
(2018) 05 CAT CK 0060

In the Central Administrative Tribunal

Case No : Original Application No. 1718 Of 2018

Yashwant Narayan Parjapati

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Citation : (2018) 05 CAT CK 0060

Hon'ble Judges : V. Ajay Kumar, J; Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Anoop Kumar Pandey

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member(A)

1. This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

"I. Allow the present Original Application thereby directing the HQ Chief Engineer, Northern Command, to withdraw the Warning List (No.41624/Sub/34/EIC(1)] dated October, 2017 regarding the Applicant and their equal employees and quash the reply to representation dated 04.04.2018 .

II. Direct the Engineer-in-Chief and other High Authorities to notify the revised Posting/Transfer: Subordinates Warning List for the Year 2017-18 comprising of Complete Northern Region 'A' and not only Northern Command, as well as , after considering the objections of the Applicant and correcting the same by including the names of the left over eligible persons; and withdraw the posting order dt. 16.01.2018 (Annexure-3);

III. Direct the Engineer-in-Chief and other High Authorities to ensure that all the employees in the rank of Junior Engineer (Civil), equal to the rank of Applicant, be posted at Tenure postings on rotation/Regular Turn Over as per Guidelines For Management of Group 'C' & 'D' Posts of MES as notified vide Letter No.41623/

Policy/69/E1C(1) dated April 2017.

IV. Direct the Engineer-in-Chief and other High Authorities to ensure that the applicant be allowed to complete 2 years of postings at his compassionate station postings with addition of the benefit of his longer tenure posting before directing him to serve the Tenure Postings as per his turn of postings on rotation.

V. Direct the Engineer-in-Chief and other Higher Authorities to ensure that Guidelines prepared for the Management of MES employees should be followed and the employees should be given the benefit of their choice regarding posting, if available.

VI. Direct the Engineer-in-Chief and other Higher Authorities to ensure to implement the order passed by the Chandigarh Bench of this Hon'ble Tribunal in OA No. 317/JK/2013 in its true spirit.

VII. Costs of proceedings be also awarded in favour of the Applicant: AND

VIII. Any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the present case be also awarded in favour of the Applicant."

2. The facts, in brief, are that the applicant joined the services in MES Department on 20.10.2009 in the Northern Command. Further, in MES, the posting stations have been classified into two categories, Tenure Stations/Hard Stations and Field Stations/Peace Stations. The Tenure Stations are non-family stations and Peace Stations are family stations. As per policy of Management of Group C and D staff, everyone must serve at the Tenure Station on rotation basis for 2 to 3 years.

3. The applicant contended that as he has served for more than 3 years at the Tenure Stations and hence he be retained at Peace Station, keeping in view his previous Tenure Station services. According to the applicant, the Warning List for the year 2017-18 was published/uploaded on the website only in the month of December, 2017, including his name in the list for posting to tenure station and thereagainst he made a representation dated 09.01.2018, but without deciding the same, the respondents, vide order dated 16.01.2018, asked the applicant to move to his stations of posting i.e. GE (AF) Thoise, which is a Tenure/Hard Station.

4. Being aggrieved by the respondents' order dated 16.01.2018, the applicant had earlier approached this Tribunal in OA No. 800/2018, which was disposed of vide order dated 06.03.2018 with the following directions:-

"4. In the circumstances, the OA is disposed of, without going into the merits of the case, by directing the respondents to consider the representations of the applicant and to pass appropriate speaking and reasoned orders thereon, if not decided already, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The respondents shall maintain status quo

with regard to relieving of the applicant till his representation is decided."

5. It is submitted that the respondents, in implementation of the above directions of the Tribunal in OA No. 800/2018, passed an order dated 04.04.2018 rejecting the representation of the applicant in a customary way rather than addressing his grievances. Against the said order of the respondents, the applicant again sent a letter dated 23.04.2018 saying that some of his grievances have remained unanswered. Hence, the applicant has filed the present OA praying that the same be allowed.

6. Heard the learned counsel for the applicant and perused the OA.

7. The short question involved in this case is whether the order passed by the respondents dated 04.04.2018 on the representation of the applicant dated 09.01.2018 against Warning List is liable to be quashed.

