

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.170/00326/2020**

ORDER RESERVED ON 10.09.2020

DATE OF ORDER: 29.09.2020

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

Dr. Sunil Bhandekar

Aged about 40 years 6 months,

S/o J.L. Bhandekar,

R/a CCBF,

Hesaraghata,

Bangalore 560 088

Working as:

Veterinary Officer/Head of Office,

Central Cattle Breeding Farm,

Hesaraghata, Bangalore 560 088

....Applicant

(By Advocate Shri Veerendra Sharma- through video conference)

Vs.

1. Union of India,  
Rep. By its Secretary,  
Ministry of Fisheries, A.H. and Dairying,  
Krishi Bhavan, New Delhi 110 001

2. The Director,  
CSFP&TI, Hesaraghata,  
Bangalore 88

.....Respondents

(By Shri S. Sugumaran, ACGSC - through video conference)

**ORDER****PER: SURESH KUMAR MONGA, MEMBER (J)**

Pleaded case of the applicant herein is that he has been working as Veterinary Officer in the Central Cattle Breeding Farm since 29.09.2014. He has been transferred thrice between 2014 to 2020. Recently, vide order dated 15.07.2020, he has been transferred from Central Cattle Breeding Farm, Hessarghatta, Karnataka to Central Cattle Breeding Farm, Chiplima in the State of Odisha. It has been averred that the respondent department has no transfer policy.

2. It has further been averred that the Government of India, due to extraordinary situation prevailing in the country because of outbreak of COVID-19 pandemic, has directed its departments to not to transfer any officer in Group A, B and C unless the urgent reasons are assigned and the approval of the competent authority is sought in this regard. It has been stated that there is no urgency or any valid ground for applicant's transfer. The applicant has further averred that his old aged parents, who are senior citizens, being dependents, are residing with him. They are suffering from hypertension and diabetes and travel during the outbreak of pandemic is not only restricted but also dangerous. The applicant has two minor children aged 10 years and 4 years and, as per the government instructions, they are not permitted to travel. It has further been averred that there was a complete lockdown in the city of Bangalore from 14.07.2020 to 22.07.2020. Neither the flights nor the trains or any other means of transport are available to travel to the place of his transfer. Even if the applicant manages to leave

Bangalore, still he will not be able to reach the place of his transfer as the State of Odisha is under complete lockdown due to COVID-19 pandemic crisis. Chiplima in the State of Odisha is approximately 300 kilometres away from the nearest airport and there is no travel facility available to reach there after landing at the nearest airport.

3. The applicant has further stated that the order dated 15.07.2020, being arbitrary and discriminatory, cannot be sustained. Aggrieved by the said order, he has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

4. The respondents by way of filing a joint reply have joined the defence and opposed the prayer made by the applicant in his Original Application. It has been averred that the order dated 15.07.2020 transferring the applicant from Hessarghatta in the State of Karnataka to Chiplima in the State of Odisha has been issued in administrative exigencies and the said order can be given effect by the applicant by travelling alone to his new place of posting. The applicant has misquoted the order dated 29.06.2020 issued by the Ministry of Home Affairs by stating that children and old aged people are not permitted to travel. It has been stated that the said order nowhere restricts their travel and it says that they are advised not to travel. Moreover the applicant is in possession of a residential quarter at Hessarghatta, in the State of Karnataka and, as per rules, he can hold the quarter allotted to him for a period of two more months on normal licence fee. He is at full liberty to keep his family in the said allotted quarter and he can proceed to join at his new place of posting. It has further been averred that the Department of

Personnel and Training, being a nodal agency amongst all the government departments, has not issued any guidelines and there are no restrictions for transfer of government officials during the COVID-19 pandemic. The Ministry of Home Affairs, which is handling the pandemic issues in the country, has also not issued any guidelines on transfer of government officials. It has been stated that some of the Ministries/Departments have issued certain guidelines pertaining to transfers based on their own requirements. The order dated 20.05.2020 issued by the Ministry of Labour and Employment is applicable only to its officers/staff and the same is not applicable to officers/staff of other Ministries.

