

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00548/2014
with
MA Nos. 291/00340/2015, 291/00415/2015 and
291/00162/2016

(Order Reserved on 12.05.2016)
DATE OF ORDER: 25/05/2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Dr.Anil Kumar Sardana S/o Late Shri Prem Praksah Sardana, by case-Arora, Aged 49 years, R/o 9/865, Malviya Nagar, Jaipur. Currently posted as SO(G) at AMD, Jaipur

...Applicant
By Advocate Mr.A.S. Shekhawat, counsel for applicant.

VERSUS

1. Union of India, through the Secretary to the Government of India, Department of Atomic Energy, Atomic Minerals Directorate for Exploration and Research, Mumbai.
2. Director, Department of Atomic Energy, Atomic Minerals Directorate for Exploration and Research 1-10-153/156, Begumpet Hyderabad 500016.
3. Chief Administration, Account Officer, Department of Atomic Energy, Atomic Mineral Directorate for exploration and Research, 1-10-153/156, Begumpet Hyderabad 500016.
4. The Regional Director, Atomic Minerals Directorate for Exploration and Research Department of Atomic Energy, Western Region, AMD, Complex, Sector 5, Pratap Nagar, Sanganer, Jaipur.

...Respondents

(By Advocate Mr.Rajendra Vaish, Counsel for Respondents)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, against the Office Order dated September 18, 2014

(Annexure A/1) passed by Respondent No. 3 by which the applicant has been transferred to North Eastern Region Shillong, seeking the following reliefs:

- (i) By an appropriate order or direction the order dated 18.09.2014 (Annexure A/1) passed by the Respondents may kindly be quashed and set aside.
- (ii) By an appropriate order or direction the respondents may be directed to stay the transfer of the applicant and allow him to give his services to the place of his present posting.
- (iii) Cost of the application may also kindly be awarded to the poor applicant; and any other order or direction which this Hon'ble Tribunal deems fit and proper may also kindly be passed in the favour of the applicant in the larger interest of the equity, justice and that law.

2. When the matter came up for hearing and consideration on 12th May, 2016, Ld. Counsel for applicant submitted that vide order dated September 18, 2014 (Annexure A/1), the applicant (whose name figures at Serial No. 11) has been transferred from Western Region (WR) Jaipur to North Eastern Region (NER) Shillong. In this context counsel for applicant submitted that the applicant is presently working as Scientific Officer (G) in the Chemistry Group of the of the Respondent Atomic Minerals Directorate (AMD) for Exploration & Research Department of Atomic Energy, Government of India, and further submitted that the applicant has already served in the NER, Shillong from 1990 to 1997 and again now the applicant has been transferred to NER, Shillong for a second time in an arbitrary and discriminatory manner. Counsel for applicant further submitted that as may

be seen from Annexure A/16 there are 67 persons working as Scientific Officers/Scientific Assistants/Technical Officers in the Chemistry Group of the of Atomic Minerals Directorate (AMD) out of which 41 have never been posted to NER, even once and further that no one has been transferred and posted in NER, twice . He further submitted that as may be seen from Annexure A/20 there are 20 persons of the Chemistry Group who have continued to stay at one place for more than 15 years, and especially referred to the name of person at serial number 12 of Annexure A/20 who is also in SO(G) cadre, like the applicant, but continuing at Headquarters at Hyderabad for more than 20 years, only on gender ground (as mentioned in the reply) and this is patently discriminatory to the applicant.

3. Counsel for applicant further submitted that in the reply respondents have stated that there is a transfer policy but as per RTI information received by him (Annexure A/15 page 72) it has clearly been stated that there is no specific documents indicating the guidelines for transfer policy but only the guidelines formulated by the transfer committee are adhered to and implemented in the AMD. In this regard counsel for applicant submitted that even the guidelines are not clear and fixed and keep changing from time to time. Counsel for applicant also referred to the discrepancy in the guidelines, stating that the guidelines referred in reply to the rejoinder (at page 102 and 103) in Para 13 and those supplied in RTI

information dated Nov. 13, 2014 (Annexure A/16 page 82) are at variance and there is no mention of "those not holding any responsible position as In-charge" in the guidelines given under RTI (as at page 82). Counsel for applicant also said that actually the AMD has no transfer policy, and in fact referred to transfer policy of Geological Survey of India (GSI), which is a similar Department of Government of India where Para 6.4 (ii) of the transfer policy clearly provides as under :

"As a policy, all Group A & B officers up to JAG level should be posted once to NER, except those officers who have completed three winterings in Antarctica. Also, those who have already served in NER station(s) for more than 5 years shall not be redeployed in NER except on written request or in SAG and above level posts".

Counsel for applicant produced copy of transfer policy of GSI, during the course of hearing, which was taken on record. Thus he argued that there is no justification for posting the applicant who is a JAG level officer, for a second time to NER.

