

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 05.09.2014

OA No. 291/00391/2014 with MA No. 291/00332/2014

Mr. Heera Lal Bairwa, Applicant, present in person.
Mr. R.K. Singh, RPFC-I, Respondent No. 2 / Departmental Representative, present in person.

The advocates are abstaining from work today.

Heard the applicant and the respondent no. 2 /
departmental representative, in person.

The O.A. and M.A. are disposed of by a separate order
on the separate sheets for the reasons recorded therein.

Anil Kumar,
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00391/2014
WITH
MISC. APPLICATION NO. 291/00332/2014

Date of Order: 05.09.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Heera Lal Bairwa S/o Shri Ram Swaroop, aged about 58 years, R/p Plot No. 41-42, Raoji Ka Bagh, Kartarpura, Jaipur. Presently working as Section Supervisor, O/o Regional Provident Fund Commissioner, Nidhi Bhawan, Jyoti Nagar, Jaipur.

...Applicant

Applicant present in person.

VERSUS

1. Union of India through the Secretary (L&E)/Chairman, EC, CBT, Employees Provident Fund Organization, 14 Bhikaji Cama Place, New Delhi - 110066.
2. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Nidhi Bhawan, Jyoti Nagar, Jaipur.
3. The Assistant Provident Fund Commissioner (Adm.), Employees Provident Fund Organization, Nidhi Bhawan, Jyoti Nagar, Jaipur.

...Respondents

Mr. R.K. Singh, RPFC-I (Respondent No. 2) / Departmental Representative, present in person.

ORDER

The applicant has filed the present O.A. being aggrieved by his transfer order dated 26th June, 2014 (Annexure A/1) from Regional Office, Jaipur to Sub Regional Office, Udaipur and by the rejection of his representation vide order dated 01.07.2014 (Annexure A/2).

Anil Kumar

2. The main ground of the applicant for challenging the transfer order is that he has less than two years in his superannuation and he has been transferred on rotational basis at the verge of his retirement. He represented to the respondents against his transfer order but the respondents have rejected his representation vide order dated 01.07.2014 (Annexure A/2). The date of birth of the applicant is 01.06.1956 and, thus, the date of his superannuation is 31.05.2016.

3. According to the applicant, this transfer is also in violation of the transfer policy on rotational basis. The transfer policy provides that the officials who are due for retirement within three years, on their request for exemption, they may be exempted from such transfer on merits. Copy of the order dated 03.12.2008 has been annexed as Annexure A/4.

4. The applicant submitted that he has two sons and two daughters besides his wife in his family. All his children are unmarried. His both daughters are of marriageable age. Besides this, he is constructing his house by taking loan, which is still in progress. The respondents without considering the above aspect have transferred him to Sub Regional Office, Udaipur.

5. The applicant further submitted that the respondents in similar circumstances had accepted the request of other employees by granting them exemption from rotational transfer. He quoted the example of Shri Om Prakash Sharma, Section Supervisor and Shri Padam Chand Jain but the respondents have

Anil Kumar

not considered the request of the applicant. He also submitted that his transfer orders are neither just nor legal; rather smacks mala-fides of the respondents. Therefore, he prayed that his transfer order for Udaipur be quashed and set aside.

6. The respondents have filed their reply. In the reply, they have stated that the applicant has been transferred from Regional Office, Jaipur to Sub Regional Office, Udaipur under rotational policy of transfer. He has been relieved from Regional Office, Jaipur. Due to the shortage of staff in the Sub Regional Offices, the staffs are transferred from Regional Office, Jaipur and to avoid any dispute and for smooth functioning of Sub Regional Offices, transfer policy was framed according to which in an office where excess number of Section Supervisors are posted, they have to go on transfer to other offices normally within the same region for a period of one year. After completion of one year's period, the employee returns to the Regional Office and thereafter the next person is sent to the Sub Regional Office.

7. In the reply, the respondents have further stated that the applicant has been transferred under the policy as per rotation. Under the rotational transfer policy, exemption is permissible at the discretion of RPFC, if he is satisfied with the cause of the officers who are within the age group of 57 to 60 years. At present 23% officers are falling under this category. There are 09 officers who are in the age group of 58 years. The persons who are next in line to the applicant to be transferred under the rotational transfer policy, they have just completed the tenure

Anil Kumar

and, therefore, they are entitled for granting exemption from transfer. The respondents have stated that it is not mandatory to give exemption. The letter dated 03rd December, 2008 (Annexure A/4) on which reliance has been placed by the applicant provides that RPFC incharge is required to consider the genuine request. The competent authority after considering the entire position and the number of cases falling under three years clause has turned down the request of the applicant. Therefore, the applicant has been transferred looking into the administrative exigency.

8. The respondents have also submitted that transfer is an incidence of service and the applicant cannot claim to stay at a particular place. There is no violation of his statutory rights and, therefore, he is not entitled for any relief and the Original Application needs to be dismissed.

