

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/439/2017

Date of Reserve:11.11.2019  
Date of Order:03.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Tulasi Das Mahananda, aged about 52 years, S/o. Sri Dama Mahananda, permanent resident of Barahmal, PO-Khasbahal, PS-Saintala, Dist-Bolangir and presently working as Junior Works Manager (JWM/non-Tech), Person No.922153, Ordnance Factory, Badmal, Dist-Bolangir.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha  
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry o Defence (Production Unit), Defence Headquarters, New Delhi-110 011.
2. The Director General, Ordnance Factories, Ordnance Factory Board, 10A, Saheed Khudiram Bose Road, Kolkata-700 001.
3. The General manager-cum-Disciplinary Authority, Ordnance Factory, At/PO-Badmal, Dist-Bolangir-767 770.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra  
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Junior Works Manager in the Ordnance Factory, Badmal. District-Bolangir in the State of Odisha. In this Original Application, he has questioned the legality and validity of the order dated 11.05.2017 (A/3) transferring him to Ordnance Factory, Chanda.

2. It reveals from the O.A. that earlier, he had approached this Tribunal in O.A.No.260/313/2017 challenging the said order of transfer. This Tribunal vide order dated 17.05.2017 disposed of the said O.A. in the following terms:

"...However, it is brought to my notice that after getting the order of transfer, applicant has made a representation on 12.5.2017 to Respondent No.1, i.e., Secretary to Government

of India, Ministry of Defence (Production Unit) Defence Headquarters, New Delhi, giving a copy of the same to the Director General, Ordnance Factory Board, Kolkata (respondent No.2). In view of the pending representation, it is for the authorities to consider the said representation taking into account all the submissions made by the applicant. Therefore, without going into the merit of the matter, I direct the respondent No.1 to consider and dispose of the pending representation with a reasoned and speaking order to be communicated to the applicant within a period of four weeks. It is also directed that until the said reasoned and speaking order is communicated to the applicant, status quo in respect of the applicant, shall continue"....

3. In pursuance of the aforesaid orders, Respondent No.1 passed an order dated 04.07.2017 (A/6) whereby the representation of the applicant regarding his retention at Badmal was not acceded to. Aggrieved with this, the applicant has approached this Tribunal in the 2<sup>nd</sup> round of litigation seeking for the following reliefs:

- i) To admit the OA.
- ii) To quash the order dated 11.05.2017 (Annexure-A/3) holding the same is against the policy and guidelines issued by the appropriate authority from time to time.
- iii) To quash the order dated 04.07.2017 (Annexure-A/6) passed by the Respondent No.1 holding the same is arbitrary, whimsical and outcome of non-application of mind.
- iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case.

4. Since the order dated 04.07.2017 (A/6) passed by the Respondent No.1 in pursuance to the direction of this Tribunal in O.A.No.260/313/2017 is the subject matter of judicial review by this Tribunal, in the fitness of things, the relevant part of the said order is quoted hereunder.

"2. AND WHEREAS the matter has been examined in consultation with OFB and found that in his representation dated 12.5.2017, Shri Tulsidas Mahananda, JWM has mainly raised the following issues:

- i) Order of transfer is issued demonstrate that the same has been made in a punitive manner against a Scheduled Cast person.
- ii) Since, employment was offered to him on the ground of rehabilitation assistance as displaced person and as per Govt. Of India, Dept. Of Environment, Forest and Wildlife letter No.B-368/05-fry (Cona) dated 09.09.1986, his service will be placed in the same project only, present order of transfer is gross violation of understanding/decision made way back in 1986.
- iii) Before transferring him neither option was called for as per the transfer neither guidelines nor the matter was placed before the Transfer Committee before issuing order of transfer. On the other hand, this decision has been taken in isolated way just to satisfy some high officials of OFBL those who alleging against me that I am showing softness towards the staff working under me.
- iv) He has responsibility towards his old father aged about 84 years and all children and pursuing their study in nearby institutions. Mid-academic transfer will seriously prejudice the academic career of his children.
- v) In the order of transfer, it has been indicated that he has been transferred "permanently" which is clearly against the conditions of service. On the other hand, while order of transfer has been made in "Public interest" reasons thereof has not been indicated anywhere. Unless any employee is coming with the public contacts and making some prejudicial act, his transfer in public interest is against the service rules. However, without indicating any reason, this transfer has been designed with the magic word 'public interest' which is illegal.

2. AND WHEREAS in this connection OFB has furnished following comments:

- i) Shri Mahananda has alleged that transfer order has been issued in a punitive manner. However, such allegation is utterly unfounded since transfer, as a matter of fact, is an incident of service. Shri Mahananda is holding the post of

Junior Works Manager and is therefore liable to be transferred as and when required.

