



**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

**ORIGINAL APPLICATION NO.170/00168/2021
AND
MISCELLANEOUS APPLICATION NO.170/00239/2021**

ORDER RESERVED ON 11.08.2021

DATE OF ORDER: 04.10.2021

CORAM:

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

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

Sri N.Sreenivasa Murthy, 57 years
Son of Sri H.M.Narayanaswamy
Occn: Research Officer (Map)
O/o Director of Census Operations Karnataka
10th Floor, Sir.M.Visvesvaraya Kendriya Bhawan
No.806, Old Airport Road
Near Flyover, Domlur, Bengaluru: 560 071.
Residing at No: 155
Herohalli, Vishwaneedom Post
Magadi Main Road
Bengaluru: 560 091.

.....Applicant

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India
To be represented by its Secretary
Ministry of Home Affairs
North Block
New Delhi: 110001.
2. Registrar General & Census Commissioner of India
AD-III Section, NDCC-II Building
'A' Wing, 1st Floor, Jai Singh Road
New Delhi: 110 001.
3. Directorate of Census Operations Karnataka
9th & 10th Floor
Sir. M.Visvesvaraya Kendriya Bhawan
No.806, Old Airport Road
Near Flyover, Domlur
Bengaluru: 560 071.

.....Respondents

(By Advocate Shri S.Sugumaran)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“Quash the order bearing F.No.A-32011/1/2020-Ad.III/543, dated 14.12.2020 Annexure-A2, passed by Registrar General & Census Commissioner of India, New Delhi, R-2 herein so far as it pertains to applicant, transferring him from DCO Karnataka to DCO Kerala and to quash the order bearing No: A-12025/1/2019 Est., dated 26.02.2021, Annexure-A6 vide which the applicant has been relieved of his duties from DCO Karnataka to report for duty at DCO Kerala.”

2. The Tribunal besides issuing notices on 02.03.2021 to the respondents to show cause as to why the Original Application be not admitted for hearing, had stayed the operation of the impugned orders at AnnexuresA2 & A6 and as a result thereof, the applicant was permitted to continue in DCO, Karnataka.

3. The facts of the case as averred by the applicant in his pleadings are as follows:

- a. The applicant was working as a ‘Senior Geographer’ in the office of Directorate of Census Operations(DCO), Karnataka. He is due to retire on superannuation on 01.11.2023.
- b. The applicant was promoted to the post of Research Officer(Map)(Group ‘A’ Gazetted), Level 10, against one of the 08 temporary census posts, on regular basis vide orders dated 25.09.2020. These temporary posts are available upto 25.09.2024.



- c. The applicant accepted the promotion and reported for duty as Research Officer in the office of Directorate of Census Operations, Karnataka.
- d. The applicant was subsequently transferred vide office order dated 14.12.2020 from DCO, Karnataka to DCO, Kerala.
- e. The applicant submitted representation on 15.12.2020 for reconsideration of his transfer case pointing out many difficulties being faced by him in accepting this transfer at this stage.
- f. The representation of the applicant was forwarded by his controlling authority at Bengaluru to respondent No.2 (Registrar General & Census Commissioner of India) on 22.01.2021.
- g. Subsequently, the applicant's controlling authority relieved the applicant from Bengaluru office vide orders dated 26.02.2021 with instructions to report for duty at DCO Kerala in terms of transfer order dated 14.12.2020.
- h. The applicant had accepted this promotion against temporary posts since it does not involve his shifting from Bengaluru.
- i. His contention is that when a promotion is against a temporary post created for a limited period, it is not open for the administration to cause any disturbance to the applicant's accepting such promotion especially in view of the fact that such promotion is offered on 'as is where is basis'.



