

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 4.12.2014

OA No. 291/00309/2014

Mr. Rakesh Kumar, Counsel for the applicant.

Mr. V.K.Pareek, Counsel for the respondents.

Heard the learned counsel for parties.

Order Reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

9/12/14.
order
pronounced
today in
the open
court by
the
aforesaid
Bench.
9/12/14.
C.O.

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00309/2014

ORDER RESERVED ON: 04.12.2014

DATE OF ORDER: 9.12.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Jitendra Narayan Choudhary S/o late Shri Dinesh Narayan Choudhary, aged about 44 years, R/o Quarter No. 5/4, G.S.I. Officers Colony, Indira Nagar, Jaipur, presently working in the office of G.S.I. (W.R.) Jhalana Dungri, Jaipur.

...Applicant

Mr. Rakesh Kumar, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Mines, Government of India, Shastri Bhawan, New Delhi - 110001.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta - 700016.
3. Director Geology, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta - 700016.
4. Additional Director General, Geological Survey of India, W.R., 15-16 Jhalana Dungri, Jaipur.
5. Chief Engineer, Geological Survey of India, C.H.Q. Kolkatta.

...Respondents

Mr. V.K. Pareek, counsel for respondents.

ORDER

This is the second round of litigation. Earlier, the applicant had filed an OA No. 677/2013 being aggrieved by his transfer order dated 12.09.2013 from WR, Jaipur to

Anil Kumar

STSS, HQ, CHQ, Kolkata. This Tribunal vide order dated 15.04.2014 quashed the transfer order dated 12.09.2013 qua the applicant on the ground that at that point of time, there was no vacant post of Director (Drilling) or equivalent at Kolkata. However, the respondents were given liberty to examine the issue of availability of a post at Kolkata and then pass a fresh order of transfer of the applicant, if necessary.

2. Now the applicant has been transferred from Western Region, GSI, Jaipur to Eastern Region, GSI, Kolkata vide order dated 30.04.2014 (Annexure A/1). The applicant has filed the present Original Application being aggrieved by this transfer order dated 30.04.2014 (Annexure A/1).

3. Heard the learned counsel for the parties, perused the documents available on record and the case law as referred to by the learned counsel for the parties.

4. Learned counsel for the applicant argued that the transfer order of the applicant dated 30.04.2014 (Annexure A/1) is against the guidelines issued by the respondent-department dated 07th January, 2010 (Annexure A/4). He drew my attention to the provisions of para 1.2, 5.6(ii), 9.3,

Anil Kumar

9.4 and 15 of the Human Resources Development and Deployment Policy for Group A & B Officers of the Geological Survey of India dated 07th January, 2010 (Annexure A/4).

5. Learned counsel for the applicant submitted that the transfer of the applicant has been passed in violation of these guidelines because the transfer of the applicant has not been made in the best interest of GSI. It has been made on the basis of malice in law, therefore, it is violative of para 1.2 of the transfer guidelines dated 07th January, 2010. Para 5.6 (ii) of the said transfer guidelines provide that redeployment shall take place every eight years whereas the applicant has been posted in Jaipur w.e.f. 01.08.2007, therefore, he has not completed the tenure of eight years. Para 9.3 of the transfer guidelines dated 07th January, 2010 provides that general transfers shall be completed by 15th April each year whereas the applicant has been transferred on 30th April, 2014. Para 9.4 of the said transfer guidelines provide circumstances in which transfers outside the period of general transfer should only be done. The case of the applicant does not fall in any of these categories.

Anil Kumar

6. Learned counsel for the applicant further argued that transfer on administrative grounds or in public interest can be done by the Government only whereas in the present case, the transfer order has been issued by the Director General, therefore, as per para 15 of the transfer guidelines dated 07th January, 2010, the transfer order of the applicant has been issued by the incompetent authority.

7. Learned counsel for the applicant also argued that the Shri Praveen Prabhat, Superintending Engineer, M-II B, GSI, Kolkata has been transferred in place of the applicant whereas the applicant has been transfer to Eastern Region, GSI, Kolkata. Thus, he has not been transferred on the vacant post of Superintending Engineer, M-II B, GSI, Kolkata. He further argued that since the applicant was holding the charge of vigilance officer and has conducted the fact finding enquiry against many senior officers, few of such officers are now promoted and highly placed in the rank of Director General and Additional Director General and at their behest, the applicant was transferred earlier vide order dated 12.09.2013. This transfer order was quashed and set aside by this Bench of the Tribunal vide order dated 15.04.2014. The respondents received a copy of this order on 23.04.2014 and thus the transfer order

Anil Kumar

dated 30.04.2014 (Annexure A/1) has been passed in a hurry.

