

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

OA/ 291/00471/2014

(Order Reserved on 04.05.2016)

Date of order: 23.05.2016.

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Bhanwar Singh Rathore S/o Shri B.S. Rathore aged about 46 years, presently posted as Store Keeper Grade- II Regional Institute of Education, Ajmer, Rajasthan. R/o 225, Jaysagar, Chamunda Colony- Ajmer.

...Applicant

(By Advocate Mr.S.S. Shekhawat)

VERSUS

1. Union of India, through, Secretary. National Council of Education Research and Training, Shri Arbindo Marg, New Delhi- 110006.
2. Regional Institute of Education, through its Principal, Ajmer.
3. Prof. V.K. Kakadia, Principal, Regional Institute of Education, Ajmer.

...Respondents

(By Advocate Mr. Kapil Mathur and Mr. Amit Mathur)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, being aggrieved with the action of Respondents in transferring the applicant from RIE Ajmer to RCPD C.W.C. Campus Kolkata vide order dated 19.08.2014 (Annexure A/1) and relieving him vide relieving order dated 20.08.2014 (Annexure A/2), seeking the following reliefs:

- (a) By an appropriate order or direction in nature thereof quashed and set aside the order dated 19.08.2014 and 20.08.2014.

- (b) By an appropriate order or direction in nature thereof thereby direct that the action of the Respondents in transferring the applicant as being against the Guidelines of DOPT.

2. When the matter came up for hearing on 04.05.2016, Ld. Counsel for the applicant submitted that the applicant who is Store Keeper Grade. II in the Regional Institute of Education (RIE for short) which is under the National Council for Education Research & Training (NCERT) has been transferred from RIE Ajmer to RCPD C.W.C. Campus Kolkata vide order dated 19.08.2014 (Annexure A/1) and he was relieved the very next day vide order dated 20.08.2014 (Annexure A/2). Thereafter, he approached the Hon'ble Tribunal through this OA and vide Interim Order dated 27.08.2014 directions were issued to the Respondents not to give effect to the transfer order dated 19.08.2014 (Annexure A/1) and relieving order dated 20.08.2014 (Annexure A/2) till the next date and the same IR has been continued and the applicant thus continues to be at Regional Institute of Education, Ajmer (RIE). Counsel for applicant submitted that the applicant is aggrieved by the transfer order dated 19.08.2014 (Annexure R/1) on three grounds:

- (i) It is made on mala fide basis.
- (ii) Guidelines of DOPT OM dated 06.06.2014 (Annexure A/4) which are applicable to Government employees who have a disabled child and serve as the main care giver of such a child, have not been adhered to.
- (iii) The transfer has been made during the currency of punishment under disciplinary proceedings, and further he is neither the senior most nor junior most to have been transferred.

3. Counsel for applicant submitted that earlier disciplinary proceedings were initiated against the applicant and he was awarded the penalty of compulsory retirement by the Principal RIE, Ajmer who is the Disciplinary Authority (also impleaded in personal capacity as Respondent No. 3). The case pertained to tender of buses, and others involved were left off with a penalty of Censure, but penalty of compulsory retirement was imposed on the applicant. Thereafter he filed an appeal before the Appellate Authority and the Appellate Authority reduced the penalty of compulsory retirement to reduction to the lower post of Store Keeper Grade- II in the Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 2400/- with immediate effect for a period of three years under sub rule (vi) of Rule 11 of CCS (CCA) Rules, 1965.

4. Counsel for applicant contended that mala fide arose after the reduction in the penalty by the Appellate Authority because the Principal, Regional Institute of Education, Ajmer (i.e. Respondent No. 3) could not accept the fact that the penalty order passed by him of compulsory retirement was reduced and the applicant could come back in service (on 05th May, 2014) and Respondent No. 3 became so prejudiced that he wrote a complaint letter dated 25.07.2014 to the Director, NCERT, New Delhi (Annexure A/5) making false complaints against the applicant and requesting for his transfer from Regional Institute of Education, Ajmer and even going to the extent of saying that in case a post of Store Keeper Grade – II is not available, the applicant may be transferred along with the post. Counsel for applicant contended that the Respondent No.3 instead of making enquiry and taking disciplinary action against the applicant even if there were any allegations against the applicant, simply recommended the transfer of the applicant out of

