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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH,
CALCUTTA

O. A. No. 350/00 | 225 of 2019

IN THE MATTER OF:

ALOKE KUMAR DE,

son of Late Anil Kumar De, aged about 58 years, residing at 76/4, Bagjola Line Road, Subhas Nagar, Dum Dum Cantonment Kolkata-700065 and working as JTO (S) in the office of Collectorate of Quality Assurance (Metals), Post Office- Ichapur-Nawabganj, District- 24-Parganas (North) under overall control and authority of Director General of Quality Assurance (DGQA), Government of India, Ministry of Defence;

...Applicant

-Versus-

1. **UNION OF INDIA** service through the Secretary, Ministry of Defence, Department of Defence Production, New Delhi, Room No. 136, South Block, Nirman Bhawan, New Delhi-110011.

2. THE DIRECTOR GENERAL,

Directorate General of Quality Assurance (DGOA) Organisation, Government of India, Ministry of Defence, Department of Defence PRoduction, Nirman Bhawan, New Delhi-110011;

3. THE ADDITIONAL DIRECTOR

GENERAL OF QUALITY

ASSURANCE (Metals & Explosives),

Government of India, Ministry of Defence, Department of Defence Production, Post Office- Ichapur-Nawabganj, District- 24-Parganas (North), Pin-743144.

4. THE DEPUTY DIRECTOR in the

office of Additional Director General Of Quality Assurance (Metals & Explosives), Government of India, Ministry of Defence, Department of Defence Production, Post Office- Ichapur-Nawabganj, District- 24-Parganas (North), Pin-743144.

5. THE CONTROLLERATE OF
QUALITY ASSURANCE (METALS),
service through Deputy Controller,
Government of India, Ministry of
Defence, Post Office- Ichapur-
Nawabganj, District- 24-Parganas
(North), Pin-743144.

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1225/2019

Date of order : 8.1.2020

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

ALOKE KUMAR DE
VS.
UNION OF INDIA & OTHERS
(M/O DEFENCE)

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. B.B. Chatterjee, counsel

ORDER

Bidisha Banerjee, Judicial Member



The applicant in this O.A. has sought for the following reliefs:-

- "a) To quash and/or set aside the impugned speaking order dated 31st August, 2019 issued by the Controller, Ministry of Defence (DGQA), Controllerate of Quality Assurance (Metals), Ichapur being Annexure A-14 of this original application by which the prayer of the applicant for retention in the office of CQA(Metals), Ichapur till his superannuation by cancellation of the transfer order has been rejected by not considering the identical decision issued by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2791/2017 passed on 17.12.2018 in the case of Mrs. Alka Chauhan & Ors. -vs.-Union of India & Ors being Annexure A-15 of this original application;
- b) To pass an appropriate order directing upon the respondents to give extension of the benefit of the order dated 17.12.2018 passed by the Learned Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2791/2017 in the case of Mrs. Alka Chauhan & Ors. -vs- Union of India & Ors being Annexure A-15 of this original application and further direct the respondents to retain the applicant to the post of JTO(S) in the office of CQA(Metals), Ichapur against the available vacancies of seven(07) to the post of JTO(S);
- c) To quash and/or set aside the impugned order being No.CQA(M)/Est./7915/JTO(S)/9 dated 18th July, 2019 and the impugned transfer order No.B/85336/DGQA/M&E-5/Transfer/MET/B dated 27th July, 2017(Annexure A-3) in respect of the applicant which was issued two years back and without implementation of the said transfer order after lapse of two years reopening the same vide impugned office order dated 18th July, 2019 being Annexure A-10 of this original application is otherwise bad in law and illegal and liable to be quashed and/or set aside;

d) To quash and/or set aside the impugned office order dated 10th July, 2019 issued by the Joint Director for Additional DGQA, Department of Defence Production, Directorate of Quality Assurance (Metals & Explosives), Post Office-Ichapur-Nawabganj, District-24 Parganas(North) communicated to all the CQA(ME) and SQAE(Metals) establishments to implement the cases of RTS-2017 and RTS-2018 being Annexure A-11 of this original application;

e) To declare that enforcing the applicant to join duty at Chennai who has crossed 57 years of age is otherwise violates the amended Transfer Policy dated 10th February, 2017 being Annexure A-2 of this original application and on that ground the impugned order of transfer dated 27th July, 2017 which they are trying to re-open vide office order dated 18th July, 2019 after a lapse of two years in respect of the applicant is bad in law and illegal;

f) To pass an appropriate order directing upon the respondents not to harass the present applicant to compel him to join duty in the transfer place who has crossed 57 years of age and he may be retained in the office of CQA(Metals), Ichapur till his superannuation;

g) Costs;

h) Any other relief or reliefs or Your Lordship may deem fit and proper."



2. The applicants' case in a nutshell is that a transfer order was issued on 27th July, 2017 transferring him from Ichapur to Chennai. It was not implemented until 18th July, 2019 but by that time the applicant had already crossed 57 years of age and in terms of the Rotational Transfer Policy of the respondents he was entitled to be exempted from rotational transfer having less than 3 years to retire.

He preferred an Original Application No.1012 of 2019 which was disposed of on 29.07.2019 with liberty to him to prefer a comprehensive representation to the appropriate authority and a direction upon the respondent authorities to consider his case in accordance with the Transfer Policy.

The applicant is aggrieved as while issuing the speaking order dated 31st August, 2019 the respondents failed to consider the fact that

with less than 3 years to retire he deserved exemption from rotational transfer in view of the decision of Principal Bench of this Tribunal in O.A.No.2791/2017 in the case of Mrs. Alka Chauhan & Others. vs. Union of India & Others;

3. Per contra the respondents would submit that the original transfer being ordered on 27.07.2017 when the applicant was less than 57 years old and not entitled to be exempted in terms of the Transfer Policy, the speaking order was justified.

4. We heard the ld. counsels for the parties and perused the materials on record.

5. We discern as under:-

(i) As on the date the transfer order dated 27.07.2017 was said to be implemented vide office order dated 18.07.2019, the applicant came under the aegis of Transfer Policy dated 10.02.2017 as contained in Annexure A/2 which explicitly lays down the following:-

"Officials having 03 years or less service for superannuation, will be exempted from rotational transfer."

Therefore, as on the date the applicant was sought to be released in terms of the transfer order, he had already crossed 57 years and was entitled to be exempted from rotational transfer.

(ii) The cited decision of Principal Bench of this Tribunal being O.A.No.2791/2017 demonstrates that the applicants therein were allowed to be retained and the transfer orders were quashed when the Bench found that they had crossed the age of 57 years as on the date of



transfer in terms of new Rotational Transfer Policy. They qualified for exemption from transfer and the transfer orders issued to them were quashed;

(iii) The speaking order does not spell out why the applicant would not be entitled to qualify for exemption in terms of Rotational Transfer Policy(supra). The respondents have therefore failed to justify his transfer with less than three years to retire, in violation of their own policy/guideline.

6. Accordingly in the aforesaid backdrop, we quash the speaking order and direct the authorities to retain him at the present place of posting until he is superannuated on retirement.

7. Ld. counsel for the applicant would further submit that despite a stay granted on 09.09.2019 in this O.A. that "applicant if not released shall not be released till the next date",, the respondents who had not released him by serving a copy of the release/movement order had not permitted him to join his post at Ichapur and, therefore, they had consciously and deliberately flouted the directions of this Tribunal and that the applicant has not been paid his salary since then we note that he was served with a hard copy of the movement order after grant of interim order. Hence, we direct the authorities to adjust his absence from service from 09.09.2019 until this day, against leave due and release his salary accordingly for which a leave application may be obtained from the applicant.



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8. The O.A. accordingly stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member