8. Learned counsel for the applicant submitted that the applicant has filed a representation against his transfer order on 02.05.2014 (Annexure A/12), but the respondents have not decided the representation of the applicant so far. Therefore, the transfer order of the applicant dated 30.04.2014 (Annexure A/1) being against the transfer policy of the respondent-department and based on malice in law be quashed and set aside or in the alternate the order dated 30.04.2014 may be kept in abeyance till April, 2015.

9. In support of his arguments, learned counsel for the applicant relied upon the judgment of the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur in the case of **Jagat Prakash Yadav vs. State of Raj. & Ors.** reported in RLR 1990 (1) 171 in which the Hon'ble High Court has held that it is not necessary to implead a person as a party in the writ petition against whom specific allegations of mala fides are being levelled and that the order of transfer passed to accommodate one or the other person at a particular place, it cannot be a proper administrative ground for passing order of transfer.

Anil Kumar

10. On the other hand, learned counsel for the respondents argued that the points raised by the learned counsel for the applicant regarding the violation of the transfer guidelines in the present Original Application were also raised by the applicant in his earlier OA No. 677/2013, which was filed against his transfer order dated 12.09.2013. This Tribunal vide its orders dated 15.04.2014 has already considered these points and, therefore, the applicant cannot take the plea of violation of the transfer guidelines in the present Original Application. Moreover, the Hon'ble Supreme Court in the case of **Union of India and Ors. vs. S.L. Abbas** reported in 1993 (2) SLR 585 has already held that guidelines issued by the Government in regard to transfer of employees does not confer upon the Government employee a legally enforceable right. The Court cannot interfere in the order of transfer unless the same is vitiated by mala fide or is made in violation of any statutory provisions. In para 7 & 8 of the said judgment, the Hon'ble Supreme Court has held, the operative portion of which reads as under:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it.

Anil Kumar

8.The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer.”

11. Learned counsel for the respondents submitted that this Tribunal vide order dated 15.04.2014 in OA No. 677/2013 had quashed and set aside the transfer order of the applicant dated 12.09.2013 on the ground that there was no vacant post of Director (Drilling) or equivalent at Kolkata. However, the respondents were given liberty to examine the issue of availability of a post at Kolkata and then pass a fresh order of transfer of the applicant, if necessary. He also drew my attention to a statement of 'Distribution of Sanctioned Strength of Group 'A' & 'B' Personnel of Engineering Stream in CHQ and Different Regions of GSI' (Annexure R/2). He submitted that according to this statement, there are total 7 posts of Superintending Engineer out of which one has been allocated to Eastern Region and the applicant has been posted as Superintending Engineer, Eastern Region against this vacant post. Thus, there is neither any illegality nor any irregularity in the transfer order of the applicant.

12. Learned counsel for the respondents further submitted that the applicant has not made any officer of the

Anil Kumar

respondent-department as party-respondents by name, therefore, his plea of malice or mala fide against any employee cannot be accepted. He also argued that the transfer order of the applicant dated 30.04.2014 does not suffer from any malice in law. Learned counsel for the applicant has not proved any malice in law in this transfer order.

13. Learned counsel for the respondents also argued that the applicant cannot take a shelter behind the fact of his daughter's education because the applicant has an All India Transfer liability. He further argued that the idea of Kendriya Vidyalaya in all over India was mooted solely with a view to ensuring seamless transfer of students/wards of Govt. Officers from one Kendriya Vidyalaya to another Kendriya Vidyalaya. There are number of Kendriya Vidyalayas in Kolkata affiliated to CBSE where the daughter of the applicant can easily take admission and study. Therefore, the present Original Application has no force and it should be dismissed with costs.

14. Learned counsel for the respondents submitted that the applicant has joined at Kolkata in compliance to the

Anil Kumar

transfer order dated 30.04.2014 (Annexure A/1). This fact has been admitted by the learned counsel for the applicant.

15. Having heard the rival submissions of the respective parties, after careful perusal of the documents available on record and the case law referred to by the learned counsel for the parties, I am of the opinion that the applicant has failed to make out a case for relief in the present Original Application.

16. The main emphasis of the learned counsel for the applicant is that the applicant has been transferred in violation of the transfer guidelines dated 07th January, 2010 (Annexure A/4) and the transfer order dated 30.04.2014 (Annexure A/1) suffers from malice in law and also this transfer order has been by the incompetent authority.

17. With regard to the plea of issuance of the transfer order against the provisions of the said transfer guidelines, learned counsel for the respondents submitted that this question has already been examined by this Bench of the Tribunal in OA No. 677/2013 vide order dated 15.04.2014, filed by the applicant against his transfer order dated 12.09.2013. He also submitted that the applicant was

Anil Kumar

promoted to the post of Superintending Engineer in 2013, which is a SAG level post and, therefore, the provision of para 5.6(ii) of the transfer guidelines dated 07th January, 2010 would not be applicable in the case of the applicant.