prejudice and the applicant has been transferred to faraway Kolkata in a mala fide manner. In support of his contention counsel for applicant relied upon the judgement of the Hon'ble Rajasthan High Court, Jaipur Bench dated 02.12.2011 in SB Civil Writ Petition No. 8982/2011 -A.K. Nani Wadekar Vs L.I.C. of Undia & Others, and also in case of Kanika Das Vs State of West Bengal & Ors. in C.O.No. 9633 (W) of 1990 decided on April 2, 1991 by the Hon'ble High Court, Calcutta (1992) 1 Cal LT 264 : (1992) 8 SLR 356 and submitted that the present order is clearly mala fide and is required to be quashed and set aside on this ground itself.

5. Counsel for applicant further submitted that the applicant has a handicapped child who suffers from hearing impairment and has a 100% disability of hearing loss as may be seen from Annexure A/3 and as per OM dated 6th June, 2014 (Annexure A/4), a Government employee, who is a care giver of the disabled child may be exempted from the routine exercise of transfer/rotational transfers subject to the administrative constraints. However, the applicant has been transferred to a faraway place, in flagrant violation of the aforesaid guidelines.

6. Counsel for applicant further submitted that the Respondents in their reply have mentioned that the applicant was in Army earlier and posted at different places and presently the applicant's child is pursuing study in Indore and therefore, provisions of the OM dated 6th June, 2014 (Annexure A/4) are not applicable in the case of the applicant. In this context counsel for applicant submitted that earlier the applicant's son could not get admission in Jaipur especially in a Hostel and he therefore sent him to Indore and now he is back in Ajmer and would require to be admitted in a

college in Jaipur where facilities for the disabled person are better. Therefore, care and protection of his child can only be made if the applicant is posted and stationed at Ajmer and not too far away Kolkata.

7. Counsel for applicant also submitted that the order of penalty of reduction to the lower post of Store Keeper Grade- II in the Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 2400/-has been imposed on the applicant for a period of three years, and therefore the currency of the punishment is up to April, 2017 and as per Rule 135 of Postal and Telegraph Manual Volume- III "An official on whom the penalty of reduction to a lower service, grade or post, or to a lower time scale or to a lower stage in a time scale has been imposed for a specific period, should not be transferred or posted to another service, grade or post, on or after the date of orders imposing the penalty but before the date from which the orders finally cease to be operative, if such a transfer or posting result in payment of basic pay higher than that admissible to him in the existing service, grade or post consequent on the punishment orders" and accordingly the applicant cannot be transferred during the currency of the penalty. He further contended that the applicant is neither senior most and junior most as may be seen from RTI information dated 07th Nov, 2014 (Annexure A/6) regarding Store Keepers working at RIE -Ajmer. He also submitted that the appointing authority of the applicant is Principal, Regional Institute of Education and as per policy the Principal can only transfer a person within the Northern region but the applicant has been transferred to Kolkata outside Northern region and therefore he has approached the Hon'ble Tribunal for quashing and setting aside the transfer order dated 19.08.2014 (Annexure

A/1) and relieving order dated 20.08.2014 (Annexure A/2) and prayed for the OA to be allowed.

8. Per contra, counsel for Respondents submitted that the applicant has concealed very material facts in the OA and also when being present in person on 27.08.2014 before this Tribunal. At the time of filing the OA and on the date of hearing the applicant's son was studying at Indore and therefore provisions of DOPT OM dated 06th June, 2014 (Annexure A/4) are not applicable to the applicant but he concealed this very material fact. Counsel for Respondents also submitted that this fact has not been mentioned by the applicant in the OA also and only when the same was brought out in the reply that it was admitted by the applicant in the rejoinder. Therefore, he prayed for dismissal of the OA at the threshold itself for concealment of very vital facts, and contended that even the IR dated 27.08.2014 was obtained concealing these facts.

