
(2016) 02 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 120 of 2016

Union of India

APPELLANT

Vs

Raju Singh.

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Citation : (2016) 3 JKJ 216 : (2016) LIC 2859

Hon'ble Judges : N. Paul Vasanthakumar, C.J. and Bansilal Bhat, J.

Bench : Division Bench

Advocate : Suneel Malhotra, Advocate, for the Appellant; K.S. Puri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, C.J.—This writ petition is filed by Union of India and its officers against the order passed by the Central

Administrative Tribunal, Chandigarh Bench (the Tribunal for short) in OA No. 060/01172/2014 dated 24.09.21 15 with further prayer to prohibit

the Tribunal not to farther proceed and entertain the petitions with respect to the guidelines dated 17 04.2010.

2. The case of the petitioners is that respondents, who are 72 in number filed OA challenging the transfer policy dated 17.04.2010 particularly

paras 66 and 77 as discriminatory, violative of Articles 14 & 16 of the Constitution of India and consequential orders passed by the Headquarters

138 Works Engineer (HQ 138 WE)""", It is stated in the writ petition that OA NO.1077/JK/2002 was filed to implement the policy of MES for

management of Group-C and D Cadres and on 07.10.2013 the Tribunal passed a speaking order and directions were issued to consider the

matter regarding request of the applicants for transfer out of Leh complex in accordance with the policy within a period of two months. The present

writ petitioners, who were respondents in the said OA considered the request in terms of the guidelines for management of Group C and D cadres

of MES dated 17-04 2010 and rejected the same. The said order was challenged by the respondents in OA. contending that after appointment by

HQ Chief Engineer, Northern Command, they were posted at Leh, which has been declared as hard station and remains cut off from the rest of

the Country for a considerable number of months in a year. They have been discriminated against other management Group C and D cadre staff

working in the same department as the management cadre staff are transferred from Leh after every 2-3 years whereas the respondents were

working on technical side are not being transferred outside Leh.

3. The writ petitioners by filing the written statements contending that since vacancies have occurred under HQ 138 Works 1 Engineer Leh and

when vacancies had arisen it was specifically mentioned therein that selected candidates shall have to work at HQ 138 Works Engineer, which is

stationed at Leh and therefore, the guidelines for management of Group C & D cadres cannot be applied in case of respondents, who are industrial

employee and they cannot be posted out of station except on account of mandatory requirement arising either on account of being surplus or due

to exigencies of services and in that event the department shall be obliged to follow the guide lines specified in the IBID. It was also the case of the

petitioners before the Tribunal that there is huge deficiency of industrial staff at HQ 138 W.E., therefore, their posting outside Leh will cause huge

deficiency in the Unit and will affect the functional deficiency, hence the order passed was not sustainable. The question of transfer from Leh is not

possible, which will discriminate the seniority/promotions of industrial persons of concerned Commander as the seniority and promotion of

industrial persons are controlled by Commander Works Engineer wise. The Tribunal ordered to give rotational posting in the plain area, however,

without noticing the guidelines as well as the necessity to retain the respondents in the Unit.

4. The case of the respondents before the Tribunal was that most of them are hailing outside Leh area and merely they were employed there, they

cannot be compelled to stay at Leh in their entire service where the climatic conditions are not conducive for outsiders due to high altitude, climatic conditions, lack of facilities and in other services namely Army, BSF etc, persons are posted on rotational basis in hard areas and plain areas and posting a person only in Leh area where climatic conditions are harsh and a person permanently residing outside Leh could not bear the climatic conditions, therefore, the guidelines issued are discriminatory and violative of human rights.

5. The Tribunal appreciated the said contention and allowed the application as against which order, this writ petition is filed.

6. Heard the learned Counsel for the petitioners and the learned counsel for the respondent.

7. The point arises for consideration in the writ petition is, as to whether the petitioners are justified in contending that once the respondents are engaged as industrial workers in Leh, they are bound to serve in Leh area during their entire service period, which is the most difficult area to serve due to climatic conditions/high altitude and various other factors.

8. It is a well accepted fact that a non-resident of Leh area cannot withstand the weather conditions due to high altitude composition. Merely because industrial workers, who are outsiders and are appointed in Leh they cannot be compelled to serve in the difficult area at all times. When ministerial/management staff is permitted to go outside the area, the lower level industrial workers cannot be discriminated by relying upon the policy, which is in violation of the Articles 14, 16 and 21 of the Constitution of India. As rightly argued by learned counsel for the respondents, in the Army/BSF and other establishments staff and officers are posted on rotational basis, i.e., in hard areas and plain areas considering various factors such as climatic conditions, lack of basic amenities in the area like transportation, housing, medical facilities/educational and such a procedure is bound to be followed by the petitioners also insofar as industrial workers are concerned.

9. The Tribunal has considered the issue in term of the constitutional perspective bearing in mind that merely because the industrial employees have accepted employment they should not be treated as slaves, surrendering all their constitutional rights including human rights. There is no merit in the

writ petition and the same is dismissed. No costs.