
(2014) 06 SHI CK 0088
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1328 of 2014

Jiwan Dass

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

Citation : (2014) 06 SHI CK 0088

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : G.R. Palsra, Advocate for the Appellant; Sandeep Sharma, Assistant Solicitor General of India, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The petitioner in this writ petition, has urged for quashing of the order, rendered by the Central Administrative Tribunal, Chandigarh, on, 26.2.2014 comprised in Annexure P-1. A further relief, is, urged, of the respondent being directed to transfer the petitioner to, either Palampur, Allahala, Holta in Kangra District or Manali in Kullu district. In the alternative, it has been prayed that the respondents be directed to retain the petitioner at the present place of posting i.e. Yol Cantt. Dharamsala. The petitioner has averred that he has completed 58 years of age in December, 2013. He has served for more than 35 years in CWE Leh. He claims the benefit of paragraph 20 of the guidelines for Management of Group "C" and "D" posts of Military Engineering Service (MES), which is extracted hereinafter:-

20. The normal age limit for tenure station/complex posting is 52 years and 50 years for high altitude stations such as Leh Complex, Kargil Complex and Nathatop. Subordinates may also be posted for a shorter tenure even beyond their age limit fixed for hard/high altitude area depending upon the exigency of services but none will be retained at a tenure station/complex beyond the age of 55 years. Age shall be considered as on cut-off date of 30th June every year.

2. On strength thereof, the petitioner claims that, with his having completed 58 years of age, hence, crossed both 52 and 55 years of age, therefore, there being a bar in the rule aforesaid, against an employee aged 52/55 being posted at a tenure station/complex posting. Hence, his being aged 58 years in age, he be accorded the benefit of the aforesaid rule. Consequently, it, is urged that, hence his, claim in the writ petition, is, tenable and the view as adopted by the Central Administrative Tribunal, in, the impugned Annexure A-1, is, fallacious. Further more, it is urged that, with there, being an absolute bar in the retention, of any employee of the respondent, beyond, 58 years, at, a tenure/complex station, hence, the said bar, also works in favour of the petitioner, his having crossed 58 years of age. Therefore, its, benefit be afforded to the petitioner. Concomitantly he be given a posting outside Leh. Though impressive, the contention of the petitioner, is, on a bare reading of the rule aforesaid. Nonetheless a reading of, the rule, extracted aforesaid, in, the manner as done by the petitioner and its application to the petitioner would have been tenable, only, in, the event of there being, no, exception to the availability/applicability of the rule, to the petitioner.

3. Rather when, the respondents, in, their reply depend and rely upon clauses 66 and 67, of, the rules, aforesaid, existing at page 74 of the paper book and the said clauses, aforesaid, extracted hereinafter, enshrining that industrial/non-industrial persons would not be posted out of station/complex, except, where industrial/non-industrial staff are rendered surplus by reduction in the authorized strength or their adjustment in other complex becomes necessary, to, balance out surplus and deficiencies, the longest stayee in the station will be posted out. For determining surpluses, the junior most person in the grade would be declared surplus. On the factual matrix, it, is contended on behalf of the respondents that the petitioner belongs to the industrial/non-industrial category, to, whom clauses 66 and 67 of the rules existing at page 74 of the paper book would be applicable. The said rules are extracted hereinafter:-

66. As far as possible, industrial/non-industrial persons will not be posted out of station/complex. In all cases where industrial/non/industrial staff are rendered surplus by reduction in the authorized strength or their adjustment in other complex becomes necessary to balance out surpluses and deficiencies, the longest stayee in the station will be posted out. In the case of postings involving Inter command transfers, the junior most person in the grade within the Command will be declared surplus. Volunteers if any will be given preference. 67. In case of Industrial/non-Industrial personnel when transfers are involved for specific tenure due to exigencies/requirements of service within the area, the longest stayee will be posted out. In the case of industrial personnel rendered surplus due to reduction in the authorized strength and if their adjustment outside the CWE area becomes necessary, the junior most in the grade will be posted out. Volunteers will be given preference. Adjustment of surplus from one area to another within the Zone will be carried out by the respective Zonal Chief Engineers. Adjustment involving move from one Zone to another will be carried out by Chief Engineer Command.

4. When fact of the petitioner belonging to industrial/non-industrial category, is, comprised in the affidavit, sworn to that extent, by, the authorized functionaries, of, the respondents, obviously, then credence is to be imputed to it. In consequence, when given the conclusive category of trade, to, which the petitioner belongs, rendering applicable to it, clauses 66 and 67 of the rules, obviously, then they comprise an exception to the rules, as, relied by the petitioner, comprised in rule 20 aforesaid. Therefore, any reliance, as, placed by the petitioner on it, is, wholly irreverable nor it can be countenanced in law. The fact of the petitioner being on compassionate grounds having come to be posted, at, Dharamshala by the respondents does not at all give him any leeway or latitude, to, protect his posting other than, at, Leh, for a tenure as enshrined, in, Clauses 66 and 67 of the rules. It was, however, permissible for the petitioner to contend on the strength of clause 66, as, applicable to the petitioner, that it be given effect to qua him. However, he has neither capitalized nor depended upon the apt provision of the rule as applicable to him nor hence has he either substantially nor palpably portrayed, existence of the enshrined conditions therein working in his favour, for its consequent applicability qua him, so, as to empower him, to claim a posting outside Leh. As a natural corollary omission on the part of the petitioner to place on record any material demonstrative of the conditions prescribed in the apposite rules, as applicable to him, having been accomplished by him, so as to enjoin, the respondent to transfer him outside Leh, as such, cannot, at all fortifying his submission, while being anvilled and harboured on inapposite rules, to, canvass that he be posted, out side Leh. Reiteratedly when there is absolute and complete bar of his being posted out side a tenure station, unless, he satisfies the condition prescribed under the relevant, germane and apposite rules whereby he would be empowered to claim a transfer outside a tenure station, which he has omitted to do so. As a corollary, when the apposite rules have remained both un-invoked as well as un-accomplished besides when the rules as relied upon by the petitioner are not applicable to him, therefore this Court, is, constrained to dismiss the writ petition.