9. Counsel for Respondents further submitted that, as brought out in the reply, the applicant was earlier in the Army and then in private service, before joining the Respondents service and at that time his son, who was then a minor, required more care. Referring to the Circular OM of DOPT dated 06.06.2014 (Annexure A/4) counsel for Respondents emphasized upon its contents relating to proper care of the disabled child and the need to give him a proper environment, but in the present case, the applicant's son, now a major, was not even residing with the applicant and was studying at Indore and therefore there is no applicability of the said OM in his case. Counsel for Respondents also submitted that the applicant never formally informed about his son's disability and

related problems or even approached the Respondents to reconsider his transfer on that ground prior to filing the OA.

10. As far as question of mala fide is concerned, counsel for respondents submitted that no case whatsoever of mala fide arises. The fact that in the disciplinary proceedings initiated against the applicant, the appellate authority reduced the penalty from compulsory retirement to reduction to a lower stage for a period of three years, itself shows that the Respondents have been just and fair. Counsel for Respondents further submitted that Annexure A/5 which is the letter of Principal, RIE, Ajmer to the Director, NCERT, New Delhi, clearly shows the insubordination of the applicant in respect of official matters and therefore, the transfer of the applicant was recommended thus the complaints at Annexure A/5 is not out of mala fide but made for administrative reasons, because of the obstructive and negative attitude of the applicant in the working of the Institute. Counsel for Respondents further submitted that Respondent No. 3 has not passed the transfer order and it has been passed by the competent authority and therefore alleging mala fide against Respondent No. 3 has no validity.

11. As far as the question of P&T Manual Rule 135 referred to by the counsel for applicant is concerned, counsel for respondents submitted that it is no where shown by the applicant that this Manual is applicable to NCERT and further contended that in any case from a bare perusal of the said rules it is clear that this rule has been framed to ensure that when the currency of a penalty is in force, it is not nullified by transferring a person to a post which results in a payment of a higher pay. In this case, applicant has

nowhere shown or established that the transfer will result in payment of basic higher pay.

12. Counsel for Respondents, with regard to counsel for applicant's reference to the information at Annexure A/6 of Store Keepers working at RIE-Ajmer submitted that in this case the transfer of the applicant has been made on the basis of certain misconduct and wrong doings of the applicant and to ensure smooth functioning of the Institute and therefore, the question of considering senior most/junior most and station seniority does not arise. With regard to argument of the counsel for applicant that the applicant can be transferred only within northern region. counsel for Respondents submitted that it is clearly mentioned in the appointment order of the applicant (Annexure R/2) that the applicant has All India transfer liability and question of competence or otherwise of Respondent No. 3 to transfer within the northern region is of no consequence because the transfer of the applicant has been issued by the competent authority and not by the Respondent No. 3 and also submitted that there is no requirement of Respondent No. 3 to file an additional affidavit as the order of transfer has been passed by the Headquarters of the Respondents Organization NCERT and there is no truth in the alleged mala fide. Counsel for Respondents further submitted that the applicant never gave a representation about being care giver of the disabled child and he even concealed the facts (while filing the OA and at the time of hearing on admission) that actually the son of the applicant was studying at Indore (MP). Counsel for Respondents further submitted that this continuous posting of the applicant at Regional Institute of Education at Ajmer is adversely affecting the Institute and on all these grounds he prayed for dismissal of the OA.

13. Rebutting the arguments, counsel for applicant submitted that the letter dated 25.07.2014 (Annexure A/5) simply contains various allegations including supply of information to a group of anti Institute elements and instigating them to made false complaints, but no inquiry was conducted against these allegations and the transfer of the applicant has been made on a punitive basis. He further reiterated that the applicant has a disabled son with 100% hearing loss and his Doctor is also at Ajmer and thus he requires constant care and protection which can only be made if the applicant remains at Regional Institute of Education at Ajmer and not from far away Kolkata where he has been transferred and therefore prayed that the OA is allowed.

14. Considered the aforesaid contentions and perused the records. It is noted from the record especially from the order dated 27.08.2014 of this Tribunal by which IR was granted to the applicant stating that "Having heard the applicant in person and after perusal of the documents on record, in the interest of justice, the respondents are directed not to effect to the transfer order dated 19.08.2014 (Annexure A/1) and relieving order dated 20.08.2014 (Annexure A/2) till the next date", and at that time no submissions were made by the applicant about his son studying at Indore (MP) and this was also not mentioned in the OA and only admitted after it was brought out in the reply.

