

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00414/2020**Jabalpur, this Tuesday, the 27th day of October, 2020**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Alok Kumar Gupta, S/o Late K.L. Gupta
 Date of Birth 07.05.1967
 Occupation UDC R/o House No.17
 State Bank Colony, Gorakhpur Jabalpur
 482001 (M.P.)
 (By Advocate –**Shri S.K. Nandy**)

-Applicant**V e r s u s**

1. Union of India Through its Secretary
 Central Public Work Department
 Nirman Bhawan New Delhi 110001

2. The Director General Govt. of India
 Central Public Work Department
 Nirman Bhawan New Delhi

3. The Executive Engineer (Coordinator)
 Western Region CPWD 3rd Floor
 New CJO Building 48 New Marine Lines
 Mumbai 400020 (Maharashtra)

4. The Executive Engineer
 Jabalpur Central Division CPWD
 Survey of India Colony Type IV
 Quarter No.3 & 4 Vijay Nagar
 Jabalpur (M.P.)

5. Shri S.K. Barapatre, Through Competent Authority Chief
 Engineer Western Zone II Nagpur Maharashtra - **Respondents**
 (By Advocate –**Shri S.P. Singh**)
 (Date of reserving the order:05.10.2020)

ORDER

By Ramesh Singh Thakur, JM:-



This Original Application has been filed by the applicant challenging the legality, validity and propriety of order dated 07.08.2020 (Annexure A/1), whereby the representation of the applicant for cancellation of his transfer order has been rejected by the respondent-department.

2. The applicant sought for the following reliefs:-

“8(i) Summon entire relevant record from the possession of the respondents for kind perusal of this Hon’ble Tribunal.

(ii) Upon holding that the impugned transfer order dated 30.01.2020 (A/2) as bad in the eye of law. Consequently quash and set aside impugned transfer order dated 30.01.2020 to the extent it relates with the applicant and the respondents be directed to permit the applicant to continue at his present place of posting with all consequential benefits arising thereto.

(iii) Set aside the order dated 07.08.2020 (A/1) rejecting application’s representation as it is a non speaking order.

(iv) Any other relief which this Hon’ble Court may deems fit and proper in favour of petitioner may also be given, in the interest of justice.”



3. From the pleadings the facts are that the applicant was initially appointed in the respondent-department on 22.03.1993 on the post of Lower Division Clerk. Thereafter the applicant was promoted as Upper Division Clerk in the year 1998. As UDC the applicant was posted at Bhopal and thereafter in the year 1995, he was posted at Jabalpur. In the year 2005, the applicant was transferred to Raipur Division. In the year 2012 the applicant was posted in a Project popularly known as "IIITDM". The applicant submitted his option for retention at Jabalpur on several grounds that daughter of the applicant is studying at Class 12, the copy of representation is annexed as Annexure A/5. The competent authority recommended the office of Respondent No.3 for retention of the applicant as UDC in Central Division Jabalpur upon administrative counts. The copy of letter dated 11.12.2019 is annexed as Annexure A/6. In spite of positive recommendation, the impugned order dated 30.01.2020 has been passed and the applicant has been transferred to Executive Engineer (Electrical)

Raipur. Aggrieved by said order the applicant immediately preferred representation before the competent authority praying for his inability copy of which is annexed as Annexure A/7. The applicant had earlier filed O.A. No.200/265/2020 which was disposed of by this Tribunal vide order dated 13.03.2020, whereby the respondents were directed to decide the representation and till such time, the applicant was allowed to work at Jabalpur. Now the respondents-department has rejected the representation.



4. The main ground for challenging the impugned order are that the order dated 07.08.2020 has not been dealt with the contention raised in the representation and has been passed on false and contradictory to records. Moreover, Shri Ashok Kumar Sonkar has already retired in the month of February and Shri Ashok Narayan Rao Pawar is superannuating in the month of September 2020. Thus, there would be two vacancies in a month. Secondly that due to COVID-19 Pandemic as per circular dated 27.04.2020 the rotational transfers are to be kept in

abeyance. The copy of circular dated 27.04.2020 is annexed as Annexure A/8. Further his family liability and his wife is suffering from Asthama. So the applicant has requested not to shift him from Jabalpur. Though the applicant has opted for retention at Jabalpur but the same has not been considered. Moreover the impugned order is not a speaking order and is contrary to records.



5. The respondents have filed their reply and it has been submitted by the replying respondents that as per policy issued by Department of Personnel and Training (DOPT) and as per Chapter 12 of CPWD Establishment Manual 2013 (Annexure R/1) it is stated that in every year in CPWD in the month of April/May rotational transfer orders are issued. In the year 2019-20 rotational transfer could not be carried out in spite of putting it in process by publishing Office Memorandum dated 10.10.2019 (Annexure R/2) and giving employees opportunity to give their options online within 7 days. It has been specifically submitted by the replying respondents that the



restructuring in department, was in challenge initially before the Central Administrative Tribunal, Bangalore Bench. The order passed by CAT Bangalore Bench was later on was set aside by Hon'ble High Court of Karnataka on 17.09.2019 upholding the restructuring of department so accordingly the process of rotational transfer was revived in the month of October 2019 again while calling for options vide order dated 10.10.2019 (Annexure R/2). It has been specifically submitted by replying respondents that impugned transfer order was issued in the month of January 2020, which is absolute necessity from administrative point of view and accordingly the same was issued in public interest. The applicant has longest stay in Jabalpur. The normal tenure for any post is 3 years as provided in OM dated 12.02.2019 (Annexure R/4).

6. The respondent No.2 vide OM dated 07.09.2018 (Annexure R/5) is given power to decide the work and administrative exigencies related to work, with recorded reasons can decide transfer and posting accordingly and



further SDG shall have power to decide the posting even without asking for choices for filling the vacant post. Therefore that not adhering to options given by applicant cannot be a ground of challenging the transfer order impugned in the matter. It has been submitted by the replying respondents that the respondents have decided the representation as per order of the Tribunal by speaking order dated 07.08.2020. It has been submitted by respondents that the scope of judicial review/interference justice only in case of malafide or infringement of service condition where career prospectus remain unaffected and no detriment is caused; challenge to the transfer must be eschewed. The action of the respondents in issuing Annexure A/2 of O.A. is well within the law and applicant is liable to be transferred and posted as per the policy of the Government. The rotational transfers are carried out as per transfer policy issued by DOPT from time to time. There is no bar as per GOI regulation to issue transfer orders when it is absolute necessary. As per OM dated



10.10.2019 (Annexure R/2), as mentioned in Para 5 the submission of online options for posting, the applicant do not submitted any online option. It is further submitted by the replying respondents that as a matter of fact, many units have been closed and new units have been opened due to which employees were transferred from old units to new units and while doing so transfer policy and probity guidelines have been kept in view. Due to restructuring the sanctioned strength of UCD in Jabalpur unit of CPWD has been reduced from 3 numbers to 2 numbers. Out of the 3 UDCs in position at the time of issuing of impugned order, 2 were retiring within a year and hence they are continued against the sanctioned strength. However one UDC was posted in the impugned order against one of the retiring employee.

7. We have heard the learned counsel for both the parties and have also gone through the documents annexed with the O.A.

8. From the pleadings it is clear that the applicant was initially appointed with the respondent-department on 22.03.1993 as Lower Division Clerk and thereafter he was promoted as Upper Division Clerk in the year 1998. In the year 2012, he was posted in a Project and has submitted his option for retention at Jabalpur vide his representation Annexure A/5. Thereafter the competent authority has recommended the office of Respondent No.3 for retention of the applicant as UDC in Central Division Jabalpur vide letter dated 11.12.2019 (Annexure A/6). The contention of the applicant is that in spite of positive recommendation by respondent No.3, the competent authority has issued the impugned order dated 30.01.2020 and the applicant has been transferred to Raipur. The next contention of the applicant is that aggrieved by said transfer order, the applicant has filed O.A. No.200/265/2020 which was disposed of by this Tribunal vide order dated 13.03.2020, with the direction to the respondents to decide the representation but the



respondent-department while deciding the representation has not considered the points raised in the representation.

9. On the other side, the contention of the respondents that the department has complied with the order of this



Tribunal and the contention raised in the representation has been dealt with. It has been specifically replied by the

respondents that the department has decided the representation as per policy issued by Department of

Personnel and Training (DOPT) and also as per Chapter 12 of CPWD Establishment Manual 2013 (Annexure R/1).

The contention of the respondent-department is that in every year CPWD in the month of April/May rotational

transfer orders are issued. But in the year 2019-20 rotational transfer could not be carried out. So vide Office

Memorandum dated 10.10.2019 (Annexure R/2) an employees have been given the opportunity to give their

options online within 7 days. The rotational transfer has been done in view of the restructuring of the department.

Although the same action of the department was

challenged before the Central Administrative Tribunal, Bangalore Bench. Ultimately Hon'ble High Court of Karnataka has upheld the exercise of restructuring in the department. Thereafter the respondent-department has started the process of rotational transfer in the month of October 2019 and options were called vide order dated 10.10.2019 (Annexure R/3). Thereafter the impugned transfer order has been issued in the month of January 2020. It has been specifically submitted by the replying respondents that such transfer is absolute necessity from administrative point of view and in the public interest. The applicant has longest stay in Jabalpur. The normal tenure for any post is 3 years which is provided in OM dated 12.02.2019 (Annexure R/4).



10. The respondent No.2 has been empowered to decide administrative exigencies related to work. The SDG shall have the power to decide the posting even for filling up the vacant post. The respondent-department has decided the representation as per order of the Tribunal by speaking



order dated 07.08.2020. It has been specifically submitted by respondents that the scope of judicial review/interference justifying only in case of malafide or infringement of service condition, where career prospectus remain unaffected and no detriment is caused. In the present case there is no such circumstances. The impugned transfer order is absolute necessity. As per OM dated 10.10.2019 (Annexure R/2), submission of online options for posting are to be submitted. It has been specifically submitted by the replying respondents that many units have been closed and new units have been opened due to which employees were transferred from old units to new units and while doing so, transfer policy and probity guidelines have been kept in view. Due to restructuring, the sanctioned strength of UDC in Jabalpur unit of CPWD has been reduced from 3 numbers to 2 numbers. Out of the 3 UDCs in position at the time of issuing of impugned order, 2 were retiring within a year

11. It is true that it is the prerogative of the employer regarding posting and transfer of the employees. In the instant case the respondent-department has decided the representation as per direction of our order in O.A. No.200/265/2020.



12. We have perused the impugned order dated 07.08.2020 (Annexure A/1) and from impugned order it is crystal clear to the fact that the contention of the applicant regarding his daughter who is studying at 12 Class at Jabalpur in the academic year 2019-20, has been taken care and the reasons has been assigned to the fact that the academic year is now over. Moreover, the applicant has a longest stay at Jabalpur and normal tenure for retaining employee is 3 years as per the policy. From the reply it is very clear that the necessity of transferring of the applicant has arisen due to the restructuring of the department and we find that the impugned order has been passed as per the administrative exigencies. The respondent department has also explained in their reply regarding the vacancy at

Jabalpur and in the reply it has been clearly spelt out by the respondent department that due to restructuring the strength has been reduced. Moreover, the other two persons are going to be retired within one year and applicant has longest stay. So, we are of the view that the impugned order qua the applicant has been issued in the public interest and due to exigency of service.



13. Resultantly, we do not find any reasons to interfere with the impugned order.

14. Accordingly, this Original Application is dismissed.

No order as to costs.

(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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