

(2018) 09 CAT CK 0146

In the Central Administrative Tribunal

Case No : Original Application No. 2416 Of 2018, Miscellaneous Application No. 3650 Of 2018

Sanjeev Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0146

Hon'ble Judges : L. Narasimha Reddy, Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : M. K. Bhardwaj, Hanu Bhaskar

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant is holding the post of Director on Non Functional Upgradation (NFU) basis in the Military Engineering Services (MES). We are compelled to observe that the level of indiscipline exhibited by him at various stages would have shocked even a civil administration. The amount of damage caused to the morale of the military administration is not difficult to imagine.

2. In the year 2003, the applicant was transferred from the establishment in Secunderabad to Delhi. In 2007, he was transferred to Kolkata, and in 2008, he was transferred to Kanpur. From there, he was transferred to Jabalpur through order dated 18.05.2011. The applicant filed OA No.688/2011 before the Allahabad Bench of this Tribunal, in which, an interim order was passed staying the order of transfer. That remained in force almost for two years. The OA was ultimately dismissed on 20.02.2014. A writ petition was filed in the Allahabad High Court and it is said to have been dismissed.

3. It is stated that during the pendency of that OA, a Memorandum was issued proposing to take action against the applicant. He filed OA No.409/2013 before the same Bench, and an order of interim stay was passed in relation to the order

dated 24.07.2013. The OA is said to be pending.

4. On 21.10.2015, the applicant made a detailed representation to the Defence Minister, for posting him at Delhi to look after his old mother, and by pleading certain other reasons. Through an order dated 14.01.2016, the applicant was posted to Delhi on compassionate grounds, for a period of two years. On expiry of that period, an order was passed on 04.05.2018 transferring the applicant to a Station at Srinagar.

5. The applicant filed OA No.1911/2018 challenging the same. That OA was disposed of on 01.06.2018, directing the respondents to pass order on the representation submitted by the applicant. Accordingly, on consideration of the representation dated 07.05.2018, a detailed speaking order was passed on 15.06.2018 retaining the order of transfer of the applicant to Srinagar. The order of transfer dated 04.05.2018 read with the speaking order dated 15.06.2018 are challenged in this OA.

6. The applicant contends that as per the administrative instructions issued by the establishment, the tenure of an officer of his rank at a station is four years, and the order of transfer dated 04.05.2018 was passed even before the expiry of that period. It is also stated that the posting was to a position inferior to the one of Director, and the order of transfer was passed by an Officer who is not competent to do so. Another contention is that Srinagar is a field area and any officer of the age of applicant is not liable to be posted at that place. Other contentions are also urged.

7. The respondents filed a detailed counter affidavit. It is stated that in his total tenure, the applicant remained for substantial period at Delhi and other stations, and for the first time, he is being posted to the Northern Command. It is stated that the applicant is in the habit of instituting proceedings on every small pretext and making wild and serious allegations, and that he does not have regard or discipline to the service. The allegations that Srinagar is a field area and the officer who passed the order of transfer is not competent are denied.

8. Shri M. K. Bhardwaj, learned counsel for the applicant advanced extensive arguments on the lines of pleadings and Shri Hanu Bhaskar, learned counsel for the respondents defended the order of transfer by referring to various proceedings and orders.

9. The first contention is about the designation held by the applicant. He is designated as Director on NFU basis, and he has not been promoted to the post of Director on regular basis. Secondly, the posting is as Joint Director, and hardly there exists any difference as to the status of those two posts. At any rate, neither the pay band, nor any other attending benefits of the applicant are reduced on account of the transfer.

10. The second contention is about the tenure. The plea of the applicant is that he has been posted at Delhi only in January, 2016, and he is entitled to continue

in that station for a period of four years. It has also been mentioned that on a representation made by the applicant he has been transferred from Kanpur to Delhi through order dated 14.01.2016 on compassionate basis. The order is very specific about the period, and the applicant did not raise any objection in that behalf. The curious part of it is that in the present OA, a declaration is sought to the effect that the order dated 14.01.2016 cannot be treated as the one on compassionate basis. Having availed the benefit of order issued purely on compassionate basis for the full length of two years, the applicant turns around and wants it to be treated as an order of regular transfer. This only exhibits the level of indiscipline.

11. In this behalf, it is necessary to refer to the representation made by the applicant to the Defence Minister, which, in turn, gave rise to the order of transfer dated 14.01.2016. The relevant portion reads as under:-

"13. In view of prevailing critical circumstances I request your good self to intervene and readdress my genuine grievances and post me on status post as per PRESIDENTIAL ORDER OF 2003 AND STO 95 OF 29 June 2004 to any formation in Delhi to look after distressed family in time of need for which provision also exists in the then posting policy of 2003 of Department to post officers in hometown, i.e., Delhi for me, in staff appointments. Issue of bonafide transfer in conformity to my present status and in compliance to statutory rules to any formation in Delhi and payment of pay and allowances from month of 27 Feb 2014 to till date will also bring end to these prolonged litigations.

Added to that, the way in which the applicant treats his superiors, is evident from para 14, which reads as under:-

"14. It is also requested that as per prevailing G of I instructions, any pecuniary loss caused to GOVT due to frivolous and malafide court cases arising due to malafide acts of errant public servants, the money has to be recovered from pay and allowances or pensionary benefits of such public servants. Hence retirement benefits of LT GEN JATINDER SIKAND EINC retiring on 30 sep 2015 should be withhold till finalization of OA NO 409 of 2013 and WRIT PETITION NO 4754 of 2015 in OA NO 688 of 2011 filed by me. The financial effect of pay and allowances, penal interest and damages will be approximately 30 lakh rupees till date."

There cannot be a better instance of act of indiscipline that too in a military establishment like MES than this.

12. As regards the third contention, it is pleaded that the guidelines issued in respect of transfers entitle the applicant to remain at the station for four years. It has also been mentioned that the earlier transfer was purely on compassionate grounds, specifically making it clear that it will be for a period of two years. Even otherwise, the tenures mentioned in the administrative instructions are for the general guidance, and they are always subject to the administrative exigencies. If the situation warrants, an officer is bound to be shifted so that his services can

be availed at the station. The employment in a service is not for the exclusive purpose of providing comfort to the employee, and to remain at a station. Service must be primary and the comfort of an employee is always subject to the requirements of the department concerned.

13. The fourth contention is that the officer who issued the order of transfer is not competent to do so. The order of transfer was issued by the Engineer-in-Chief. It is relevant to mention here that not only this order, but also earlier orders of posting including the one of 14.01.2016, were issued by the officer of the same rank. In the recruitment rules, it is clearly mentioned that the Engineer-in-Chief is competent to pass orders for officers of the rank of Executive Engineer. It is not in dispute that the applicant holds that post.

14. Lastly, it is contended that Srinagar is a field area. However, the respondents have categorically mentioned by referring to various official memoranda that it is not a field area and several civil officers are posted at that place.

15. We do not find any merit in the OA. It is accordingly dismissed, with costs of Rs.10,000/- to be deposited by the applicant by 31.10.2018 towards the CAT Bar's, Library Fund. If the applicant fails to deposit that amount to the credit of CAT Bar's Library Fund within that time, the Drawing Officer of the department shall deduct the same from the salary of the applicant and deposit the same in the CAT Bar's Library Fund.