4. Counsel for applicant further contended that in the reply it has been mentioned that in fact the applicant has been given higher official responsibilities by being made In-charge of the Chemistry Laboratory, NER, Shillong and the applicant was found to be the suitable choice for the said posting on the basis of his experience, but actually as may be seen from information provided in Annexure A/16 (specially page 81) officers in the Chemistry Group in different grades of

SO/SD, SO/SE, SO-E and SO-F and SO/G have been made In charge at NER, Shillong and there is no reason why the applicant who has already spent more than 06 years in the NER should have again been picked out for a second posting in NER. Counsel for applicant also submitted that he made a representation dated 22.09.2014 (Annexure A/4) against the transfer order but the same was rejected vide order dated 21.10.2014, (a copy of which was produced during the hearing and taken on record). However, in view of the IR of this Tribunal dated 09.10.2014, which has continued till date he has not been relieved. Counsel for applicant submitted that on all these grounds, his OA deserves to be allowed.

5. Per contra, Id.counsel for Respondents submitted that the basic facts are that the applicant was initially appointed to the post of Scientific Officer-SC in November 1990 as per his offer of appointment order dated 15.11.1990 (Annexure R/1) which he accepted and joined his services in NER in December 1990. Thereafter, he has earned four promotions and became SO-G which is a Group 'A' post and the applicant has continuously been posted in Western Region Jaipur from 2004. He further submitted that this transfer to NER Shillong is virtually a promotion because he has been made In-charge of the Chemistry Laboratory at NER Shillong as per the official requirement of the Respondent Department. In this context, counsel for Respondents submitted that the Atomic Mineral Directorate (AMD) for Exploration & Research, is a constituent unit of Department of Atomic Energy which is a

very sensitive Department of the Government of India and where a system of merit based promotion is followed and further even the transfers are made on the recommendations of a transfer committee which takes into consideration all aspects, including the functional requirement of the Directorate/its Regional Centers, gives due weightage to the number of years of service of the officials and also considers various requests for transfer, keeping in mind the set-target and scientific goals. He further submitted that there may not be a formal coded document of transfer policy but the guidelines and the procedure followed by the transfer committee is laid down and the same are followed in the interest of Organization. Counsel for Respondents further submitted that the applicant has never contended that the guidelines have been violated in his case. Counsel for Respondents also clarified that there is no contradiction or discrepancy in the guidelines adhered to by the transfer committee. He submitted that the guidelines filed with the rejoinder by the applicant at Annexure A/15(page 73) on the basis of RTI information dated May 30, 2011 and guidelines as mentioned at Para 13 of the reply to the rejoinder (Page 102, 103) filed by the Respondents are same and there is no discrepancy.

6. Counsel for Respondents also submitted that counsel for applicant has referred to transfer policy of the Geological Survey of India (GSI) especially Para 6.4(ii) wherein it has been mentioned that "As a policy, all Group A & B officers up

the JAG level should be posted once to NER, except those officers who have completed three winterings in Antarctica. Also, those who have already served in NER station(s) for more than 5 years shall not be redeployed in NER except on written request or in SAG and above level posts". In this regard he submitted that the question of applying policy of GSI to the transfers and postings in the Respondents Department does not arise as the GSI is a separate Organization and policies of GSI cannot be availed of by the applicant.

7. Counsel for Respondents also submitted that there are many other officers who were given 2nd term in NER as may be seen from Para 5(f) of the reply and therefore posting of the applicant for the 2nd term in NER cannot be said to be discriminatory. He further contended that the applicant has failed to show any instructions/directions in the Respondent Directorate by which the transfer cannot be made to NER for a 2nd time. He further referred to Annexure R/1 which is the appointment order of the applicant by which the applicant has All India transfer liabilities.

8. Counsel for Respondents clarified that retention of certain persons at a particular place, in the interest of Organization on gender grounds, cannot be questioned by the applicant, as there has been no violation of any guidelines in his case and he has been posted as In-charge of the Chemistry Laboratory at NER, Shillong after being duly

considered and recommended by the transfer committee. Counsel for Respondents also submitted that as upheld in a catena of judgements by the Hon'ble Apex Court (including those referred to in the reply) ordinarily Courts and Tribunals should not interfere in matters of transfer and postings unless there is a case violation of statutory provisions, proven mala fide or orders have been issued by an incompetent authority, which is not there at all in this case, and therefore prayed for the dismissal of the OA on all the above grounds.

9. In rebuttal, counsel for applicant submitted that 3 persons at Para 5(f) of the reply who have been said to have been posted twice in NER belong to Geology Group and have been posted as Administrative Heads and there is no comparison of those cases with that of the applicant. Counsel for applicant further submitted that the transfer of the applicant is arbitrary, there being no transfer policy or clear cut guidelines and second term posting of the applicant in NER is discriminatory and thus prayed for the OA to be allowed.