18. Learned counsel for the respondents also submitted that the case of the applicant is also covered by the provisions of para 9.4 of the transfer guidelines dated 07th January, 2010, wherein it has been provided that transfers outside the period of general transfer can be done to fill up a vacancy caused due unanticipated event and where the post cannot be kept vacant or on account of a new and pressing requirement. As per Distribution of Sanctioned Strength of Superintendent Engineer (Annexure R/2), one post of Superintending Engineering, Eastern Region was vacant and, therefore, the applicant was transferred on account of pressing requirement and on account of the fact that the post of Superintending Engineer, Eastern Region could not be kept vacant, therefore, in the interest of the organisation, the applicant was transferred to Eastern Region, Kolkata. I am inclined to agree with the averments made by the learned counsel for the respondents that since one post of Superintending Engineer in Eastern Region,

Amit Kumar

GSI, Kolkata was available, therefore, the applicant was transferred.

19. Learned counsel for the applicant also did not deny that the applicant was promoted to the post of Superintending Engineer, which is a SAG level post. Thus, I am inclined to agree with the averments of the learned counsel for the respondents that the provisions of para 5.6 (ii) of the transfer guidelines has not been violated by the respondents while issuing the transfer order of the applicant.

20. Moreover, I have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Union of India and Ors. vs. S.L. Abbas** (supra) and I am of the view that the ratio decided by the Hon'ble Supreme Court in this case is squarely applicable under the facts and circumstances of the present Original Application. For the sake of arguments, even if the plea of the learned counsel for the applicant is accepted that the transfer order of the applicant has been issued in violation of the transfer guidelines dated 07th January, 2010 (Annexure A/4) even then the transfer order of the applicant cannot be quashed and set aside because the Hon'ble Supreme Court in the case of **Union of India**

Anil Kumar

and Ors. vs. S.L. Abbas (supra) has held that guidelines issued by the Government in regard to transfer of employees does not confer upon the Government employee a legally enforceable right. Thus, the applicant is not entitled for any relief on the ground that the transfer order dated 30.04.2014 (Annexure A/1) has been issued in violation of the transfer policy.

21. The another ground taken by the learned counsel for the applicant is that the transfer order of the applicant is based on malice in law. However, he could not substantiate as to how this transfer order suffers from malice in law. In support of his arguments, he referred to the judgment of the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur in the case of **Jagat Prakash Yadav vs. State of Raj. & Ors.** (supra) in which it has been held that it is not necessary to implead that person as a party-respondent in the writ petition against whom specific allegations of mala fide have been made. I have carefully perused the pleadings of the applicant in the Original Application and I do not find any ground which may lead to the conclusion that the transfer order of the applicant dated 30.04.2014 suffers from malice in law.

Anil Kumar

22. The Hon'ble Supreme Court in the case of **State of U.P. and Ors. vs. Gobardhan Lal** - 2004 (3) SLJ 244 - in para nos. 6 & 7 of its judgment has held that -

"6. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

"7. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the

Anil Kumar

State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In the present O.A., the applicant has not been able to prove the malice in law. Therefore, on this count also, the applicant is not entitled for any relief in the present O.A.

23. Learned counsel for the applicant had also laid stress on the fact that the transfer order of the applicant dated 30.04.2014 has been issued by the incompetent authority. He further submitted that according to the provisions of para 15 of the transfer guidelines dated 07th January, 2010, the transfer order should have been issued by the Government. I have carefully perused the provisions of para 15 of the transfer guidelines and I am of the opinion that it does not bar the jurisdiction of the Director General to transfer the employee after the transfer season is over i.e. 15th April of that year. Para 15 of the transfer policy only states that notwithstanding anything contained in this policy, Government may, if necessary in public interest, direct the transfer or post any officer to any station or post. Para 15 of the transfer guidelines dated 07.01.2010

Anil Kumar


nowhere mentions that the Director General, GSI, cannot transfer an employee after 15th April. Therefore, it cannot be said that the transfer order of the applicant dated 30.04.2014 has been issued by the incompetent authority. Thus, even on this ground, the applicant is not entitled for any relief in the present O.A.

24. Moreover, the Hon'ble Supreme Court in the case of **Rajendra Singh and Others vs. State of Uttar Pradesh and Others** reported in (2010) 1 SCC (L&S) 503 : (2009) 15 SCC 178, in para 8 has held that a Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

Anil Kumar

25. The Hon'ble Supreme Court in the case of **Shilpi Bose (Mrs.) and Others vs. State of Bihar and Others**, reported in 1991 Supp (2) SCC 659 : 1992 SCC (L&S) 127 : AIR 1991 SC 532 in para 4 has held that 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. In the present Original Application, the transfer order of the applicant has not been made in violation of any mandatory statutory rule or on the ground of mala fide as stated earlier. It is not disputed that the applicant has been transferred to an equivalent post and it would not have any adverse consequence on the service or any career prospects of the applicant such as seniority, scale of pay and secured emoluments.

26. In view of the above discussions, I do not find any merit in the present Original Application. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER