
(2019) 02 CAT CK 0108

In the Central Administrative Tribunal

Case No : Original Application No. 2695 Of 2017

Sudheer Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0108

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Sh. M.K. Bhardwaj, Sh. Gynendra Singh

Final Decision : Dismissed

Judgement

Aradhana Johri, J

1. The applicant Sh. Sudheer Kumar, JE (GS&C) posted at GE(P)(AF), Palam was transferred to HQ CE 31 Zone in Srinagar vide order No.30305/JE(QS&C)/REPT-17/17/ EIC(I) dated 10.03.2017. He has contended that he has been transferred to a field area. He further stated that since he is more than 48 years of age, he is not fit to be posted in field area as per the policy. He has also asserted that before issuing transfer order, a list of JEs on the basis of their stay in a station/complex was required to be prepared as per the policy and prevailing practice, which was not done in this case and he could not have been taken up for transfer as he had completed only 5 years of service in Delhi.

2. The respondents have denied the claim of the applicant. They have stated that the applicant was posted to GE (AF) Thoise to report by 20th June, 2015 under tenure posting but the said transfer was cancelled on request of the applicant on medical grounds of his family members. The request of the applicant dated 28.05.2015 is at Annexure R-1. The cancellation order dated 27.06.2015 is at Annexure R-2. The respondents further submitted that options were taken for posting and the applicant had given choices for (i) GE(AF) Srinagar, (ii) GE(AF) Leh and (iii) CWE (AF), Srinagar (Annexure R-3). They have further asserted that

tenure postings are given to an individual before he attains the age of 52 years and the said posting cannot be continued after the age of 55. Therefore, prior to tenure posting, the willingness of the applicant was taken as per the policy. The respondents have pointed out that the applicant has previously filed two Original Applications in this Tribunal on the same ground/hard tenure posting - OA No.3654/2014 which was dismissed on 21.05.2015 as infructuous and OA No.2138/2015, which was also dismissed on 25.08.2015 as having become infructuous. Therefore, three years additional time has been given to the applicant to look after his ailing family and since the present transfer has been done with his consent, the OA has no merit.

3. Heard Sh. M.K. Bhardwaj, learned counsel for the applicant and Sh. Gynendra Singh, learned counsel for the respondents.

4. In support of his contention, the applicant has placed reliance on the decision of this Tribunal in Ram Khilari Meena (IDSE) vs. Union of India & Ors. [OA No.3654/2014 decided on 22.07.2016 - Annexure A-3]. In this case, the issue of Srinagar being under Counter Insurgency Area, classified as field area, was adjudicated upon. In the present case this point is not the subject of dispute. The applicant has also cited the decision of Punjab & Haryana High Court in the case of Union of India & Others vs. Central Administrative Tribunal & Others [Civil Writ Petition No.26974/2013 decided on 09.12.2013 - Annexure A-4] to support his claim. However, the facts of this case are different and the point therein was that the petitioner had been posted on a post lower in rank than that to which he was entitled. This does not hold good in the present case since it has nowhere been contended that the applicant has been given a posting of a lower rank than his entitlement.

5. Guidelines issued by the Directorate (Pers.), Military Engineer Services have been filed at Annexure A-5. Para 22 (g) of these guidelines provide as under:-

"22(g) The normal age limit for tenure station/ complex posting is 52 years Subordinate over 52 years may also be posted for a shorter tenure but none be retained, at a tenure station/complex beyond the age of 55 years. The age such posting will be considered as on date of posting."

6. After hearing the arguments of both sides and perusing the material on record, the facts that emerge are that the age limit for a tenure station is 52 years. Further, the applicant was transferred out of Delhi in 2015 and the said transfer was cancelled at his own request. It is very clear that the applicant had given his willingness certificate for posting to Srinagar (Annexure R-3) for the posting season 2017-18. Therefore, now he cannot make any other claims since his posting to Srinagar is well within the guidelines and also with his own willingness.

7. In view of the above discussion, we find no merit in the instant OA and the same is accordingly dismissed. There shall be no order as to costs.