 Shri G Navi Chander, SAA GE (P) Bangalore	Indl has not completed six years of service in Bangalore, hence Indl requested for cancellation of posting.
b	A/1386650	Indl will be completing 57 years of age on 17 May 2018 and as per Para 58 of E-in-C's Branch New Delhi posting policy letter No. B/20148/PP/E1C (1) dt 27 Aug 07 is exempted from posting and also Indl elected has First Time Branch Secretary AIMESAC & MSA for Bangalore.
c	Ex-JC-306736F Shri Ram Chandra Prasad, JAA CWE (Army) Bangalore	Son of the individual is having 40% disability for life as per AFMSF-16 (Ver 2006 dt Sep 12 issued by Comd Hosp (Air Force) Bangalore. Based on the medical ground of his son your HQ has cancelled his earlier posting order vide your letter No 132402/2016/LDC/110/E1B(S)/A2 dt 15 Jun 16.

d	MES-190109	Indl is having 12 months old Baby Boy and her spouse is working in IT Sector in Bangalore and his service is not transferable. Due to which her 12 months old Baby needs mothers care/nourishment. Based on her child care she has requested for cancellation of posting order as per Govt of India, DOPT order No.28034/2/97-Estt(A) dt 12 Jun 97.
e	EX-JC-305603	Indl is suffering from Dysphasia with Sub Mucosal module in esphagus on UGI and under medical treatment with Command Hospital Bangalore and also not completed six years service in Bangalore, hence Indl has requested for cancellation of posting.
g	MES-189364	Indl is having 03 years old Girl child and her spouse is working in IT Sector in Bangalore and his service is not transferable. Due to her 03 yrs child and needs both parental care/nourishment. Based on her child care she has requested for cancellation as per Govt of India, DOPT order No. 28034/2/97-Estt(A) dt 12 Jun 97.
h	Ex-JC-306074K	Indl is elected first time as JCM IVth Level Member vide this office order No. 11211/JCM/276/E1B dated 06 Aug 2016 and also going to complete 57 years of age 20 Jun 2018, hence as per Para 17 and 58 of E-in-C's Branch New Delhi posting policy letter No B/20148/PP/E1C (1) dt 27 Aug 07 is exempted from posting please.

3. In view of the above, representations of the above Individuals may please be fwd to HQ Chief Engineer Southern Comd Pune duly recommended by Chief Engr at the earliest due to paucity of time please.
4. HQ Chief Engineer (AF) Bangalore has also taken up a considered case of Bangalore area with HQ Chief Engr Southern Comd Pune for review of posting order vide their letter No 122015/AF/CCB/3600/E1B(S) dt 03 Mar 2018 (copy enclosed).

-sd/-

(C Subramanyam
Admn Offr II
For Commander Works Engineers(Army)

2. Apparently, thereafter an administrative ground order was passed saying that the applicants had been put on warning list and have not reciprocated. But then that does not seem to be correct, as evidenced from Annexure A-19. As Annexure A-19 could not have genesis, unless the applicant supplied necessary points. Therefore, we think that the stand taken by the respondents seems to be at variance with the facts available.

3. Apparently, from the level of Director, E-in-C an order was issued as B/20148/PP/E IC(1) dated 20th August 2018, which we quote:

*Directorate General (Pers)
HQ Military Engineer Services
Engineer-in-Chief's Branch
Kashmir House, New Delhi-11*

B/20148/PP/94/E IC(1)

20th August 2018,

*Chief Engineer [for kind attn.. of Jt DG (Pers)/Col(Pers)]
HQ Southern Command
Pune-908541.*

WARNING INSTRUCTIONS FOR ADMINISTRATIVE POSTING-2018
BASIC SUBORDINATE STAFF

1. *Reference All India MES Civilian Engineer Association letter No.AIMCEA/CHQ/THU/30 dt Jul 2018 addressed to Lt Gen Sanjeev Kumar Shrivastava, AVSM, E-in-C, E-in-C's Sectt, Kashmir House, New Delhi-11 and copy endorsed to your HQ wherein they have enclosed the copy of your HQ letter No.132601/Adm Posting-18/01/E1B(S).A1(a) dated 24 Jul 2018.*
2. *The matter has been analysed by the E-in-C and it is directed to put on hold Administrative Postings being planned vide your letter No.132601/Adm Posting-18/01/E1B(S).A1(a) dated 24 Jul 2018.*

Deficiency of stations should be taken care of by posting newly recruited LDCs, Stenos & JEs. Please ensure that while posting newly recruited LDCs, Stenos & JEs priority will be given to newly raised formations.

3. *Please fwd details alongwith justification of all adm postings issued by your Command and also give detailed comments on the points raised in the Association letter.*
4. *This has approval of the E-in-C.*

-Sd/-
(S.K. Tripathi, IDSE)
Director, E1C(1)
For E-in-C

4. Therefore, the higher authority has directed that all Administrative postings be put on hold and that deficiency of stations should be taken care of by newly recruited persons. Therefore, this transfer order could not have been issued by Respondent No.3. It is quite illegal and against the mandate given by the higher authority.
5. We think that this is a matter which should be examined by Respondent No.1 in relation to the sensitiveness and obedience of orders by the then Respondent No.3. He may do so within the next 2 months. The transfer orders are hereby quashed.
6. OA allowed. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the Applicant in OA.356 to 358/2018

Annexure A1: O.M.No.28034 of DoP&T-posting of Husband and Wife dt.12.06.1997.

Annexure A2 :Transfer Policy of the Respondent Department dt.27.08.2007.

Annexure A3: O.M.F.No.28034/9/2009-Estt (A) dt.30.09.2009.

Annexure A4: Swamy's Hand Book 2017- regarding posting of Husband and wife.

Annexure A5: L.No.132402/Gen/485/EIB (S)/A (a) dt.29.07.2017-CML posting held in abeyance.

Annexure A6: Warning instructions-No.13204/2/CCB Jul 17/177/EIB (S)/A1 dt.11.11.2017.

Annexure A7: Representation of the First Applicant dt.22.11.2017.

Annexure A8: Representation of the third Applicant dt.22.11.2017.

Annexure A9: L.No.13204/2/CCB Jul 2017/34/EIB (S)/A1 dt.22.02.2018- Posting/Transfer

Annexure A10: Representation dt.24.02.2018 of Staff Association.

Annexure A11: Representation of third Applicant dt.27.02.2018.

Annexure A12: Representation dt.27.02.2017 of Staff Association.

Annexure A13: Representation of first Applicant dt.01.03.2018.

Annexure A14: Representation of 2nd Applicant dt.01.03.2018.

Annexure A15: Letter from CE (AF) dt.03.03.2018.

Annexure A16: L.No.13229/CCB/486/EIB-issued by CWE(Army) dt.06.03.2018.

Annexure A17: L.No.132404/2/CCB Jul 2017/63/EIB/A1 dt.10.04.2018-Posting/Transfer issue by R-3 .

Annexures referred by the Respondents in the Reply

Annexure-R1: Copy of Warning Instructions.

Annexure R2: Copy of OM dated 12.6.97.

Annexure-R3: Copy of Warning List.

Annexure-R4: Copy of Guidelines.

Annexures referred to by the Applicant in Rejoinder

Annexure A18: L.No.132601/Admn Posting-2018 Basic subordinate staff/01 /EIB(S)/A1 (a) dt. 24.07.2018 issued by R-3 .

Annexure A19: L.B/20/20148/PP/94/E 1C (1) Warning instructions for Administrative posting- 2018 Basic subordinate staff dt.20.08.2018 issued by R-2 .

Annexures referred by the Respondents in the Additional Reply

Annexure-R1: Shri K.S.N. Reddy (Applicant-3) submitted application under RTI Act 2005 for seeking information on details of correspondence related to administrative posting.

Annexure-R2: Engineer-in-Chief Branch Posting Policy Guidelines 2007.

Annexure-R3: HQ Chief Engr Southern Comd Pune Warning Instruction letter No.132404/CCB Jul 17/77/E 1B (S)/A1 dt. 11 Nov 2017 along with Appx 'B' to fwd choice station by 22 Nov 2017.

Annexures referred to by the Applicant in written arguments

Annexure A20: Appointment orders for the post of LDC issued by R-3.