9. The respondents have further submitted that the case of Shri Padam Chand Jain, which has been referred to by the applicant in his O.A., was considered by the department. Shri Padam Chand Jain is suffering from serious ailment of cancer and, therefore, he was given exemption / extension. The applicant cannot compare his case with an employee who is suffering from a serious life threatening disease. The applicant also referred to the case of Shri Om Prakash Sharma. According to the respondents, he is retiring in May, 2015 which is less than a year, therefore, he has been exempted from rotational transfer. According to the respondents, one of the employees in the age group of 58 and above is retiring in September, 2014 and 04

Anil Kumar

others have just returned after completing their tenure and, thus, there has been no discrimination against the applicant. Hence, the Original Application be dismissed with costs.

10. The applicant has filed a rejoinder reiterating the facts stated in the Original Application.

11. Heard the applicant in person and Mr. R.K. Singh, RPFC-I (Respondent No. 2) / Departmental Representative, in person.

12. The applicant has argued the case taking almost all the facts and grounds mentioned in the O.A. He has also referred to the order dated 14.05.2003 passed by this Bench of the Tribunal in OA No. 74/2003 in the case of **M.H. Pathan vs. Union of India & Ors.** Vide this order dated 14.05.2003, the transfer of the applicant was cancelled on the ground that the respondents could not come out with the case that there were special circumstances necessitating the transfer of the applicant, therefore, the respondents ought to have given exemption to the applicant from the rotational transfer. Therefore, the applicant is praying that his transfer order dated 26.06.2014 (Annexure A/1) and rejection of the representation vide order dated 01.07.2014 (Annexure A/2) should be quashed and set aside.

13. On the other hand, departmental representative also reiterated the facts as given in the reply. Mr. R.K. Singh, RPFC-I / Departmental Representative also produced a list of 09 Section Supervisors, who are of 58 years or above age. From the

Anil Kumar

perusal of that list, it appears that one of the employees is retiring in September, 2014 and another is retiring in May, 2015. Therefore, they were exempted from the rotational transfer policy. One Shri Padam Chand Jain has been exempted because he is suffering from cancer and according to the respondents he is admitted in ICU. Obviously, the applicant cannot claim parity with such an employee. Four other employees have returned from their rotational transfer. Therefore, I do not find that the applicant has been subjected to any discrimination.

14. I have perused the letter dated 03rd December, 2008 (Annexure A/4) relied upon by the applicant. This letter provides that RPFC in-charge may consider genuine request to exempt the employees from rotational transfer, who are due for retirement within three years. However, the same letter also provides that this arrangement will not be considered as a matter of right and officials are liable to be transferred in public interest if situation so demands.

15. In this case, the request of the applicant for exemption from rotational transfer has been duly considered by the respondents and it has been rejected. The departmental representative submitted that there is a shortage of staff at Sub Regional Office, Udaipur and, therefore, the applicant has been transferred to Sub Regional Office, Udaipur under rotational transfer policy. He will be transferred back to Regional Office, Jaipur after completion of his tenure of one year at Sub Regional Office, Udaipur.

Anil Kumar

16. On the basis of the above facts, I am of the considered view that the applicant has failed to make out any case for interference by this Tribunal with his transfer order.

17. I have carefully perused the order dated 14.05.2003 passed by this Bench of the Tribunal in OA No. 74/2003 – **M.H. Pathan vs. Union of India & Ors.** (supra), which has been relied upon by the applicant and I am of the view that the order of the Tribunal in OA No. 74/2003 – **M.H. Pathan vs. Union of India & Ors.** (supra) is not applicable under the facts and circumstances of the present case. In that case, the respondents could not come out with the special circumstances necessitating the transfer of the applicant. However, in the present case, the respondents have stated that there is a shortage of staff at Sub Regional Office, Udaipur and, therefore, the applicant has been transferred in the exigency of administrative work. The applicant has placed reliance on the rotational transfer policy of the respondents dated 03rd December, 2008 (Annexure A/4). It may be mentioned that this transfer policy was not in existence in the year 2003 when this Bench of the Tribunal passed the order in OA No. 74/2003 – **M.H. Pathan vs. Union of India & Ors.** (supra). Therefore, the ratio decided by this Bench of the Tribunal in OA No. OA No. 74/2003 – **M.H. Pathan vs. Union of India & Ors.** (supra) is not applicable in the present O.A. Moreover, there has been no discrimination against the applicant.

18. On the other hand, the respondents have referred to the order dated 18.09.2012 passed by this Bench of the Tribunal in

Anil Kumar

OA No. 502/2012 in the case of **Mukesh Arora vs. Union of India & Ors.** in which this Tribunal did not cancel the rotational transfer of the applicant. In the present case also, I find no reason to interfere with the transfer order of the applicant.

19. The transfer is an incidence of service and no employee can claim to stay at a particular place as long as he wishes. It is for the employer to post an employee according to the need and the requirement of the work. The present transfer order of the applicant has been issued by the competent authority and it does not suffer from any mala-fide exercise of power. It is not in violation of any statutory Act or Rules. 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

Anil Kumar

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 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."

The ratio decided by the Hon'ble Supreme Court in the case of **State of U.P. and Ors. vs. Gobardhan Lal** (supra) is squarely applicable under the facts and circumstances of the present O.A. Therefore, I do not find any merit in the present O.A.

20. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.

21. In view of the order passed in the Original Application, the Misc. Application No. 291/00332/2014 praying for interim relief is also dismissed. The interim relief earlier granted on 15.07.2014 is vacated forthwith.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER