

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/20/386/2020

Reserved on: 11.09.2020

Pronounced on: 16.09.2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

B.Vijaya Babu S/o Late B.Gangaram,
Aged 56 years, Occ: Translation Officer(Russian / English)
(Group 'A'), Russian Translation Cell,
O/o. The Admiral Superintendent,
Naval Dock Yard, Visakhapatnam.

...Applicant

(By Advocate: K.R.K.V. Prasad)

Vs.

1. Union of India represented by
The Secretary, Ministry of Defence,
Government of India,
South Block, New Delhi.
2. The Chief of Naval Staff,
Integrated Headquarters,
MoD (Navy), New Delhi.
3. The Principal Director Civilian Personnel,
Integrated Headquarters,
MoD (Navy), New Delhi.
4. The Flag Officer Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Visakhapatnam.
5. The General Manager (Quality Assurance),
Russian Translation Cell,
O/o. The Admiral Superintendent,
Naval Dock Yard, Visakhapatnam - 533 014.
6. The Captain, Directorate of Dock Yard (DODY),
Russian Translation Cell,
Naval Headquarters, Annexe, First Floor,
Talktora Annexe Building, Park Lane,
New Delhi-110 011.

....Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

2. The OA is filed challenging the transfer of the applicant from Visakhapatnam to Delhi.



3. Brief facts of the case are that the applicant while working as a Russian Translator in the respondent's organization has been transferred from Visakhapatnam to Delhi. Applicant made a representation to defer the transfer till the Covid pandemic ends but he was given to understand that he should be prepared for getting relieved.

4. The contentions of the applicant are that the transfer orders were issued in violation of the policy of the Central Government to defer transfers till March 2021. It is not safe to move when the Corona cases are increasing and more so when he has health issues. The impugned order is not based on the recommendation of placement committee as pointed out by the Hon'ble Supreme Court in W.P (C) No 82 of 2011. By retaining the applicant at Visakhapatnam Rs.4.00 lakhs can be saved toward transfer expenditure.

5. Respondents state in the reply statement that the applicant joined Visakhapatnam in 2007 as Russian Translator. He was transferred to Delhi on 12.3.2020 in public interest with the reporting date fixed as 26.5.2020. Applicant represented on 23.3.2020 for retention which was rejected. Earlier the applicant was planned to be sent for RTC (Delhi) on training in

May 2019 and the applicant was verbally informed about the transfer in November 2018. Applicant represented in Dec 2018 for retention on family grounds which was acceded to and was retained for one year. This fact has been concealed by the applicant. Though the applicant is stating that he would not be able to go over to Delhi due to corona but he expressed willingness to go over to Russia on deputation for 3 years from 2020. If selected, the respondents would have spent Rs.40 lakhs on the deputation which is far more than Rs.4 lakhs to be incurred on his transfer to Delhi. His recent health report has found him to be fit. A lady official Smt. Pamyo Raman was also transferred along with the applicant to Delhi and when her representation was rejected, she had made arrangements to move to Delhi. Hon'ble Principal Bench of this Tribunal has dismissed a similar request made by a similarly situated officer Mrs. Darshana on 21.7.2020. Delhi is safe when compared with A.P. as per latest Govt. Statistics. Transport facilities were largely restored. The applicant is to retire in 2024 and that the issue of transfer is to be decided by the Directorate of Civil Personnel. Respondents cited Hon'ble Supreme Court judgments to further their contentions.

Additional information was furnished by the applicant when the case came up for hearing on 11.9.2020 wherein he claims that the transfer of the applicant falls under compassionate ground as per transfer policy. Dockyard orders dated 26.8.2020/1.9.2020 are that the applicant, being aged 56, was asked not to come to office. Non essential expenditure in terms of composite transfer grant to be reduced by cancelling command transfers for one year as per Ministry of Defence orders. Medical certificate



dated 19.8.2020 issued by civilian medical doctor shows that the applicant is suffering from co-morbidities and has to be exempted from transfer. Transfer of Mrs. Darshana was stayed by the Hon'ble High Court on 6.8.2020 and that of Mrs.Mrudula, Translation Officer to Vizag has been deferred by the respondents themselves. Smt.Pamyo Raman wanted to be relieved on transfer and hence she was relieved. Willingness to go on deputation to Russia was given before the advent of Corona pandemic.



Responding promptly to the additional information submitted by the applicant, the respondents submitted details contesting the aspects raised by the applicant. They have explained the detailed procedure of how the committees at the Principal Directorate and the Directorate of Civilian Personnel vet the proposed transfer of an officer and then submit the same to the Competent authority to take a call on the recommendation made. Mrs.Mrudala will be reporting to Visakhapatnam on 23.10.2020. Her transfer was deferred to take care of her 30 months old baby. Mrs Pamyo Raman was unwilling to go on transfer but when her request was rejected she has reported to New Delhi on 28.8.2020. Deputation to Russia is based on merit, performance and physical fitness. Applicant did not measure up to these parameters. Applicant was duly informed that if his deputation does not materialize he would be posted to Delhi in May 2020.

Applicant did not lag behind and through his Learned counsel has submitted his written submission on 11.09.2020 wherein he claims that the respondents are improving their reply which is not permitted as per law. Material papers regarding placement committee were not produced.

Applicant transfer comes under compassionate grounds. No transfer order was issued in 2019 and hence the question of deferring the transfer does not arise. Mrs. Darshana who is senior to the applicant has been moved from Delhi to Vizag and therefore the argument of the respondents that the applicant being senior is posted to Delhi is raised to defeat the purpose of the OA. 1st respondent Ministry has issued letter dated 20.5.2020 cancelling command transfers for one year and Dockyard at Vizag has issued concurrent advisory. Sri Manas Kumar Chakraborty, Editor is working in Delhi since the last 26 years with no transfers.



6. Heard both the counsel and perused the pleadings on record.

7. I. As seen from the records the transfer of the applicant was planned in May 2019 and on his representation it was deferred for an year. The transfer plan for Russian Translation Cell was approved by the Commodore (DY) in January 2019 and concurred with by Commodore (CP). Applicant has not furnished these details in the OA but denied to have received any transfer order in 2019 while submitting additional information on 11.09.2020. However, Annexure R-1 dated 1.12.2018, evidences the fact that the applicant has represented to the respondents to retain him at Vizag till his superannuation. In response, the respondents vide Annexure R-2 dated 20.2.2019 have considered the request and observed as under:

“1. Refer to application dated 01 Dec 18 regarding retention of Shri B. Vijaybabu, TO (R/E) in Visakhapatnam station consequent on promotion to STO (R/E) on compassionate grounds.

2. The application has been examined in detail and considering the domestic/ personal aspects brought out, transfer of the officer has

been deferred for more than one year on compassionate grounds. Transfer of the officer is now planned in May 2020.

3. *In view of the above, the officer is advised to make necessary personal/ admin arrangements during this period for moving to proposed place of duty i.e. IHQ, MoD(N)/DODY. “*



Hence, the claim of the applicant that the question of deferring his transfer in 2019 did not arise, is false. Applicant, a senior employee, has not come to the Tribunal with clean hands. This is undoubtedly a sufficient ground to dismiss the OA and the applicant has exposed himself to appropriate departmental action for misleading the Tribunal.

II. However, we would like to examine the issue in its entirety and then arrive at a considered conclusion, so that justice does not become a casualty. The applicant has been working since 2007 at Vishakhapatnam. After 13 years, the transfer mooted in 2019 was being given effect to in 2020, on allowing one year retention at the request of the applicant. Employees are to be transferred periodically so that they do not develop any vested interests. Besides, for administrative reasons employees are posted where required. It is not administratively prudent to keep any employee holding a responsible position in the same station or in the same post as observed by the Hon'ble Apex Court in ***B. Varadha Rao Vs. State of Karnataka & Ors., (1986) 4 SCC 131***, with respect to transfer of officers, thus -

6. xxx But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period.

The applicant was for 13 years in the same station i.e. Vishakhapatnam and therefore, it was neither in the interest of the organization nor in the interest of the applicant to be at Vishakhapatnam, in view of the above observation of the Hon'ble Apex Court. It is also not understood as to why the respondents have not adopted the tenure principle in ordering transfers so that vested interests do not develop. However, in the instant case the applicant was finally ordered to move, and that too, after retaining him for a year at Vizag, on request, after planning his transfer in 2019.



III. Even on grounds of health the Hon'ble Supreme Court has called for non interference in matters of transfer in Union *of India & Anr Versus Deepak Niranjana Nath Pandit* in Civil Appeal No. 1236 of 2020 (Arising out of SLP(C) No 1867 of 2020) as under:

4. *The High Court, in interfering with the order of transfer, has relied on two circumstances. Firstly, the High Court has noted that as a result of the stay on the order of transfer, the headquarters of the respondent will remain at Mumbai and even if he is to be suspended, his headquarters will continue to remain at Mumbai. The second reason, which has weighed with the High Court, is that the spouse of the respondent suffers from a cardiac ailment and is obtaining medical treatment in Mumbai. In our view, neither of these reasons can furnish a valid justification for the High Court to take recourse to its extraordinary jurisdiction under Article 226 of the Constitution in passing an order of injunction of this nature. Significantly, the High Court has not even found a prima facie case to the effect that the order of transfer was either mala fide or in breach of law. The High Court could not have dictated to the employer as to where the respondent should be posted during the period of suspension. Individual hardships are matters for the Union of India, as an employer, to take a dispassionate view. However, we are categorically of the view that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting. We express our disapproval.*

In the case on hand, there is no malafide that can be attributed to the decision of the respondents to transfer the applicant or is there breach of any law. Medical facilities in Delhi are better than those available at Vizag.

The respondents took a dispassionate view, as can be seen from the sequence of events related to the transfer, and then posted him to Delhi.



IV. The respondents have a system wherein the officers who are due to transfer are sounded well in advance. The applicant was alerted in Nov 18 about the impending transfer in May 2019 and for reasons of family issues the transfer was deferred by an year on compassionate grounds. Now when the respondents took steps for effecting the transfer, the applicant claims it is against the policy of the Govt. not to cause transfers till March 2021 due to corona pandemic. In this regard it is evident that the transfer of the applicant was on grounds of service requirements. Therefore it is purely in public interest. It is in the public domain that the situation at the India - China border is serious and it is an accepted fact that the Indian Army extensively depends on Russian equipment. Particularly, the Naval Wing of the Armed forces. Therefore, the Russian translators play a vital role in translating crucial documents regarding transfer of technology, maintenance etc. Hence, when the Nation needs the applicant in a particular assignment at this crucial period, we are surprised that, the applicant is giving priority to personal interests rather than National interests. It requires no reiteration that, when it comes to the security of the Nation, there can be no other interest that can be paramount. Hence, when the transfer was issued in public interest, applicant, who is quite senior,

need to have complied with the order rather than exploring grounds to get the transfer stalled. We believe, he should have set an example for others to emulate, when the Nation needs him the most.



V In the fitness of things, the applicant should have first joined the post and pursued his grievance, as was observed by the Hon'ble Apex Court in the case of *S.C. Saxena v. Union of India, (2006) 9 SCC 583*, as under:-

“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.”

Alas, the applicant did not join but approached the Tribunal especially in circumstances when there is war like situation at the Indian borders. Had he joined and made a representation, in tune with the spirit of the observation of the Hon'ble Apex Court, as above, that would have been appreciated.

VI. It was not that the transfer order was issued suddenly. The applicant was put on notice well in advance. The representation of the applicant was duly examined and rejected. Applicant was given due opportunities to ventilate his grievances. After giving the adequate leeway to the applicant on the issue and on due consideration of the issues involved, the transfer order was not withdrawn. One cannot expect more fairness than this.

VII. The technical ground taken by the applicant is that the transfer is not based on the recommendations of the Placement Committee. The



respondents have submitted the procedure wherein the Committees at the Professional Directorate and the Directorate of Civilian Personnel examine the proposal of transfer and thereafter, place it before the competent authority for approval. The respondents have a time tested well established procedure in processing transfers. The same was followed in respect of transfers of others, who were transferred along with the applicant. Thus, the respondents have not formed one, but two Placements Committees, which examine a transfer proposal. Hence, the requirement of the Placement Committee as is required by the Hon'ble Apex Court judgment has been fully complied. The applicant claiming that a reference has not been made about the approval of the Placement Committee in the transfer order is just a hyper technical ground. Even if the information about the Placement Committee is not mentioned in the transfer order, yet, as per law, it is substantive justice, which prevails over technical justice, as observed by the Hon'ble Supreme Court of India in ***State Rep. by Inspector of Police, CBI vs M Subrahmanyam*** in CrI.A. No(s). 853 of 2019 (arising out of SLP (CrI.) No(s). 2133 of 2019), decided on 7th May, 2019, as under:

“Substantive justice must always prevail over procedural or technical justice..... A balance therefore has to be struck. A procedural lapse cannot be placed at par with what is or may be substantive violation of the law.”

The substantive justice relates to implementing the order of the transfer to enable the applicant to serve the Nation in a specific assignment, in societal interest, given his experience and that too, when his services are badly needed in the context of the country facing external threats. Technical justice is about mentioning the recommendation of the Placement

Committee in the transfer order. The law on transfers is that, it is an incidence of service; employee should represent after reporting at the new post and even if rules are violated, he should approach the competent authority for remedy. The interests of the applicant are important, so too are the societal interests. To place the applicant's interest on a high pedestal and making the societal interest subservient is not dispensation of justice.



Hence, on grounds of substantial justice, the plea of the applicant cannot be entertained. However, respondents, who are senior officers from the defence, have enclosed the procedure they have followed, which is too elaborate, intensive and in full compliance with the requirement of the observance of the Hon'ble Supreme Court judgment relied on by the applicant. The said information was provided by the respondents on the direction of the Tribunal to get to the true facts. Similar opportunity was also given to the applicant. Hence, both sides submitted the information which they wanted to submit. Therefore, it is incorrect on part of the applicant to state that the respondents are improving their reply. The applicant is only trying to be hyper technical to get over the transfer which we do not appreciate.

Even, assuming that if that the rule pertaining to Placement Committee is violated, which the Ld. respondents counsel vehemently denied and we concur with her because of the facts of the case as at above, the applicant has to approach the respondents for resolution of the grievance in accordance of the Hon'ble Apex Court observation ***in Shilpi Bose (Mrs) v. State of Bihar***, 1991 Supp (2) SCC 659, at page 661 as under:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer

orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”



The right course of action for the applicant was to join the new post and represent to the respondents as observed by the Hon'ble Apex court in para supra, if he had found any lacunae in his transfer order. Further, if the applicant was very sure that the placement committee has not approved his transfer, it not known as to what prevented him to obtain the information under RTI Act. We would not like to create chaos in the administration at this juncture of time with war clouds looming large over the country and it is not conducive too, to intervene, in public interest.

VIII. Regarding, deputation he did express his willingness to go over to Russia before the outbreak of Corona for a period of 3 years from 2020. When he was willing to work in inhospitable climate prevailing in Russia and that too, for a long period of 3 years with diabetes and blood pressure issues, it is difficult to comprehend as to how he cannot work in a relatively better climatic conditions of Delhi. It is also submitted by the respondents that the applicant was informed that in case he is not selected for deputation he would be transferred in May 2020. Annexure R-2 stands testimony to this fact. Therefore, as is seen the applicant was in the know of things about the impending transfer for quite some time. The order of the Naval Dockyard relied upon by the applicant to defer outstation transfers



due to prevailing Covid environment is a local order based on 1st respondent Ministry order. The competent authority to issue the transfer in respect of the applicant is the Directorate of Civil Personnel (DCP). The applicant has not produced any concurrent order from the DCP deferring transfers in view of Corona pandemic. Instead, he has produced orders of Ministry of Labour/Housing, in which the applicant is not working, to apply the same and contemplate about the relief sought. Coming to the spread of Corona, as explained by the respondents with statistics published by Govt. of India, the situation is better in Delhi than Vizag. Moreover, Delhi being the Capital of the country, it has superior medical facilities than Vizag. Reports available in the public domain comprehensively indicate that Delhi Govt. is controlling the pandemic ably. It is not the case of the applicant that he has been singled out for the transfer but the others were also transferred. In fact, a lady official Smt.Pamyo Raman was transferred along with the applicant to Delhi and when her representation was rejected, she reported on 28.8.2020. Thus, the contention of the applicant that Smt.Pamyo was in for the transfer straightaway is incorrect. Coming to the transfer of Mrs.Darshana, senior to the applicant, it was stayed by the Hon'ble High Court of Delhi to allow her to appear before the Sexual Harassment Committee. The same is not the case in respect of the applicant. In a way, the sexual harassment case gives an inkling about the transfer of a senior official from Delhi to Vizag. Hence, the applicant stating that he is not the senior most to get transferred is not reasonable. Respondents have a right to transfer any employee in administrative interest. It is not for the applicant to decide as to where he has to be posted. Regarding expenditure of Rs.4 lakhs to be incurred, any expenditure incurred to serve National interest is

worth it. There can be no questions raised on this. The Ministry order relied upon by the applicant only speaks of reducing expenditure and does not prohibit incurring expenditure when required. Applicant asserts that the transfer order of a similarly placed official namely Mrs. Mradula was deferred by the respondents. Respondents submit that Mrs. Mradula is reporting to Vizag on 23.10.2020 and the temporary deferment was to enable her to take care of her 30 month old baby. On the contrary, applicant's transfer was deferred for a year on compassionate grounds in 2019. Besides, applicant cannot keep on seeking deferment of the transfer on compassionate grounds year after year. The interest of the organization, which supports you, has to be given priority particularly when the call of duty requires you, to be where you have to be.



We have observed that most of the objections have been raised by the applicant for the sake of raising them. Such objections have not impressed the Tribunal and in fact Hon'ble Apex court has observed in *Kanta Goel v. B.P. Pathak*, (1977) 2 SCC 814, at page 815, as under, not to take them seriously:

“An objection for the sake of an objection which has no realistic foundation, cannot be entertained seriously for the sake of processual punctiliousness.”

Rarely, we come across cases of this nature, where one gets an opportunity to do his best when required in an assignment as important as that of the applicant in Delhi and yet we find the applicant dragging his feet on the same by raising issues which are not realistic.

IX. Respondents have cited the following judgments to support their contentions.



- (a) Right from the case of *Shilpi Bose (Mrs.) and Ors v. State of Bihar & Ors, 1991 Supp. (2) SCC 659*, Hon'ble Supreme Court observed that the courts should not interfere with the transfer order issued in public interest or for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule or on the ground of malafide.
- (b) In *National Hydroelectric Power Corporation Limited v. Sri Bhagwan & Ors, (2001) 8 SCC 574*, Hon'ble Supreme Court observed that the scope of judicial review in transfer of an employee is not warranted and the transfer is not only an incident but a condition of service and it should not be interfered with unless it is shown to be an outcome of malafide exercise of power or violative of any statutory provisions. It has also been observed that no Government servant has any legal right to be posted for long time at any one particular place. Similar view has been taken by the Hon'ble Apex Court in a subsequent judgment in *Rajendera Singh & ors v. State of UP & Ors, (2009) 15 SCC 178*.
- (c) In *State of Haryana & ors v. Kashmir Singh & Anr, (2010) 13 SCC 306*, on the issue of judicial review in the matter of transfer, the Hon'ble Apex court observed that "These are purely administrative matters, and it is well-settled that Courts must not

ordinarily interfere in administrative matters and should maintain judicial restraint”



X. To sum up, the observations of the Hon’ble Supreme court are crystal clear that the Tribunal should not interfere in transfers unless they are malafide or violation of rules. Even if the rules are violated it is for the employee to approach the competent authority for redressal. In the instant case there are many factors which go against the applicant. He has not come to the tribunal with clean hands. The transfer was effected in public interest. The applicant has been accommodated in Visakhapatnam for a long period of 13 years. After giving him adequate time of more than a year the transfer was effected. Representations made were examined and duly replied. Applicant was not singled out for the transfer but the others similarly placed were also transferred based on norms. Better Medical facilities are available in Delhi when compared to Visakhapatnam. Public interest is subservient to individual interests. The facts and circumstances of the legal case relied upon by the applicant is different from those of the applicant. Regarding retention of Sri Manas Kumar Chakraborty for a long period, the Tribunal cannot promote negative equality. In the absence of not making the said individual as a proper party, the applicant is restrained from seeking relief sought. It is open to the respondents to deal with the issue raised as per their policy guidelines. In fact, Hon’ble Supreme Court in ***HAV (OFC) RWMWI Borgoyary & Ors. Etc. vs. Union of India & Ors***, in ***Civil Appeal Nos. 8986-8988 of 2019 [2020(2) SLR 637 (SC)***, decided on 6th December, 2019, has held that

“....right to equality cannot be claimed in a case where a benefit has been given to a person contrary to law. If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions.”



Hon'ble Supreme Court also expressed same line of thought in ***Union of India vs. International Trading Company***, (2003) 5 SCC 437 (Page 444); ***State of Kerala v. K. Prasad & Anr.*** in Appeal (Civil) No. 2913/2007, decided on 09.07.2007. In the State of Kerala (supra), it was also emphasized that the judicial forum should not be used to perpetuate the illegality. Hon'ble High Court of Orissa also took same view in ***M/s. Vedanta Aluminum Limited v. Union of India***, vide its judgment in RVWPET No. 218 of 2011 (Para 17), dt.19.01.2012.

XI. In view of the aforesaid circumstances, we do not find any *mala fide* in effecting the transfer of the applicant to Delhi. Respondents have followed the rules and law. There is no iota of merit in the OA. Hence, OA is dismissed. We need to have imposed costs on the applicant for not revealing facts as they ought to be. However, taking a liberal view, we do not, hoping that he would note the same for future guidance.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

pv/evr