

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00618/2020

Date of order: 24.8.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Asharfi Lal Mallick,
Aged about 53 years,
son of Late Kartick Mallick,
Residing at Quarter No. CE-182,
East-Land, Ichapur,
Post Office, Bengal Enamel,
District-24 Parganas (North),
Pin-743122 and
working as Assistant Engineer (QA) under SQAE (Metals),
Ichapur, Post Office-Ichapur-Nawabganj,
District-24 Parganas (North)
under overall control and authority of
Director General of Quality Assurance (DGQA), Govt. 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 – 110 011.
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 – 110 011.
3. The Additional Director General of Quality Assurance

H. H.

(Metal & Explosives),
Government of India,
Ministry of Defence Production,
Post Office – Ichapur-Nawabganj,
District – 24-Parganas (North),
Pin – 743 144.

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 Controller,
The Controllerate of Quality Assurance (Metals),
Government of India,
Ministry of Defence,
Post Office – Ichapur – Nawabganj,
District – 24-Parganas (North),
Pin – 743 144.

... Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : None

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with his transfer from SQAE (Met), Ichapur, West Bengal to
SQAE (A), Trichy, Tamil Nadu, the applicant has approached this Tribunal
under Section 19 of the Administrative Tribunals Act, 1985 praying for the
following specific relief:

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"(a) To quash and/or set aside the impugned transfer order No. B/85336/DGQA/M&E-5/Transfer/MET/B dated 4th August, 2020 issued by the Deputy Director for Additional DGQA, Department of Defence Production, Directorate of Quality Assurance (Metals & Explosives), Post Office – Ichapur – Nawabganj, District -24-Parganas (North), in respect of the applicant wherein the same of the applicant appeared at Serial No. 2 in the said list by which your applicant has been transferred from SQAE (Met), Ichapur, West Bengal to SQAE (A), Trichy, Tamil Nadu being Annexure A-4 of this Original Application without consider the earlier representation of the applicant dated 4.1.2020 and also in gross violation of the Transfer Policy dated 24th November, 2016 which was circulated by the office memo dated 30th November, 2016 which was circulated by the office memo dated 30th November, 2016 where under para 10(d) it is very clearly stated that – 'Request of an official for retention at a station maximum by 01 year may be considered on grounds of education of his/her children once in entire service career and not only this particular department also violates the office order of the Ministry of Defence dated 20th July, 2020 appearing at Annexure A-4 (A) of this original application whereby it has been addressed to all the concerned departments that the pandemic caused by COVID-19 is unrelenting and increasing at an accelerated pace at National Level. Hence, it has been decided to defer implementation of the rotation transfer in the current financial year 2020-21 to next financial year 2021-22. The said order of Headquarters Ministry of Defence dated 20th July, 2020 is also violated by this present department and on that ground alone, the impugned order of transfer dated 4th August, 2020 in respect of the applicant may be set aside and/or quashed;

(b) To pass an appropriate order directing the respondents that in terms of Annexure A-9 of this original application regarding available vacancies more than five to the post of Assistant Engineer (QA) in CQA (Met) Ichapur and in the SQAE (Met) Ichapur the vacancy position to the post of AE(QA) is one, the applicant may be accommodated and he may not be forced to join in the transfer place and he may be accommodated against such available vacancies so that he can perform his duty to the post of Assistant Engineer (QA) in the present establishment at Ichapur, West Bengal.

(c) Costs.

(d) Any other relief or reliefs as Your Lordship may deem fit and proper."

2. Heard Ld. Counsel for the applicant and examined documents on record. Despite affidavit of service being placed on record, none appears for the respondents. Accordingly, we invoke Rule 16(1) of the Administrative Tribunals Act, 1985 and proceed to pass orders for disposal at the admission stage.

3. Ld. Counsel for the applicant would submit that the applicant is presently working in the post of Assistant Engineer (QA), and, he had been posted in Ichapur vide order dated 14.5.2013 after having served for a long period at Pune, Maharashtra. The applicant, however, is aggrieved that just after completion of six years and few months he had been re-transferred to Trichy, Tamil Nadu.

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Ld. Counsel would aver that the applicant is challenging his transfer on the following grounds:-

- (i) That, the transfer policy dated 24.11.2016, as amended vide Office Order dated 10.2.2017, has been totally violated in the case of the applicant in ignoring his and his wife's medical conditions as well the fact that he has a college going daughter. The applicant had represented on 4.1.2020, praying for exemption of his transfer on grounds of his and his wife's illness, but the same was ignored and the applicant was transferred out to Trichy vide transfer order dated 4.8.2020.
- (ii) That, the Hon'ble Apex Court's mandate on the necessity of recommendations of the Placement Committee prior to transfer was ignored in the case of the applicant in the absence of any such Placement Committee.
- (iii) That, vide the respondents' order dated 20.7.2020, it was directed that the rotational transfer orders would not be implemented in the context of COVID, 19 rendering the transfer order dated 4.8.2020 blatantly illegal and bad in law.
- (iv) That, another incumbent, namely, one Mr. G. D. Mondal was accommodated at Ishapore, while the applicant was discriminated against and, that, although he had spent seven years in Pune, Maharashtra, he was moved out of West Bengal just after completion of six years and a few months in West Bengal.
- (v) That, one Manish Kumar Budholia and one Iftekhar Ahsan were accommodated at their Mumbai Offices unlike the applicant, who was not so accommodated despite his representation of January, 2020.

Ld. Counsel would, also urge that the representation of the applicant dated 7.8.2020, which was preferred by the applicant

h.e.f.

(Annexure A-8 to the O.A.) praying for reconsideration of his transfer has not yet been considered by the authorities.

4. We are of the considered view that no useful purpose would be served in postponing this matter for adjudication on merit given the pendency of the applicant's representation.

Hence, without entering into the merits of the matter, we would like to direct the respondent No. 3, who is the addressee of the applicant's representation, or, any other competent respondent authority to decide on the representation of the applicant at Annexure A-8 to the O.A. in accordance with law and, in particular, in terms of the extant transfer policy as well as other grounds advanced by the applicant in his representation under reference, within a period of eight weeks from the date of receipt of a copy of this order. Once so decided, the decision should be conveyed to the applicant in the form of a reasoned and speaking order.

In the event that the applicant has not been released from the present place of posting, the respondents may not release him till the representation is disposed of. In case the applicant has been so relieved, the respondents may not take any coercive action to compel the applicant to join his transferred place of posting till the disposal of the representation.

5. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member