

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 5.11.2014

OA No. 672/2013

Mr. Anupam Agarwal, Counsel for the applicant.

Mr. V.K.Pareek, Counsel for the respondents
No.1 to 3.

Heard the learned counsel for parties.

Order Reserved.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

19/11/14.
order
pronounced
today in the
open court
by the aforesaid
Bench

19/11/14
C-O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.**ORIGINAL APPLICATION No. 672/2013****ORDER RESERVED ON 05.11.2014****DATE OF ORDER : 19.11.2014**

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Sudhir Singh Virdi son of Shri B.S. Virdi, aged about 49 years, resident of F-22F, Sumer Nagar Extension, Muhana Road, Goliawas, Jaipur presently working as Executive Engineer in Drilling Division, Geological Survey of India, Western Region, Jaipur.

... Applicant

(By Advocate: Mr. Anupam Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Mines, Government of India, Shastri Bhawan, New Delhi.
2. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Kolkata.
3. The Additional Director General & HOD, Western Region, 15-16, Jhalana Doongari, Jaipur.
4. Shri K. Parida, Additional Director General, Western Region, 15-16, Jhalana Doongari, Jaipur.

... Respondents

(By Advocate: Mr. V.K. Pareek – Respondent nos. 1 to 3)

ORDER**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA being aggrieved by his transfer order dated 12.09.2013 (Annexure A/1) from WR Jaipur to CR, Nagpur. In this OA, the applicant has prayed that the impugned order of transfer dated 12.09.2013 (Annexure A/1) may be quashed and set aside or in the alternative the order dated 12.09.2013 should be kept in abeyance till the end of the academic session of Class X CBSE

Anil Kumar

subject to modification/ alteration as per administrative exigency by the respondents at that time. Subsequently, he was allowed to amend the OA vide order dated 29.05.2014 and he filed the Amended OA. In the Amended OA, primarily the prayer clause has been modified. The alternative prayer of keeping the transfer order in abeyance till the end of the academic session of Class X CBSE has been deleted.

2. The brief facts of the OA, as stated by the learned counsel for the applicant, are that initially the applicant was transferred and posted as Drilling Engineer (Jr.), Western Region, Jaipur. That on 26.02.2013 on the recommendation of the DPC, the applicant was promoted to the post of Drilling Engineer (Sr.). That on 13.12.2012, the respondent no. 4 passed an order putting the applicant unconcerned with the drilling work at any site. That on 24.05.2013, the applicant was communicated the ACR for the year 2011-12 whereby he has been downgraded by respondent no. 4 despite Reporting Officer awarding 'Very Good' grading.

3. That vide order dated 12.09.2013 (Annexure A/1), the applicant was transferred alongwith Shri Jitendra Narayan Choudhary, Executive Engineer (NGSG), his immediate superior and Reporting Officer in the mid of session in gross violation of the transfer policy. That the applicant's son is a student of Class X at KVS No. 5, Mansarovar, Jaipur. He has Board Exams in March-April, 2014. As per the Hon'ble Apex Court in the case of **Director of School Education Madras &**

Anil Kumar

Others vs. O. Karuppa Thevan and Another, 1994 Supp.

(2) **SCC 666**, applicant deserves to be retained at the present place of posting till the end of academic session.

4. The learned counsel for the applicant submitted that the applicant has been transferred due to malice of respondent no. 4 in the name of "interest of public service". Malice is demonstrated by the fact that the applicant was initially segregated from all drilling works at drilling sites. The respondent no. 4 also downgraded his ACR. Not only it but to make room for his transfer had transferred Shri Rakesh Gupta, Executive Engineer from Nagpur to Jaipur few months back. Further just after one day of transfer of applicant, the respondents again transferred Shri Yogendra Kumar Mishra, Executive Engineer, from Nagpur to Kolkata. As per Para 9.1 of the transfer policy, the field session shall commence on 01st April each year while as per Para 9.3, general transfer shall be completed by 15th April each year. That 50% of the post of Executive Engineer are lying vacant. The respondents have deliberately not issued any order sanctioning cadre strength of Executive Engineers at respective regions.

5. That the father of the applicant is patient of Dementia and is under treatment at Fortis Hospital, Jaipur. He needs constraint supervision and attendance of the family members. His transfer is not in public interest. His transfer has been issued in violation of the transfer policy. No-one has been posted vice the applicant at Jaipur. There is no administrative

Anil Kumar

exigency or interest of public service in transferring the applicant. The impugned order is nothing but an act of malice of respondents especially of respondent no. 4. That the employees having longer stay have not been transferred such as Shri L.I. Antony and Shri Manoj Mandal. Therefore, he prayed that the OA be allowed the impugned transfer order be quashed and set aside.

6. On the other hand, the official respondents nos. 1 to 3 have filed their reply. In their reply, they have stated that the applicant was transferred in the capacity of Assistant Executive Engineer, W.R. Jaipur in public interest w.e.f. 01.10.2013 vide order dated 12.09.2013.

7. That as per the recommendation of the High Power Committee approved by the Union Cabinet, investigation for Coal Exploration has been decentralized from Kolkata, where the Headquarter of Coal Wing was located earlier and assigned to different regions i.e. C.R. with Headquarter at Nagpur, E.R. with Headquarter at Kolkata, S.R. with Headquarter at Hyderabad covering the most important coal deposits of India, where detailed exploration for coal is carried out with the aid of Drilling Operation to delineate the extent of the coal seam, both vertically and laterally.

8. That there is acute shortage of experienced Drilling Officers both, at Kolkata and Nagpur, from where such exploration are conducted and the competent authority after

Amil Kumar

assessing the functional requirement of the department viz-a-viz experience of the individual officers and after due diligence, decided to deploy the applicant because his experience in Coal Exploration can be better and properly utilized in the interest of the department as well as for operational and functional requirement and accordingly, the transfer order was passed by the competent authority transferring him w.e.f. 01.10.2013 in public interest and for the aforesaid administrative exigency.

9. They have further stated that the impugned transfer order cannot be said to be arbitrary, illegal or discriminatory in any manner whatsoever.

10. They have submitted that grading in the ACR as 'Very Good' has nothing to do with the transfer/posting of an individual officer in the public interest and administrative exigency and for better management of human resources.

11. The respondents have further stated that the Director General, Western Region, being HOD is competent authority to fix assignment, duties and responsibilities of the officers.

12. With regard to the downgrading of the APAR of the applicant, the respondents have stated that grading awarded by the Reporting Officer may not seem justified to the Reviewing Officer, therefore, he is competent enough to upgrade or downgrade the grading given by the Reporting Officer. Thus the action of respondent no. 4 of downgrading

Anil Kumar

the APAR of the applicant was in order and legally permissible.

The respondents have submitted that mid transfer order dated 12.09.2013 (Annexure A/1) has not been passed by respondent no. 4 but was passed by respondent no. 2, who is overall/supreme authority for matters pertaining to GSI and transfer posting of officers upto Director/JAG level with grade pay upto Rs.8700/-. The applicant is not competent by virtue of his position to have an overview of the manpower requirement viz-a-viz operational and functional requirement. He cannot sit in judgment over the action of the Director General, GSI. The impugned order was passed so as to fulfill the functional and operational requirement of the department. The transfer guidelines referred to by the applicant is general in nature.

13. The respondents in their reply have also stated that transfer is prerogative of the department. Courts should not normally interfere in transfer matters except when (i) it is shown to be malafide or (ii) transfer order being in violation of statutory rules and allegation of malafide must be based on concrete material and must inspire confidence in the Court. The personal reasons cited by the applicant cannot be accepted being not tenable since almost all the officers have such personal problems and if all these are to be reckoned with, then the entire exercise and spirit and purport of the exercise of transfer will come to a grinding halt.

Anil Kumar

14. The respondents in their written reply have relied on the judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh & Others vs. State of U.P. & Others, 2010**

(1) SCC (L&S) 503 while observing therein that a transfer of an employee is not only an incidence inherent in the terms of the appointment but also implicit as an essential condition of service in the absence of any indication to the contrary and has held as under:-

"Courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide."

The respondents have also relied on the judgment of Hon'ble Supreme Court in **Kerala, Solvent Extraction Ltd. Vs. A. Unnikrishnan, 2008** (2) SCC (L&S) 155, in which the following law has been laid down:-

"It is entirely for the employer to decide when, where and what point of time, a public servant is to be transferred and that Court ordinarily should not interfere."

15. Therefore, they have stated that the OA has no merit and it should be dismissed.

16. The applicant has filed the rejoinder and the respondents have filed reply to the rejoinder.

17. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the respondents.

Anil Kumar

18. The learned counsel for the applicant reiterated the facts as stated in the OA. He argued that in the transfer order dated 12.09.2013, the designation of the applicant has been shown as Assistant Executive Engineer whereas the applicant is Drilling Engineer (Sr.). Therefore, on this ground alone, the transfer order should be quashed.

