



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/939/2020

Date of Order: 05.04.2021

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member**

Sujoy Hembram, C/o Sanjib Hembram, Aged bout 42 years, Working as AE (Quality Assurance) at SQAE(L)/Kolkata, permanent resident of Tara Gati Samanta Road, Professor Colony Kenduadihi, Achuri, Kenduadihi, Bankura, West Bengal – 722102.

..... Applicant.

-Versus-



1. Union of India Union of India, Service through the Secretary, Ministry of Defence, New Delhi – 110011.
2. The Director General of Quality Assurance, Ministry of Defence (DGQA), G. Block, Nirman Bhawan, New Delhi – 110011.
3. The Additional Director General of Quality Assurance (L), Ministry of Defence (DGQA), G Block, Nirman Bhawan, New Delhi – 110011.
4. The SQAO, SQAE(L)/Senior Quality Assurance Establishment, Kolkata, Ministry of Defence (DGQA), Hastings PO, Kolkata – 700022.
5. The Officer-in-Charge Admin, Senior Quality Assurance Establishment (Electronics), Kolkata, Ministry of Defence (DGQA), Hastings PO, Kolkata – 700022.

..... Respondents.

For The Applicant(s): Mr. Arpa Chakraborty, counsel

For The Respondent(s): Mr. S. Paul, counsel

O R D E R (O R A L)

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for both sides at length.

2. This O.A has been preferred to seek the following reliefs:

"8.a) Impugned Order of Transfer being No. 78823/14/ROT/2020/DGQA/L-2 dated 20.07.2020 issued on behalf the respondent No. 3 with respect to the applicant and impugned Order of rejection dated 30.09.2020 issued by the respondent No. 4 are not tenable in the eye of law and as such the same should be quashed.

b) To grant all the consequential benefits including the benefit of exemption from transfer provided under the DoPT OM dated 31.03.2014 and Para 10(c) of the respondent's transfer policy of Group-B Officials in favour of the applicant and thereby his retention at his present place of posting at Kolkata.

c) To grant Costs and incidentals.

d) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof concessionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) and (ii) above.

(e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

3. On 19.10.2020, the following detailed order was passed:

"Aggrieved with his transfer to Bangalore the applicant who is serving as AE(Quality Assurance) at SQAE(L)/Kolkata has pleaded that he has lost eye sight in one eye and he is suffering from various disorders including seizure disorders has preferred this O.A would seek a stay on transfer.

At hearing learned counsel for the applicant would place the following :

1. *That the posting of the applicant to SQAE(L) Kolkata was in permanent nature as contained in Annexure A-2, yet he is transferred to CQA(L) Bengaluru against an existing vacancy.*
2. *That, he has preferred a representation dated 24.07.2020 (Annexure A-3) stating his medical condition and citing his inability to carry out the transfer to such a distant place as he is a visually impaired person with 40% disability and deserve exemption from rotational transfer in terms of Para 10 (c) of O.M dated 31.03.2014 which exemplifies the following :*

"As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilized."

(iii) *Several incumbents who themselves or their ward suffer from physical disorder have been recommended for exemption in terms of para 10 (c) of the rotational policy as would be evident from Annexure A-7 page 99 of the O.A. Some of those persons are Animesh Dutta, Gopal Vasudevan, Ajay Kumar Saxena and P. Venkataramana etc. Yet the applicant has not been exempted from rotational transfer which is clearly discriminatory.*

(iv) *The rejection of his deferment is an unreasoned one, as evident from Annexure A-5 dated 30.09.2020, relevant portion of which reads as under :*

"2. It is intimated that HQ DQAL has intimated vide letter at ref para 1(a) above, that your application for deferment of move against RTS-2020 has been examined by the competent authority and not agreed to.

3. *In view of the above, it is intimated that you are required to report to CQAL Bangalore at the earliest as per para 4 & 5 of letter referred at para 1(c) above.*
4. *It is further mentioned that you are undergone Medical treatment and unwell however no medical certificate is found attached/enclosed to your e mail referred at para 1(e) above for compliance.*
5. *It is requested to intimate your date of joining to this establishment for further necessary action at the earliest."*

(v) *That, the applicant is entitled to an exemption in terms of para 10 (c) of the rotational transfer policy dated 24.11.2017 as contained in Annexure A-6 of the O.A which para reads as under :*

"10. Exemptions from transfer under RTP

- *XXXXXXXXXX*
- *XXXXXXXXXX*
- *Exemption from RTP to an official with disabilities or who has differently abled dependents shall also be considered in terms of instructions/guidelines issued by the Government of India on the subject from time to time.*
- *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."*

Per contra, learned counsel for the respondents while vociferously opposing the plea of the applicant would contend that,

1. *The word 'permanent nature' mentioned in the order at page 70 Annexure A-2 does not necessarily mean that his transfer in SQAE(L) is permanent in nature and he would never be shifted in his entire service career to any other place but simply means and connotes a posting of a permanent nature against a permanent existing vacancy/post.*
2. *In the year 2012 the applicant had made similar prayer seeking retention as he wanted to remain with his family, whereas he is residing at Nizam Palace while his family resides elsewhere.*



- He has been exempted for one year in consideration of his prayer and no further exemption is admissible.

We heard Ld. counsel for the parties and perused the records. Admittedly and indubitably the applicant is visually impaired person with disability of 40% as in terms of the disability certificate annexed as Annexure A-1 to the O.A. The applicant as such deserves consideration in terms of para 10 (c) extracted supra. The reason why he is not entitled to be granted exemption from RTP is not discernible.

In view of such position, we direct the authorities to issue a reasoned and speaking order clarifying why the applicant would not be entitled to an exemption when other similarly situated employees, as evident from Annexure A-7 from page 99 mentioned (supra) have been allowed exemption as per para 10 (c) of RTP due to their own physical disorder or of their ward.

An appropriate reasoned and speaking order be issued within a period of 8 weeks from the date of receipt of a copy of this order. Till such time the applicant shall not be compelled to join the place of transfer."

4. Pursuant to the direction supra, the SQAO has issued an order dated 11.01.2021 which reads as under:

No. 10018/AVReports/IX dated 11.01.2021

Shri Sujoy Hembram
AE(QA)
SQAE(L), Kolkata

**O.A. NO. 939 OF 2020 IN THE MATTER OF SUJOY HEMBRAM
VS UOI & ORS**

References:

(a) Hon'ble CAT Kolkata Bench, Court No. 01 Order Sheet dated 27 Nov 2020

(b) HQ-DGQA/DQA(L), New Delhi: Rotational transfer order No. 78823/14/RTS/2020/DGQA/L dated 20 Jul 2020

2. It is intimated that the Assistant Engineer (Quality Assurance) in short AE(QA) is a technical post in Ministry of Defence, Department of Defence Production (DGP) with All India Service Liability (AISL). The rotation transfer policy has been approved by the Ministry for implementation thereof. You have been posted to Kolkata with effect from 07 May 2012 and thereby you have completed more than 08 years in the station. As per the rotation transfer policy in vogue, your rotation was due during RTS-2019. The competent authorities having considered your application dated 19 Mar 2019 and you were not posted out of Kolkata against RTS-2019 (last year).

The series of representation made by you were forwarded to the authorities for consideration for grant of extension. You had applied for exemption from rotational transfer 2020 on medical ground (visually disable) vide application dated 12 Dec 2019. It is intimated that Medical opinion on the application was obtained from competent authority. Medical officer had intimated that "Individual's eyes are genuinely weak which is not a life threatening disease to invite provision of policy for retention on extreme compassionate grounds. He has already availed exemption on same grounds last year as per policy of once in lifetime exemption clause". Your Application was also considered in Board of Officers constituted for RTS-2020 but not recommended for exemption.

4. Reference is made to the 'DOP/T' guidelines issued under the OM No. 360351/2013-Estt(Res) dated 31 Mar 2014. Paragraph H thereof states that:

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy and be allowed to continue in the same job where they would have achieved the desired performance. Further, preference in place of posting, at the time of transfer/ promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering the choice of place of posting in case of persons with disability may be continued. To the extent feasible, they may be retained in the same job where their services could be optimally utilized.

5. A plain reading of the aforesaid provision reveals that there is no bar on posting of officials with viability in organisational interest. Such officers may however be given preference in place of posting subject to administrative constraints.

6. Further with respect to enclosure at A/7, page 99 as mentioned by Hon'ble CAT, Kolkata Bench, it is intimated that the officers (at page 99 of O.A) have been considered by the Board of Officers (BOO) based on the nature and severity of their disability or otherwise in public interest and subsequently exemption was granted against para 10(c). The outcome/ decisions are taken by the Board of Officers (BOO) based on the medical status of the officer. Hence, the decisions taken by the BOO are fair, just and equitable.

7. In view of the rule position cited above, your application for grant of exemption from RTP - 2020 has been considered by the competent authority and not agreed to in organisational interest.

8. This issues with the approval of the competent authority.



मा. गज. / D.M. Salare
न्यायालय (संघ नियंत्रण न्यायालय) / JAG (NFSG)
प. ग. अ. अधिकारी / SGAO

5. Ld. counsel for the applicant would vociferously plead that the applicant sought for a consideration in terms of para 10 (c) of RTP circulated vide dated 24th November (Annexure A-6 to the O.A), which reads as under:

"10. Exemptions from transfer under RTP

- a) XXXXXXXXX
- b) XXXXXXXXX
- c) *Exemption from RTP to an official with disabilities or who has differently abled dependents shall also be considered in terms of instructions/guidelines issued by the Government of India on the subject from time to time.*
- d) *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."*

3

And whereas his prayer has been rejected as he was earlier consider in terms of para 10 (d) of RTP policy which is separate and distinct from para 8 (d) of the RTP, which is as under:

"(d) Transfer on Compassionate grounds:

- (i) *Requests from officials for posting on compassionate grounds will be considered on merit if it does not affect the interest of the organisation. Where posting/transfer is issued on specific request of an employee who has not completed the prescribed station tenure, no TA/DA and joining time will be admissible to him. The individual will travel at own expense and journey period will be covered by grant of earned/half pay leave, if due, or EOL where no leave is due to their credit. However, where an official is accommodated to his choice posting after completing the prescribed station tenure, he will be entitled to TD/DA and joining time as admissible under the rules.*
- (ii) *An officials' request for transfer on medical grounds can be considered in case of terminal illness of self/family. The medical certificate from a competent Medical Authority not less than the Head of Department must accompany the application. The nature of illness and reasons justifying the transfer must be brought out clearly.*
- (iii) *A person posted on compassionate grounds will be allowed to exercise such a request only once in his full service tenure."*

That the applicant is also entitled to exemption from rotational transfer in view of para H of OM dated 31.03.2014 that stipulates the following:

"H. Preference in transfer/posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised."

That the benefits under para 10 (d) can be availed only once in service life but not in terms of para 10 (c) and para H supra.

That the authorities have misdirected themselves and have confused the two issues. That the applicant due to his severe illness, lost complete eye sight in one eye (No vision) and he is practically surviving with another eye with moderate vision i.e 6/24. He is also having a medical history of Sarcoidosis which is an inflammatory disease that effects multiple organs in the body and mostly the lungs and lymph glands and suffering from skin problem, neurology problem like seizures, eye diseases and disorders like vision loss very frequently. As such he deserves exemption in terms of para 10 (d) supra and H supra.



6. Be that as it may, at hearing, ld. counsel for the respondents agreed at the bar that the applicant can be reconsidered in terms of Para 10 (c) of OM dated 31.03.2014.

7. Accordingly, with the consent of both parties, we would dispose of the present O.A with a direction upon the competent authority to consider his prayer in the light of Para 10 (c) of the policy supra, taking into account his nature of disability, and issue appropriate orders within a period of 2 months from the date of receipt of copy of this order, without being influenced by extraneous factors.

8. Till such time, the applicant would be allowed to continue in the present place of posting.

The OA accordingly stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

ss