15. As far as the question of mala fide is concerned, it is noted that the penalty of compulsory retirement imposed by Respondent No. 3, was reduced by the appellate authority to reduction to a lower stage for three years and the applicant thereby rejoined his

services at RIE- Ajmer. This itself shows, as argued by the counsel for Respondents that the Respondents are not biased or prejudiced against the applicant. It has been argued by the counsel for applicant that the Respondent No. 3 became highly prejudiced and annoyed because he could not accept the fact that the appellate authority modified the penalty of compulsory retirement, and the complaint and recommendation of transfer was made, as at Annexure A/5, without inquiring into the allegations and even recommending the transfer of the applicant along with post. However from a perusal of the complaint letter as at Annexure A/5 it appears that it has been made to the higher authorities on genuine administrative grounds with certain enclosures (which incidentally have not been filed by the applicant along with the Annexure A/5). The complaints made in Annexure A/5 and recommendation of transfer cannot be said to mala fide because it is the duty of the Respondents No. 2 to ensure smooth functioning of the Institute. Moreover, the complaint has to be considered by the competent authority and after due consideration the competent authority has transferred the applicant vide order dated 19.08.2014 (Annexure A/1) and against whom no mala fide has been alleged. Therefore the allegation of mala fide does not appear to be sustainable. The judgements relied upon by the counsel for applicant do not come to the rescue of the applicant because in the case the judgement of the Hon'ble Rajasthan High Court dated 02.12.2011 in SB Civil Writ Petition No. 8982/2011, the applicant had sought RTI information which was denied and which would have adversely affected the Respondents and the transfer was therefore treated as mala fide, but the facts in the present OA are different and not comparable. Again in the case decided by

Hon'ble High Court of Calcutta on April 2, 1991 in the case of Kanika Das Vs State of West Bengal & Others in CO No. 9633(W) of 1990, the applicant had been transferred at the behest of higher authorities/other persons to accommodate an official of their choice and was therefore treated as not being passed in a bona fide manner.

16. As far as the question of applicability of OM dated 06th June 2014 (Annexure A/4) is concerned, it is true that a government employee who is a care giver may be exempted from the routine transfer/rotational transfer so that disabled child can continue to get proper care in his familiar environment. However, in this case it is seen that the applicant has admitted that he sent his son for studies to Indore, but also submitted that he is now back in Ajmer and he would try to get his son admitted in a Jaipur college, where facilities for disabled persons are better. At the same time the applicant did not mention anything about his son studying at Indore in the OA, or even at the time of hearing when he appeared in person on 27.08.2014 and when IR and stay on the transfer and relieving order was granted. At the same time there is no doubt that the disabled children require proper and special care and Annexure A/4 DOPT OM dated 06th June, 2014 is applicable in genuine cases.

17. As far as Rule 135 of P&T Manual is concerned, it is not clear whether these provisions are applicable in the case of NCERT, and in any case as argued by the counsel for Respondents, these rules are there to ensure that when the currency of the punishment is in force no person gets a higher pay by way of transfer to a post where basic pay is higher. In this case, nothing is there on record

to show that the basic pay of the applicant will increase because of the transfer. Further it is clear that positions of Storekeepers in RIE as at Annexure A/6 has no relevance to transfer of the applicant because the transfer of the applicant has been made in public interest and not on the basis of consideration of seniority/juniority. Further the applicant has All India transfer liabilities as per his appointment order (Annexure R/2) and the question of being transferred only within Northern region and the competency of the various authorities in this regard has no relevance in the case and there is no doubt that the present transfer (Annexure A/1) has been made by the competent authority.

18. In view of the above, it cannot be said that the transfer order dated 19.08.2014 (Annexure A/1) has been made out of mala fide, is in flagrant violation of DOPT OM dated 06th June, 2014 regarding care of disabled child or against any statutory provisions. Thus there are no grounds to set aside the transfer order dated 19.08.2014 (Annexure A/1) and relieving order dated 20.08.2014 (Annexure A/2) and accordingly the OA is dismissed.

19. However, the applicant is always at liberty to approach the Respondents regarding his transfer and posting and request for modification, especially in view of the studies of his disabled child and seek redressal of his genuine problems and difficulties.

No order as to costs.



(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER