

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00320/2018

RESERVED ON : 04.09.2019
PRONOUNCED ON:18.09.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

No.6969348 FED Ganpat Ram S/o Shri Shera Ram, aged about 36 years, R/o Saran Nagar, Ajmer Road, Jodhpur (Raj) serving with 19 FAD, PIN-909719 C/o 56 APO as a Fire Engine Driver (FED) under respondent No.6.

...Applicant

(By Advocate: Shri K.K.Shah, proxy counsel for Mr. R.N.Choudhary)

Versus

1. The Union of India through its Secretary to the Government of India, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Army Headquarters, DHQ PO, New Delhi-11
3. Directorate Gen of Ord Services, Master Gen of Ordnance Branch, Integrated HQs of MoD (Army), New Delhi- 110 011.
4. The Officer-in-Charge, Army Ordnance Corps Records, PIN- 900453 C/o 56 APO.
5. Headquarters, 8 Mountain Division Ordnance Unit, PIN- 909008 c/o 56 APO.
6. Commandant 19 Field Ammunition, Depot, PIN-909719, C/o 56 APO.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

Per Mrs. Hina P.Shah

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing and setting aside the impugned order dated 6th September, 2018, which is pertaining to posting of the applicant on turn over basis.

2. The case set up by the applicant is that he was appointed on the post of Fireman with 19 FAD vide appointment order dated 28th November, 2001. He was allotted P.No.6969348 and till date he is serving with 19 FAD. Thereafter he was promoted as Fire Engine Driver (FED) in May, 2005. 19 FAD was ordered by the AOC Records to keep the applicant stand by for posting to 8 Mtn. DOU vide letter dated 20.06.2018. The applicant stated that since he was junior in the seniority list of 19 FAD he was not eligible for posting to 8 Mtn. DOU as per provisions of Para 16 of Record Office Instruction (ROI) No. C/1/2009 (Ann.A/4). A legal notice dated 14th March, 2018 was served upon the respondents to cancel his name for posting out to 8 Mtn. DOU. In reply to the legal notice, it is intimated that no such posting order in respect of the

applicant is issued by them. In June, 2018, AOC Records issued posting order in respect of some persons, which was stayed by this Tribunal vide order dated 9th July, 2018 passed in OA No. 193/2018 and the same is pending for final disposal. The AOC Records now issued impugned posting order of the applicant to 8 Mtn. DOU vide order dated 6th September, 2018 (Ann.A/1). The applicant avers that he is not medically fit for posting to 8 Mtn. DOU which is located in high altitude area because the Neurosurgeon has advised and prescribed the treatment and put the applicant under restrictions to avoid sitting and squatting on ground, long travel, climbing trails, lifting heavy weight and long standing (Ann.A/9). In this regard, the applicant filed application on 21st September, 2018 (Ann.A/10) and 6th October, 2019 (Ann.A/11) to consider his case for cancellation of posting order on medical grounds because he is not fit to serve in high altitude areas due to his disability (Slip Disk L4 and L5). But his request has been rejected by the respondents, therefore, he has filed the present OA.

3. The respondents by way of filing reply to the OA, have submitted that Shri Harchand Ram of 8 Mtn. DOU has completed his two years tenure and as per the provisions

he applied for Jodhpur as his choice station on compassionate grounds in July, 2017. His case was considered and respondent No.4 asked respondent No.6 to forward name of volunteers FEDs if any for posting to 8 Mtn. DOU to extend the relief to Shri Harchand Ram. Accordingly, as per seniority role in the office of respondent No.6 an intimation was forwarded according to which three persons senior to the applicant in the seniority list have already been under posting and the applicant being senior most, posting order on turn over basis has been issued to 8 Mtn. DOU vide letter dated 6.9.2018 (Ann.A/1). Thereafter the applicant forwarded application dated 21.9.2018 to cancel his posting on medical grounds which has not been accepted by the competent authority as the MRI report dated 6.3.2017 clearly found mention that "this is only a radiological impression and not the final diagnosis and the report is not valid for medico legal purposes." The MRI report was more than 18 months old and the treatment on medical problem was not received and there was no recommendation of the competent medical authority which rendered him unfit for high altitude area. Therefore, the medical ground advanced by the applicant to avoid posting is not proper as per the procedure prevailed in the

respondent department for medical fitness. This Tribunal is not supposed to declare anybody fit or unfit to serve anywhere being not medically trained but it is a judicial forum. The respondents have further stated that for examining the medical fitness of a person posted to high altitude area, a particular procedure for medical checking and satisfaction has been provided by a SOP on the subject. After posting to high altitude area an individual is required to be kept for seven days under medical supervision and step by step medical check up by carrying on necessary medical test and examination etc. are done at different intervals. After satisfying with such medical check ups, if a person is found fit, he is required to proceed for duty. If the applicant is really unfit for the duties at high altitude area, the same will be found during the medical check-ups required to be taken place in pursuance of SOP. The respondents have justified their action in accordance with different paras of ROI and stated that being longest stayee in the station i.e. seniority, the action of the respondents is in accordance with law. So far as representation against the posting order is concerned, the respondents have mentioned certain procedure and stated that such representation has not been received by respondent No.4

through proper channel provided in ROI till date, but the applicant has filed the instant OA directly without submitting such representation. The applicant has not placed the correct ROI but the same is old one which is not in force now. So far as the legal notice is concerned, the respondents submitted that the legal notice was served without existence of any order of posting on the day of serving the legal notice. So far as the stay granted in other cases is concerned, the respondents submitted that the stay has been obtained by relying upon old ROI which is not in force. The respondents have further submitted that the applicant prior to placing the medical prescription before this Tribunal has never informed the respondents about the same and never submitted any medical claim for the cost incurred upon such treatment. The cases filed by Shri Shyam Lal and Shri Bhoma Ram cannot be said to be similar being factually different. After posting of the applicant vide impugned order dated 6.9.2018, he has already been relieved from office of respondent No.6 vide order dated 13.10.2018 and a movement order dated 15.10.2018 has been issued and carrying out the SOS from the office of respondent No.6 dated 17.10.2018 and the same has been forwarded to the home address of the

applicant. Therefore, it is clear that impugned order has already been carried out by relieving the applicant prior to filing of the OA on 16.10.2018 served on 27.10.2018 (Ann.R/2 and R/3). Therefore, the respondents stated the OA has no merit and liable to be dismissed.

4. Heard Shri K.K.Shah, proxy counsel for Shri R.N.Choudhary, counsel for the applicant and Shri K.S.Yadav, counsel for the respondents.

5. When the matter was listed on 16.11.2018, this Tribunal directed the respondent to get the applicant medically checked from their medical Doctor/Hospital and see whether he is fit to join at Ladakh where he has been posted as per the posting order dated 6th September, 2018 and produce the medical fitness certificate/report by 12.12.2018. On 12.12.2018, this Tribunal observed that the medical report of the applicant produced was on the basis of earlier MRI and medical check up done by the applicant, therefore, the same was not taken on record and a further direction was given to get the applicant medically checked up from Military Hospital, Jodhpur. After getting medically checked up by the Military Hospital, Jodhpur, the

Medical Board has made recommendations to the following effect:-

"Based on the symptomatology of the patient, clinical findings and radiological evaluation of patient at MH Jodhpur on 13, December, 2018, it is opined that his low back ache is likely to get aggravated at extreme cold climate conditions.

In view of above, individual should not be posted to high altitude areas and extreme climatic areas.

6. After considering the recommendations of the Medical Board dated 13.12.2018, the effect and operation of the impugned order dated 6.9.2018 was stayed, qua the applicant on 14.12.2018 till the next date and the respondents were directed to permit the applicant to join back at 19 FAD till the next date of hearing. It is clear that since 14.12.2018, the applicant is at 19 FAD. Now if the matter is considered in the light of the recommendations made by the Medical Board of Military Hospital, the applicant is not liable to be posted to high altitude areas and extreme cold climatic areas where the medical problem of the applicant is likely to get aggravated.

7. In view of the above, we find merit in this OA. Therefore, the impugned posting order dated 6th September, 2018 (Ann.A/1) and the subsequent relieving/movement orders, qua the applicant, are quashed

and set aside. The OA stands allowed in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/