10. Considered the aforesaid contention and perused the records:

- (i) OA of the applicant dated 30.09.2014 with 13 Annexure (Annexure A/1 to Annexure A/13)
- (ii) Reply of Respondents dated 12.01.2015 with Annexure R/1
- (iii) Rejoinder of the applicant dated 06.10.2015 with Annexure A/14 to A/22
- (iv) Reply to rejoinder filed by the Respondents dated 17.11.2015

- (v) MA No. 340/2015 filled by Respondents on 18.11.2015 for vacation of IR granted on 09.10.2014 and continuing in force.
- (vi) MA No. 415/2015 filed by the counsel for applicant on 17th November, 2015 for production of transfer policy.
- (vii) Reply of the Respondents to MA No. 415/2015 filed on 27.01.2016 with Annexure R/1-transfer guidelines.
- (viii) MA No. 162/2016 filed by applicant on 10th May, 2016 with Annexure B/1 regarding applicant being in JAG grade.
- (ix) HRD and Deployment Policy of Group A and B officers in GSI dated 7th Jan, 2010
- (x) Regret and rejection letter of the Respondents dated October 21, 2014 of representation of the applicant dated 22.09.2014

As far as question of transfer policy and guidelines are concerned, though there is no formally coded document of transfer policy in the Respondents Directorate but as mentioned by the counsel for Respondents, there are certain laid down guidelines which are followed by the transfer committee. In this connection, it is noted that the transfers in the Respondents AMD, which is a constituent unit of the Department of Atomic Energy, Government of India, promotions are made on merit basis (and the applicant has already earned four promotions) and transfers are made on the recommendation of a transfer committee constituted by the Director. The guidelines followed by this committee have been referred to in the record of this OA at Page 73 (with Annexure A/15) at Page 82 (with Annexure A/16) by the applicant, and by the Respondents at Para 13 (page 102,103)

of the reply to the rejoinder. It is noted *inter alia*, the point about "those who have completed 04 years from the date of their joining at NER-Shillong on transfer" is mentioned in all the aforesaid guidelines and "those who are not holding any responsible position as In-charge and above" is also a point for consideration in guidelines at Page 73 and 102 and 103. Both these points are relevant in the case of the applicant, thus it cannot be accepted, as argued by the counsel for applicant that there are discrepancies or inconsistencies even in the guidelines.

11. Further the applicant has not been able to show that how these guidelines have been violated and as far as question of applicability of guidelines and transfer policy of GSI is concerned, there is force in the contention of the counsel for Respondents that these pertain to another Department and cannot be applied to the transfers made in the Respondent Department, which has its own system including transfers being made on the recommendation of the transfer committee which adheres to guidelines and takes all required action accordingly.

12. The counsel for applicant has raised many issues regarding certain personnel of Chemistry Group never ever having served in NER, or no one having served second time in NER from the Chemistry Group or certain persons continuing on the same post and place for over 15 years and that In-charges of Chemistry Laboratories of NER- Shillong have

belonged to different grades of Scientific Officers from D to E, F and G- and further that posting him out as most suitable on the basis of experience, is actually a harassment of the applicant and others have been thus shielded from this posting and ought to have been considered as some of them have never even gone once to NER. In this context it is noted that as per R/1 offer of appointment order, dated 18.11.1990, the applicant was initially selected and posted to work in the North East Region, which he served for about 6½ years and also that he has All India Liabilities. Further there is no policy or guidelines of the respondents Department that a person cannot be posted second time to NER and some persons, though from Geology and not Chemistry Group, have been posted in NER, as brought out by the respondents in the reply. Thus the aspect of discrimination and any victimization of the applicant is not established.

13. It is also noted that for transfer and posting to NER several concessions and facilities are provided to those serving in NER and the applicant will also be entitled to avail of the same. It is further noted that in the representation of the applicant Annexure A/4 dated 22.09.2016 (though rejected on 21st Oct, 2014 by the respondents), the applicant with reference to his request for reconsideration and cancellation of the transfer, himself wrote that "however, for any further transfer after April, 2016, I shall be in a position to move along with my family".

14. In view of the above analysis that there is no discrimination or victimization of the applicant, as per transfer order dated 18.09.2014 (Annexure A/1) nor any violation of transfer guidelines, let alone of any statutory provision is established, and with reference to submissions made by the applicant in his own application dated 22.09.2014 (Annexure A/4) quoted above, and keeping in view the principles upheld by the Hon'ble Apex Court with regard to transfer and posting that ordinarily Courts and Tribunals should not interfere in the matter of transfer and posting unless there is a case of proven mala fide, violation of statutory provisions or orders issued by an incompetent authority, which is not the case, in the present OA, there appears no ground to quash and set aside transfer order of the applicant dated 18.09.2014 (Annexure A/1).

15. Accordingly, the OA is dismissed with no order as to costs and the IR is also vacated. In view of this order, MA No. 291/00340/2015, 291/00415/2015 and 291/00162/2016 also stand disposed of.


(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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