4. The respondents No.1, 2 & 3 have filed their reply statement wherein they averred as follows:

- a) Twelve(12) temporary posts of Research Officer(Map) were created for Census of India-2021, in the office of the Registrar General, India, vide letter No.A-11011/1/2019-Ad-III/1187 dated 26.09.2019(Annexure-R1). These 12 temporary posts were allocated one each to the 12 subordinate offices called, Directorate of Census Operations (DCO), including Directorate of Census Operations, Arunachal Pradesh and Kerala vide Office Order No.A.11011/4/2020-Ad.V dated 06.11.2020(Annexure-R2).
- b) The applicant along with 8 others was promoted to the temporary Census post of Research Officer (Map) (Group-‘A’ Gazetted) on the recommendations of the DPC held in UPSC on 08.09.2020. Due to prevailing Corona pandemic, the applicant along with 8 others were posted ‘as is where is basis’ till further orders.
- c) The office of the Registrar General, India carries out the gigantic work of decennial Census and having its subordinate offices called, Directorate of Census Operations, located in different State/UT capital and has an all India transfer liability for Group ‘A’ & ‘B’ posts.
- d) There is a transfer policy for Group ‘A’ & ‘B’ employees which had been notified vide OM dated 19.03.2018. The main aim of the transfer policy is as follows:



- i. Harmonization in the distribution of personnel across the country in different offices so that the manpower of the office of the Registrar General, India is deployed taking into consideration size of a state and to ensure proper rotation of personnel on All India basis.
- ii. Ensuring that there is no surplus or deficit in any State/UT and vacant position are distributed equally in a fair manner and no State/UT suffers shortage of officers.
- iii. To ensure that personnel have a minimum and maximum tenure and, when the transfer becomes due, it is done in accordance with a laid down policy so that there is no uncertainty with regard to their tenure in a particular station.

The eligibility for transfer posting of officials of DCOs is as under:-

- a. For Group 'A' posts - 5 years
- b. For Group 'B' posts - 10 years
- c. For Group 'B' on promotion to Group 'A' - 10 years

Subject (period of both working in both Group 'B' to maximum of 5 & Group 'A' will be counted) years in Group 'A'.

- e) A Departmental Placement Committee comprising of senior officers of this office, was constituted to consider transfer and posting of officers on promotion and on functional requirement basis among Directorates of Census Operations. A meeting of the Departmental Placement Committee was held on 23.11.2020 to consider transfer/posting of promoted Research Officers (Map) and the



applicant was transferred from DCO, Karnataka, on promotion, to the nearest station at DCO, Kerala along with 5 others vide Office Order No.A-32011/1/2020-Ad.III/543 dated 14.12.2020(Annexure-R6). The following points were kept in view while issuing these transfer orders:

- i. At present, all States/UTs are busy in Census 2021 activities and Directorate of Census Operations, Kerala and Arunachal Pradesh have to produce maps from state level to village/ward level with an updation of jurisdictional changes.
- ii. Important new initiatives taken in mapping for Census-2021, such as BUA work, Geo-referencing of House Listing Blocks (HLBs) across the states using Mobile mapping app are to be executed in these States, where the role of Research Officer (Map) is vital.
- iii. The applicant is working in the office of DCO, Karnataka since the date of his appointment in January, 1991 without any transfer.
- iv. No vacant post of Research Officer (Map) is available at DCO, Karnataka. One post of Research Officer (Map) is still lying vacant at DCO, Kerala, where the applicant was transferred.
- v. As regards for posting of husband and wife at the same station, the applicant could not be considered for posting at DCO, Karnataka due to non-availability of a vacant post of Research Officer(Map) there and due to exigency at Kerala to man the new initiative program.
- vi. As per point under on promotion under Annexure of DoP&T's OM No.11013/10/2013-Estt.A dated



02.07.2015(Annexure-R7), an employee on promotion may be considered for retention at the same place if he/she is due to retire from Govt. service on superannuation within 2 years. Whereas, the applicant still has about two and half years of service to retire on superannuation.

- f) The applicant had submitted a representation dated 15.12.2020(Annexure-R8) requesting for his retention at his present place of working at DCO, Karnataka stating his family pressing circumstances. His representation had been submitted for consideration of the competent authority. The same has not been acceded to, vide letter dated 31.03.21, due to non-availability of vacant post of Research Officer (Map) at DCO, Karnataka, and in public interest due to his service being needed at Kerala DCO to carry out the new initiative of mapping work.

5. In his rejoinder, the applicant has mainly raised the following points:

- a) The applicant was posted on 'as is where is basis' till further orders. Therefore, it is not open to the administration to unilaterally alter the conditions of promotion subsequent to acceptance of such promotion subject to the said conditions.
- b) Subsequent to his promotion, the applicant has been drawing his salary from the date of promotion until this day at DCO Karnataka itself. The respondents have to explain as to how the salary could be drawn if no post is available at Bengaluru. When the applicant's promotion is against a temporary census post, the question of availability of regular post does not arise.
- c) The interpretation given to the 'as is where is basis' averment contained in reply paragraph 10 with reference to OA paragraph 4.3,



is required to be tried as an issue between the parties in this OA in the course of effective adjudication of the OA.

6. Heard the learned counsels for the parties.
7. From the facts available on record, the applicant was promoted against a temporary Census post on regular basis by a DPC held in UPSC. The temporary posts are available till 25.09.2024 whereas the applicant is due to retire on 31.10.2023. Hence, as far as the applicant is concerned, his promotion, although being against a temporary census post, would be, in effect, till his date of superannuation.
8. A careful perusal of the orders dated 25.09.2020 clearly indicate that the officers, on promotion to the post of Research Officer(Map), are posted on 'as is where is basis *till further orders*' (emphasis added).The contention of the applicant that on promoting him against a temporary post on 'as is where is basis', he cannot be subsequently transferred from Karnataka to Kerala, is, therefore, without any basis. The present post to which the applicant has been promoted is of Level-10(Group-A) which carries an all India transfer liability.
9. The respondents have stated that the applicant's transfer is in public interest on account of exigency of service. The respondents in their letter dated 31.03.2021, have stated, that all States/ UTs are busy in Census 2021 activities and Map Sections in the DCO-Kerala have to produce maps from state level to village/ward level with an updation of jurisdictional changes. The applicant has to function as nodal officer between the subordinate cadre and the higher managerial officers to guide and train the mapping officials in



the GIS applications and provide necessary technical advises for Software/Hardware related issues.

10.The representation made by the applicant, against his transfer to Kerala has been rejected through a detailed speaking order dated 31.03.2021. The reasons given in this rejection order state that his services are required in Kerala and that there is no vacant post of Regional Officer(Map) available at DCO-Karnataka.

11. The applicant was promoted on “as is where is basis” *till further orders*. Subsequently, a Department Placement Committee has considered transfer/postings of all the promoted officers and based on its recommendations keeping in view the exigency of the work, all these promoted officers have been posted including the applicant who has been posted to Kerala.

12.There are a plethora of judgements of the Honorable Supreme Court on the issue of Judicial intervention in the matter of postings and transfer of employees. In *Mrs.Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532*, the Honourable Supreme Court has observed as follows:

"In our opinion, the courts should not interfere with a transfer order which are 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....."



13. In *Union of India and others vs. S.L. Abbas AIR 1993 SC 2444*, the Honorable Supreme Court has observed as follows:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration"

14. A similar view has been taken in *National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and another (2001) 8 SCC 574*, wherein it has been held that:

"no Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the appellate authorities substituting their own decision for that of the management."

15. The facts of the present case clearly indicate that the transfer order does not suffer from any malafide, nor is it against any existing policy relating to transfers and postings of its employees. The detailed representation made by the employee against his transfer order has been duly considered and rejected through a detailed speaking order. There is, an administrative requirement of applicant's services, in the promoted post, in Kerala. Consequently, there is no ground for any judicial interference in the transfer orders issued by the respondents.



16. Keeping in view of all the above, the present OA, being devoid of any merit, is liable to be dismissed. Accordingly, the OA is dismissed.

17. In view of dismissal of the OA, the MA.No.170/00239/2021 filed for vacation of stay is also dismissed having been rendered infructuous.

18. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

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