5. The fact as pleaded by the applicant that no transport facilities are available to reach his new place of posting, has been denied by the respondents. Even the assertion made by the applicant that the State of Odisha is under complete lockdown, has also been denied. It has been stated that the essential services are exempted from lockdown and the services of the officers of the respondent department are considered to be the essential services. With all these assertions, the respondents have prayed for dismissal of the Original Application.

6. While filing rejoinder to reply, apart from reiterating the assertions made in the Original Application, the applicant has further submitted that travel by air to which the applicant is entitled i.e. Indian Airlines was not operational and even the private operators were not flying to the said destination. Incidentally, trains were also not operational to his new place of posting and, therefore, being helpless, he submitted a representation with

the respondents citing all these difficulties which has not been considered till date. In order to support his assertion that no travel facility to his new place of posting was available, the applicant has produced on record the documents Annexures AR6 (Colly.). It has further been averred that the applicant has undergone training in Field Embryo Transfer Programme, ETT. The Government of India vide its letter dated 12.12.2019 made him entitled to incentives for ETT-IVF under Rashtriya Gokul Mission. The applicant has been appointed under the said scheme only in the end of the year 2017 on successful completion of his training and, as per the terms of letter dated 12.12.2019, the transfer of the applicant is prohibited.

7. Heard learned counsels for the parties.

8. Shri Veerendra Sharma, learned counsel representing the applicant, submitted that the applicant's transfer order from Hessarghatta in the State of Karnataka to Chiplima in the State of Odisha is contrary to the guidelines dated 29.06.2020 issued by the Ministry of Home Affairs. He further submitted that various Ministries/Departments have taken a decision to not to effect rotational transfers because of the prevalent situation in the country due to COVID-19 pandemic. The applicant is having two minor children aged 10 years and 4 years and his old aged parents are also residing with him. He is unable to shift them at his new place of posting because of the prevalent crisis of pandemic. Therefore, the order of his transfer is arbitrary at this juncture. Learned counsel, while drawing our attention towards a letter dated 12.12.2019 issued by the Government of India further submitted that the applicant's transfer before expiry of a period of 5 years is against

the national interest. He thus submitted that the order dated 15.07.2020, being arbitrary, cannot be sustained and the same deserves to be quashed.

9. Per contra, Shri Sugumaran, learned counsel representing the respondents, submitted that the instructions issued by the Ministry of Home Affairs are merely advisory in nature and they do not put any restraint on travel of anybody. He further submitted that the applicant is having allotment of a residential quarter at Hessarghatta in the State of Karnataka and he can retain his parents and children in the said quarter by making payment of normal license fee for a period of two months. Learned counsel further submitted that the applicant's transfer order has been issued in administrative exigencies and the same cannot be interfered with by this Tribunal.

10. Considered the rival contentions of learned counsels for both the parties and perused the record.

11. The applicant has been working as Veterinary Officer in the Central Cattle Breeding Farm since 29.09.2014. Presently he is working at Hessarghatta, Bangalore in the State of Karnataka. He is also discharging the duties of the Head of Office.

12. During the tenure of his posting at Hessarghatta in the State of Karnataka, he was deputed to attend a training programme on ETT from 07.09.2017 to 27.09.2017 at Mattupatti in the State of Kerala. He successfully completed the said training. The fact that after completion of said training programme, the applicant is appointed under the Rashtriya

Gokul Mission at Hessarghatta in the State of Karnataka has not been disputed by the respondents. It is also not in dispute that the Government of India had issued a letter dated 12.12.2019 stating therein that it is essential in the national interest that professionals trained in ETT-IVF may not be transferred or engaged in some other work and should remain engaged in ETT/IVF activity continuously over a period of 5 years. Ignoring the terms of letter dated 12.12.2019, the respondents have still opted to transfer the applicant vide order dated 15.07.2020 from Hessarghatta in the State of Karnataka to Chiplima in the State of Odisha and that too when the entire nation is facing an unprecedented situation of COVID-19 pandemic.

13. The respondents while issuing the applicant's transfer order remained totally oblivious about the guidelines dated 29.06.2020 issued by the Ministry of Home Affairs advising therein that the persons above the age of 65 years, persons with co-morbidities, pregnant women and children below the age of 10 years to stay at home except for essential and health purposes. Violation of the said advisory has been viewed very seriously by the Ministry of Home Affairs by making therein a provision that any person found violating the measures enumerated in the said guidelines shall render himself liable for prosecution under the provisions of Sections 51 to 60 of the Disaster Management Act, 2005 (hereinafter called as the '2005 Act') besides an action under Section 188 of the Indian Penal Code.

14. We cannot ignore the fact that every government servant has a family to support and the family may contain minor children and old aged parents being dependent upon him. If a government servant is transferred

then he cannot leave in lurch his old aged parents and children while proceeding to his new place of posting. While laying down the condition that the government servant has a liability to serve anywhere in India, the unprecedented situation which is now prevalent was not visualized by the employer. The situation which has emerged throughout the nation because of the outbreak and spread of COVID-19 pandemic has posed a serious threat to human life. The unprecedented situation demanded exceptional measures and, accordingly, the National Disaster Management Authority (hereinafter called as 'National Authority') established under the provisions of Section 3(1) of the '2005 Act' invoked its powers under Section 6(2)(i) of the said Act and issued the directions to National Executive Committee constituted under Section 8(1) to issue the guidelines for reopening of various activities throughout the nation in a phased manner. This is how the order dated 29.06.2020 along with 'Guidelines for Phased Reopening' (Unlock 2) came to be issued at the instance of Union Home Secretary and the Chairman, National Executive Committee. Violation of the said guidelines attracts the penal provisions of Sections 51 to 60 of the '2005 Act'. In this view of the matter, we are of the opinion that the plea raised by the respondents that the Ministry of Home Affairs guidelines issued vide order dated 29.06.2020 are merely advisory in nature cannot be accepted.

15. Admittedly, the applicant has a family and he is to support his old aged parents apart from his two minor children aged about 10 and 4 years and to suggest him to travel to a far off place in the State of Odisha while leaving behind the family at Hessarghatta in the State of Karnataka in the

official accommodation for another two months on payment of normal license fee, in our opinion, is an action on the part of the respondents which can be termed to be arbitrary.

16. We must reiterate here the observations made by a Constitution Bench of the Hon'ble Supreme Court in **E.P. Royappa Vs. State of Tamil Nadu** AIR 1974 SC 555 that from positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal, both according to political logic and constitutional law and is, therefore, violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment.

17. In any case, while keeping in view the guidelines issued by the Home Ministry, the applicant cannot shift his family to his new place of posting because of the prevalent situation of COVID-19 pandemic and, in case he makes an attempt to shift his family, then he will be violating the said guidelines leading towards penal consequences under the provisions of Sections 51 to 60 of the '2005 Act' and Section 188 of the Indian Penal Code. In this view of the matter, we are unable to countenance the plea raised by learned counsel for the respondents that the applicant can house his family for another two months in the quarters allotted to him at Hessarghatta in the State of Karnataka on payment of normal license fee and he can proceed to his new place of posting without subjecting himself to the risk of getting his family members COVID-19 infection.

18. The defence proposed by the respondents in their reply statement, in our considered view, do not stand the scrutiny of Article 21 of the Indian Constitution as well. During the period of outbreak and spread of COVID-19 pandemic, we cannot ignore the herculean task of travel from Hessarghatta in the State of Karnataka to Chiplima in the State of Odisha because of non-availability of transport. The documents placed on record by the applicant depicting therein that there are no transport facilities available to reach Chiplima in the State of Odisha, have not been rebutted by the respondents. On the other hand, without even verifying the fact, it has been stated by the respondents very conveniently that a flight is available from Bangalore to Bhubaneshwar and the transport facilities are available for onward journey to reach the applicant's new place of posting. Even the fact cannot be ignored that in the eventuality of non-availability of government accommodation at applicant's new place of posting, he will not be able to find any accommodation as no landlord will give his premises on rent during the spread of COVID-19 pandemic to any person, much less the one travelling from another State. It is not the case of the respondents that they will ensure the stay of the applicant and his dependents at his new place of posting in a transit flat/accommodation. The fact that in order to ensure the compliance of the Home Ministry's guidelines, various State Governments have issued their separate Standard Operating Procedures with strict stipulation of home quarantine for a person travelling from other States, also cannot be ignored. In the absence of any arrangement of stay in advance, it is very difficult for a person to home quarantine himself at a new place after

his travel from another State. In the facts and circumstances, we find that the approach of the respondents is highly insensitive.

19. In **Francis Coralie Mullin vs The Administrator, Union Territory of Delhi & Ors** 1981 (2) SCR 516, the Hon'ble Supreme Court has held that the right to life as enshrined in Article 21 of the Indian Constitution does not mean merely the right to physical or animal existence; it also includes the right to live with basic human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter.

20. In **National Textile Workers' Union Vs. P.R. Ramakrishnan and Others** 1983 (1) SCR 922, the Hon'ble Supreme Court relied upon what Shakespeare said in The Merchant of Venice “..... ***you take my life when you do take the means whereby I live***”.

21. The applicant who has two minor children aged about 10 and 4 years showed his inability to proceed to his new place of posting by way of submitting a representation on 18.07.2020 and requested the respondents to reconsider the order of his transfer. Since no decision was taken on the said representation, therefore, under the compelling circumstances, he has approached this Tribunal while invoking its jurisdiction under Section 19 of the Administrative Tribunals Act, 1985. It is a matter of common parlance that a child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth. A welfare government like ours has always proclaimed that childhood is entitled to special care and assistance. The family, as the fundamental group of society and the natural

environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. In our considered view, while keeping in view all these laudable objects of a welfare government, the National Authority had issued the directions to National Executive Committee constituted under the provisions of Section 8 (1) of the '2005 Act' and the order dated 29.06.2020 (Annexure A2) along with Guidelines for Phased Reopening (Unlock 2) came to be issued stipulating therein that the persons above 65 years of age, persons with comorbidities, pregnant women and children below the age of 10 years are advised to stay at home. As per clause 10, violation of the said guidelines entails penal provisions of Section 51 to 60 of the '2005 Act' apart from a legal action under Section 188 of the Indian Penal Code.

22. In sum and substance, objective of these guidelines is to contain the spread of COVID-19 pandemic by laying down various norms in the shape of an advisory which is required to be followed mandatorily as the violation of the same attracts the penal consequences. Thus, in our considered view, the order dated 15.07.2020 (Annexure A3) issued by the respondents is not only contrary to Articles 14 and 21 of the Indian Constitution but it also offends the guidelines issued on the directions of the National Authority while invoking its power under Section 6(2)(i) of the '2005 Act'.

23. The reply statement filed on behalf of the respondents including Union of India in the Ministry of Fisheries, Animal Husbandry and Dairying has

further gone to the extent of saying that the Department of Personnel and Training, being nodal agency on service related matters for all government departments, has not issued any guidelines and there are no restrictions for transfer of government officials during the COVID-19 pandemic. It has further been stated that the Ministry of Home Affairs which is handling the pandemic issues in the country has also not issued any guidelines for transfer of government officials. According to respondents, some of the Ministries/Departments have issued certain guidelines pertaining to transfers based on their requirements and those are not applicable to officers/staff of the other Ministries.

24. It appears that the respondents while making such a statement in order to oppose the applicant's cause have remained totally oblivious about the provisions of the '2005 Act' under which the National Authority had issued the directions to National Executive Committee for issuance of order dated 29.06.2020 along with Guidelines For Phased Reopening (Unlock 2). The approach of the respondents while interpreting the guidelines issued by the Union Home Secretary and Chairman, National Executive Committee under the directions of National Authority established under Section 3 of the '2005 Act' is highly insensitive as while doing so, the respondents have not only subjected the applicant to an arbitrary order but have also harped upon the right to life of his dependents as well who are the minor children and the old aged parents.

25. We also cannot ignore the fact that in order to run smooth administration, in appropriate cases, the transfers of government servants

are inevitable but, in the prevalent circumstances, when the whole nation is reeling under the menace of COVID-19 pandemic, appropriate guidelines are required to be framed by the Department of Personnel and Training, Government of India in order to avoid arbitrariness in administrative actions and to ensure the right to life to subjects of the State which include government servants working in various Ministries/Departments and their dependents including minor children and the old aged parents. Almost every day this Tribunal is confronted with one such matter where a government servant is laying challenge to his transfer order alleging violation of Articles 14, 16 and 21 of the Indian Constitution. It is the high time when the Department of Personnel and Training, being the nodal agency amongst all the Ministries/Departments for service related issues of their officers/officials, to come forward and circulate comprehensive instructions dealing with the issues of transfers of government officers/officials in the unprecedented circumstances emerging because of the spread of COVID-19 pandemic.

26. In the facts and circumstances, we deem it appropriate to issue directions to Department of Personnel and Training to come out with a comprehensive policy in consultation with Ministry of Home Affairs and Ministry of Health and Family Welfare wherein the norms are laid down that under what circumstances transfers of officers/officials of various Ministries/Departments can be effected during the prevalent situation of COVID-19 pandemic. Needless to observe that those instructions shall be issued while keeping in view the provisions of '2005 Act' and the

orders/guidelines issued thereunder from time to time apart from the same being in conformity with the provisions of Articles 14, 16 and 21 of the Indian Constitution.

27. In view of the discussions made in the foregoing paragraphs, the present Original Application deserves to be allowed with certain directions to Department of Personnel and Training, Government of India.

28. Accordingly, the Original Application is allowed. The order dated 15.07.2020 (Annexure A3) is hereby quashed and set aside. The Department of Personnel and Training, Government of India shall also carry out the directions enumerated in the preceding paragraphs and circulate the requisite instructions amongst all the Ministries/Departments of the government on the subject of transfers of their officers/officials within a period of one month from the date of receipt of a certified copy of this order.

29. The Registry is directed to serve a copy of this order upon the Secretary to Government of India, Department of Personnel and Training, New Delhi apart from the parties to this Original Application.

30. Ordered accordingly. However, there shall be no orders so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

/ksk/

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

**Annexures referred to by the applicant in OA No. 170/00326/2020**

Annexure A1 Copy of the Notification dated 21.10.2014  
Annexure A2 Copy of the order dated 29.06.2020  
Annexure A3 Copy of the order 15.07.2020  
Annexure A4 Copy of the memorandum dated 11.05.2020  
Annexure A5 Copy of the email dated 18.07.2020 sent by the applicant  
Annexure A6 Copy of the medical certificate of the applicant dated 14.07.2020  
Annexure A7 Copy of the leave application of the application on medical grounds

**Annexures referred in reply statement**

Annexure R1 Copy of the order dated 19.08.2014  
Annexure R2 Copy of the order dated 15.07.2020

**Annexures with rejoinder**

Annexure AR1 Copy of the order dated 06.11.2015  
Annexure AR2 Copy of the order dated 25.04.2016  
Annexure AR3 Copy of the Karnataka government order dated 13.07.2020  
Annexure AR4 Copy of the Odisha government order dated 31.07.2020  
Annexure AR5 Copy of the letter dated 16.07.2020  
Annexure AR6 Copy of the letter dated 25.06.2020  
Annexure AR7 Copy of the information regarding lockdown in Odisha  
Annexure AR8 Copy of the information regarding lockdown in Odisha  
Annexure AR9 Copy of the certificate of the applicant by Kerala Livestock Development Board Ltd.  
Annexure AR10 Copy of the communication dated 31.08.2017  
Annexure AR11 Copy of the communication dated 08.09.2017  
Annexure AR12 Copy of the communication dated 12.12.2019

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