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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3340/2017**

VINOD KUMAR

..... Petitioner

Through: Mr. M.K. Bhardwaj, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Anil Soni, CGSC for respondents
No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

19.04.2017

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C.M. No.14568/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 3340/2017 and C.M. No.14567/2017

The petitioner has preferred the present writ petition to assail the order dated 11.04.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1167/2017.

The petitioner had approached the Tribunal to assail his posting order dated 20.05.2015, whereby he was posted from AF Palam to AF Srinagar

(Peace to Tenure). The Tribunal dismissed the said original application-being O.A. No.2156/2016 vide order dated 18.04.2016. The petitioner then approached this Court vide W.P. (C.) No. 3782/2016. In pursuance of the order in the said writ petition, on 03.05.2016, the petitioner again approached the Tribunal vide O.A. No. 2156/2015. This O.A. was disposed off on 10.01.2017 with the petitioner being granted liberty to make a fresh representation ventilating his grievances. The petitioner, accordingly, made his representation. The respondents examined the petitioner's representation and passed an order on 16.03.2017 rejecting the same. The petitioner then approached the Tribunal by the aforesaid O.A. to assail the order dated 16.03.2017, and his posting order, which too has been dismissed.

The submission of Mr. Bhardwaj is that under the applicable policy and guidelines, the petitioner is not liable to be given a tenure posting on account of the fact that there are others, who have not been given a tenure posting for a longer period. The petitioner joined the Civilian Establishment of the Army in June 2009, whereas there are others who-though may have held tenure postings earlier, had returned to peace stations and remained there for longer duration than the petitioner's entire service. The submission of Mr. Bhardwaj is that the respondents should first post the longest stayees at the peace stations to tenure posts. The petitioner sought to place reliance upon the guidelines for Command Manning Level posting (CML) in support of his plea.

He also sought to place reliance on SRO 92 dated 26.02.1957, according to which, civilian government servants in defence service who have completed more than 45 years of age, cannot be posted in field area. The petitioner's case was that he had completed more than 47 years of age

and, therefore, he could not be posted in field area.

Mr. Bhardwaj has submitted that the petitioner's reliance on SRO 92 dated 26.02.1957, though referred to in the impugned order, has not been specifically considered by the Tribunal. In this regard, he has sought to place reliance on a judgment of the Punjab & Haryana High Court in Civil Writ Petition No.26974/2013 decided on 09.12.2013 in the case of *Union of India & Others Vs. Central Administrative Tribunal & Others*. Mr. Bhardwaj submits that the said policy of 1957 was implemented in the said case.

The Tribunal, in the impugned order, has dealt with the petitioner's submissions. It has been observed that as per the 2008 guidelines, which were applicable to him, the petitioner was liable to be posted on a tenure posting. Reliance placed on the Command Manning Level posting guidelines was misplaced inasmuch, as, they were not applicable to his posting.

We find no merit in the submissions of Mr. Bhardwaj. A perusal of the "Guidelines Management of GP 'C' & 'D' posts of MES" of May – 2008, published by the MES, Chief Engineer, Western Command, Chandi Mandir (which has been placed on record) contains the background in which the said guidelines have been framed. They, inter alia, provide;

"2. Western Command has a number of stations termed as Tenure station due to peculiarities of remote geographical locations, harsh climatic conditions, poor amenities and lack of availability of local manpower. The job requirement dictates that these stations/complexes must be manned up to a certain optimum level, thus necessitating posting of subordinates staff upto Command Manning Level, from within the formations under the Command to ensure smooth functioning of these

stations/complexes. The tenure service is mandatory and each individual is required to fulfil his tenure liability, as per his seniority in the complex on non tenure stations.

3. On completion of the stipulated period at tenure stations/complex, such individuals are required to be repatriated to one of their three choice stations/complexes as far as possible and are required to be replaced by individuals due for their tenure liability. Thus, a chain of postings is set into motion based on the choice and the tenure service seniority of the individuals.

4. The tenure turnover postings are thereafter followed by compassionate postings. These postings are affected on humanitarian/medical grounds against existing vacancies within Command as well as Inter Command.

5. The posting on tenure and compassionate grounds, being choice specific, may cause imbalance in holding of staff at certain stations/complexes. In order to rationalize, the imbalance and to share the surpluses and deficiencies, the Command Manning Level (CML) postings are resorted to. The individuals with longest period of stay in the stations/complex are moved from station/complex holding surplus to stations/complex with manpower below the CML.

6. The posting exercise as above invariably results into a disproportionate movement of personnel from a particular unit. To ensure equitable distribution of manpower and regular turnover of employees from sensitive to non sensitive after three years, Local Turn Over (LTO) postings are carried out within the same complex.

7. The exigencies of service also necessitates posting on promotion, on mutual basis, on administrative grounds, adjustment of surplus/deficiency on closing down/new raising of formation within the Command and Inter Command postings are also carried out from time to time.

8. Thus following contingencies warrant transfer of personnel from one place to another:

(a) Tenure stations/complexes turnover

- (b) *Compassionate grounds*
- (c) *Maint of Command Manning Level*
- (d) *Local Turn Over*
- (e) *Promotions*
- (f) *Mutual Basis*
- (g) *Administrative grounds*
- (h) *Adjustment of surplus/deficiency.”*

Thus, it is evident, that with different objectives, different kinds of postings of the Group ‘C’ and ‘D’ civilian subordinates of MES can be resorted to. Tenure stations/complex turnover postings are made to tenure stations due to peculiarities of remote geographical conditions, harsh climatic condition, poor amenities and lack of availability of local manpower. The Command Manning Level (CML) postings are resorted to in order to rationalize the imbalance and to share the surpluses and deficiencies which may result due to posting on tenure and compassionate grounds which are choice specific. Consciously, the policy stipulates in respect of CML postings that, “the individuals with longest period of stay in the stations/complex are moved from station/complex holding surplus to stations/complexes with manpower below the CML.” Thus, reliance placed by the petitioner on the Command Manning Level posting guidelines is misplaced inasmuch, as, they are not applicable to the petitioner’s posting, as he has been sent on Tenure posting. The decision of the Punjab & Haryana High Court relied upon by the petitioner does not concern the 2008 guidelines. Mr. Bhardwaj has himself pointed out that the said decision concerns an “officer”, which the petitioner is not.

The petitioner was re-employed in the year 2009, when the policy of 2008 was already in vogue. The petitioner joined the service with open eyes, being mindful of the said policy. He cannot turn around and now seek to avoid the same by placing reliance on SRO 92 dated 26.02.1957.

The submission that even though the petitioner has never had a tenure posting, he could not be given a tenure posting, and others who may have already been posted on a tenure post should be considered for re-posting them on a tenure posting-only on account of the fact that they may have returned from the tenure posting and remained in a peace area for a longer duration than the entire length of service of the petitioner in the civilian establishment, needs only to be stated to be rejected. To us, this submission appears to be absurd. An officer who has never undertaken a tenure posting should, obviously, undergo one, before an officer-who has already undergone a tenure posting (which is considered to be a difficult posting) is again sent on a tenure posting. Pertinently, tenure posting is to be given to the officers before they attain the age of 52 years, and the said posting cannot be continued after the age of 55 years.

If the aforesaid submission of the petitioner were to be accepted, it may well be that somebody like the petitioner may get away without undertaking a tenure posting ever during the entire tenure of service, as the officer may cross the age of 52 years by the time his turn comes on the basis of length of posting in a peace area.

It appears to us that the petitioner is deliberately trying to avoid the tenure posting. The petitioner's predicament on his moving out when his child is in 12th Grade at Delhi is one of his own making. He has successfully avoided posting to his tenure post since May, 2015 by

repeatedly approaching the Tribunal and even this Court. In these circumstances, the petitioner cannot seek postponement of his tenure posting on equitable considerations as well.

We find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 19, 2017

B.S. Rohella