- ii) Shri Mahananda has further stated that employment had been offered to him to the ground of rehabilitation assistance. In this regard it is noted that he had been recruited to the post of Lower Division Clerk in the year 1986. However, in the year 1994, he had chosen to appear in Limited Departmental Competitive Examination (LDCE) for promotion to the post of Chargeman Grade-II, which involved higher responsibility. After being selected through the said LDCE, he had taken up higher charge in the post of Chargeman Grade-II, which as on date (after being merged with Chargeman-I) constitutes all-India transfer liability and therefore, impels him to carry higher responsibilities in any place of posting all over India. However, he has been serving in the same place of posting, i.e., OFBOL for more than 29 years (Date of appointment 09.03.1998).
- iii) Shri Mahananda has further stated that before issuing order of transfer, option was not called for nor the matter was placed before Transfer Committee. In this regard it is stated that Shri Mahananda is holding the post of Junior Works Manager and is therefore liable to be transferred by the order of the competent authority as and when required and there is no procedural requirement to call for an option from the transferee, if transferred on administrative ground. As per the existing transfer policy, cases of transfer which include request from an individual are referred to the Transfer Committee for its recommendation, which is not applicable in the instant case being a transfer on administrative grounds.
- iv) Shri Mahananda has brought forth family related problems which have been duly considered by the Competent Authority. However, OFB has no comments to offer in this regard.
- v) Shri Mahananda has stated that he has been transferred "permanently". This conception of Shri Mahananda is apparently erroneous, since all administrative transfers are of "permanent nature". He has further stated in the para that his transfer in "public interest" is against

service rules. This argument of Shri Mahananda is also misconceived since all administrative transfers are made in "public interest", which signifies that the transfer of Shri Mahananda is in the interest of state and such transfers are different from those made in "own interest" in which a request from an individual for his transfer to other units is allowed by the competent authority after sympathetic consideration on compassionate grounds.

3. NOW THEREBY after considering both parties, the Competent Authority in Ministry of Defence has reached conclusion that DGOF & Chairman, OFB is the Competent Authority to take any decision regarding transfer/posting of Junior Works Manager (JWM). Shri Tulsi Das Mahananda, JWM has been allowed to continue in the same station, i.e., Ordnance Factory, Badmal for more than 29 years of service (Date of appt. 09.03.1998) and he has another 9 years; service in OF Organisation (Date of superannuation 31.12.2026). As the post of Junior Works Manager is an important post and have All India Transfer Liability, it may not be in fitness of thing to keep him at the same station for administrative reason. Moreover, the Competent Authority in this case is DGOF & Chairman, OFB and in exercise of his power he transferred Shri Mahananda from Bomdal to Ordnance Factory, Chanda. This is purely internal administrative matter of Ordnance Factory Board. Accordingly, the representation dated 12.05.2017 of Shri Tulsi Das Mahananda, JWM stands disposed of in compliance with Hon'ble CAT, Cuttack Bench order dated 17.05.2017 in O.A.No.260/313 of 2017".

5. In support of his case, the applicant has contended that the Respondent No.1 being the authority competent to deal with the service matters concerning the applicant, refusal for consideration of his grievance amounts to denial of justice. It has been pointed out by the applicant that although it was incumbent on the part of Respondent No.1 to call for the records from the Director General, Ordnance Factory, Kolkata, instead of doing so, he straightway asked the Factory Administration to provide parawise comments and based on this, rejected the request of the applicant, which according to

applicant, is the total non-application of mind. The order of transfer dated 11.05.2017 goes to show that the same is not beaded on the recommendations of the Placement Committee. Besides, the applicant has urged personal reasons, which impel his presence at his home station to take care of his family at Badmal. The applicant has pointed out that the word 'public interest' is not a magic word under whose carpet one can be transferred in violation of all norms fixed for the purpose. Nothing has been stated as what is the nature of public interest while passing the orders of transfer.

6. We have heard the learned counsels for both the sides and perused the records. It is not the case of the applicant that his transfer to Ordnance Factory, Chanda is in violation of statutory, mandatory rules or his transfer arises out of bias or mala fide. We have also gone through the order dated 03.05.2017 issued by the Ministry of Defence, Ordnance Factory Board, Kolkata. It is not the case of the applicant that this transfer order has been issued by an authority who is not competent to transfer of the applicant nor he is liable to transfer. Rules-4 and 5 of the transfer guidelines dated 23.12.2013 (A/1), provide as follows:

"4. Standing Committee for posting/transfer.

A Standing Committee comprising the following shall consider all recommendation for approval of the competent authority.

Composition of the Standing Committee:

- i) Member/Per – Chairman
- ii) DDGS of all Operating Divisions – Members.
- iii) DDG/IR – Member Secretary.

5. Competent Authority:

Based on the recommendation of the Standing Committee, all transfers whether on functional ground or on request will be issued, with the approval of DGOF & Chairman, OFB.

Notwithstanding above, DGOF & Chairman, OFB reserves the right to order or to refuse any transfer on administrative and functional grounds".

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7. From the above, it is quite clear that whether functional or request transfer, as the case may be, in pursuance of the recommendations of the Standing Committee, the decision of DGOF & Chairman, OFB is sovereign. In other words, the DGOF & Chairman, OFB, has the authority to reverse the recommendations made by the Standing Committee in such transfers. Besides this, the DGOF & Chairman, OFB reserves the right to order transfer on administrative and functional grounds. In the counter, the respondents have pointed out that the applicant has already spent about 29 years at Badmal, i.e., since the date of his appointment.

8. Law is well settled that who should be posted where and at what point of time is within the domain of the authorities concerned and in such matters, the Tribunal should not interfere, unless transfer has been ordered in violation of statute or as an outcome of bias or malice. Such a course of action, in our considered view, is not apparent. We also find that the order dated 04.07.2017(A/6) passed by Respondent No. 1 in pursuance of the direction of this Tribunal considers all the points raised by the applicant in his representation and is based on sound reasoning. Since the applicant has been transferred from Badmal to Chanda on administrative grounds and transfer being an incident of service, this Tribunal does not feel it proper to interfere with the same.

9. In the result, the O.A. is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