8. We have examined the order dated 04.04.2018 passed by the respondents in pursuance of the directions issued by this Tribunal in OA No. 800/2018 on the representation of the applicant. In order to adjudicate the issue involved in this OA, we reproduce the relevant extract of the said order as under:-

"3. Whereas you were selected for the post of JE E/M thorough SSC. You were allotted MES department by SSC based on your merit in SSC Exam and preference of departments given by you while applying to SSC. You were further allotted Northern Command by E-in-C's Branch. Offer of appointment as JE (E/M) was given by Chief Engineer Northern Command vide letter No.41623/RECT-209/SSC/JE/E/M/53/E1(C)(I) dt. 23 Sep 2009 at GE 861 EWS under Administrative Control of Chief Engineer Northern Command. Offer of appointment was accepted by you and joined the Department on 20 Oct 2009.

4. Whereas in terms of RMES Para 21 Engineer-in-Chief is the head of MES and as per Para 22 of RMES the Military Engineer Services are organized by Army Commands, under the administrative control of respective Chief Engineer Command. Staff to MES units are provided by CE Comd based on E-in-C's Branch Posting Policy under reference.

5. Whereas your averment that warning list for posting of FE's should be prepared as per your choice of Region given to SSC includes state of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan and Uttarakhand, is not tenable as these states fall under different Commands of the Army. It is also relevant to mention that while applying to SSC, you had also given choice for various other departments but you were allotted MES on your merit. Your cadre management after joining the department is governed by the policies of the Department established by law.

6. Warning list for posting of staff is maintained Comd wise for posting to tenure stations of respective comd to facilitate transparency with regard to tenure liability as per policy. While submitting representation on warning list circulated by HQ Chief Engineer Command, you have not specified any JE of Northern

Command Cadre left out from the warning list due for tenure. Hence, your representation is not based on the fact.

7. Whereas you were posted to E-in-C's Branch vide HQ Chief Engineer Northern Command letter No.41623/Tfr Are/PO/0/E1C(1) dt. 04 Aug 2015 against vacancies released to Chief Engineer Northern Command by Engineer-in-C's Branch (Head of Deptt.) to provide opportunity to employees of HQ CE Northern Comd to serve in Delhi to resolve your domestic/medical problems. It was well known to you while proceeding on posting to Delhi that you were being posted to this specific vacancy for two years only. Thus, your claim is not based on the facts & established policies of the Department.

8. Whereas your posting on repatriation to Parent Command on completion of stipulated duration in Delhi has been issued vide HQ Chief Engineer Northern Command letter No.41623/JE(E/M)/165/E1C(1) dt 16 Jan 2018 as per command seniority list. Since you are due for tenure as such you stands posted to GE (AF) Thoise.

9. Therefore, your representation lacks merit and has been rejected by the competent authority. The order of Hon'ble CAT Principal Bench New Delhi dt. 06 Mar 18 in OA No. 800/2018 Delhi has since been complied with."

9. From the above, it is clear that the respondents have dealt with all the grievances raised by the applicant in his representation dated 09.01.2018 and passed a speaking order thereon. Thus, the order of the Tribunal dated 06.03.2018 passed in OA No. 800/2018 has been fully complied with. We also find that the applicant has been making representation after representation in order to avoid his Tenure/Hard Station posting to GE(AF) Thoise. It is true that in the matters of transfer, the Courts/Tribunals are not required to intervene. In normal circumstances, intervention of the court would be only confined to such cases where either mala fide is alleged and proved or there is a violation of some statute or where the laws of natural justice have not been respected. The courts are not to go into the issue like justification of the administrative orders.

10. In Somesh Tiwari Vs. Union of India & Others [AIR 2009 SC 1399], the Hon'ble Supreme Court has held as under :-

"19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved..."

11. Further, the Hon'ble Supreme Court in its judgment in S.C. Saxena Vs. Union of India & Ors., 2006 SCC (L&S) 1890 has held as under:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a

court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

12. In view of the law settled by the Hon'ble Supreme Court as well as the facts of this case, we find absolutely no merit in the applicant's plea and this OA is, therefore, liable to be dismissed. Accordingly, the same is dismissed. No costs.