19. The learned counsel for the applicant drew my attention to letter dated 23.09.2013 (Annexure A/10) from the Additional Director General & HOD, WR, GSI, Jaipur to the Director General, GSI, Kolkata in which it has been stated that inspite of his request for transfer of the applicant, he has not been transferred, therefore, the Additional Director was compelled to have discussion in HOD meeting held on 24th & 25th August at Hyderabad and followed it upto the chamber of Joint Secretary, Mines on 09th September at New Delhi and D.G. GSI on 10th September at Kolkatta. In view of the above, the plea of Shri Birdi for the cancellation of his transfer order need not be considered which may lead to deterioration of the drilling works of the Western Region. The learned counsel for the applicant argued that this letter shows that the applicant was transferred at the behest of then Addl. Director General, HOD, WR, Jaipur and, therefore, the transfer order is based on mala fide and it should be cancelled.

20. On the other hand, the learned counsel for the respondents reiterated the facts as stated in the written statement as well as they have referred to the case law, which

Anil Kumar

have been referred to in the written statement. They denied that there was any mala fide intention on the part of the respondents. Moreover, the learned counsel for the respondents argued that the transfer order dated 12.09.2013 (Annexure A/1) has been issued by respondent no. 2 and no malice has been alleged against him. The applicant has an all India transfer liability and he has been transferred in the interest of public service according to the functional requirement of the department. Thus the OA has no merit and it should be dismissed with costs.

21. Having heard the learned counsel for the parties, perusal of documents on record and the case law referred to by the learned counsel for the parties, I am of the view that the applicant has failed to make out any case for interference in the present OA. The applicant has all India transfer liability and he has been transferred in the interest of public service. The transfer order of the applicant has been issued by respondent no. 2 and no mala fide has been alleged against the Director General, GSI, Kolkata i.e. respondent no. 2. The downgrading of the APAR by respondent no. 4 cannot be linked to transfer of the applicant as Reviewing Authority, Respondent no. 4, had a right either to upgrade or downgrade the APAR of the applicant. Similarly, the ground of the applicant that his son is studying in Class X is also over because academic session 2013-2014 is over in April-May, 2014. Moreover the applicant has deleted the alternative prayer of deferment of his transfer till the completion of academic session 2013-2014.

Anil Kumar

22. I agree with the statement made by the learned counsel for the respondents that it is for official respondents to decide the allocation of work of different regions and applicant cannot sit in judgment over the decisions of the competent authority.

Moreover, the Hon'ble Supreme Court in the case of **Rajendra Singh & Others vs. State of U.P. & Others** (supra) has held that Courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fide. In the present OA, no malice is alleged against respondent no. 2 who is the competent authority to transfer the applicant and he has issued the transfer order of the applicant. Applicant has not been able to show that his transfer order has been issued in violation of any statutory provisions. Mere violation of transfer policy cannot be termed as violation of statutory provisions such as Act or Rules. Therefore, I do not find any reason to interfere with the transfer order dated 12.09.2013 (Annexure A/1).

23. Further the Hon'ble Supreme Court in the catena of judgments have held that it is entirely for the employer to decide when, where and what point of time, a public servant is to be transferred and that Court ordinarily should not interfere.

24. The ratio decided by the Hon'ble Supreme Court is squarely applicable under the facts & circumstances of the present case. It is for the employer to decide where and when

Anil Kumar

the services of the applicant can be best utilized in the interest of the organization. The applicant cannot sit over the judgment of his superiors in this regard. The transfer is an incidence of service. The transfer of an employee is not only inherent in the term of appointment but also implicit as an essential condition of service.

25. The learned counsel for the applicant argued that transfer order has been issued in violation of the guidelines. The Hon'ble Supreme Court in the case of State of U.P. vs. Gobardhan Lal, 2005 SCC (L&S) 55 has held that employee can be transferred in violation of guidelines which are not statutory in nature. Guidelines merely at best provide an opportunity to represent against the transfer order. Thus even if the guidelines have not been followed, it would not make the transfer order illegal. The Hon'ble Supreme Court in Para Nos. 7 & 8 of its judgment in the case of State of U.P. vs. Gobardhan Lal, 2005 SCC (L&S) 55, has held that

"7. 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 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

Anil Kumar

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."

"8. 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 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."

Hon'ble Supreme Court in Para No. 8 has held that 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 except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

26. In the present OA, the applicant has not leveled mala fide or bias against respondent no. 2 who is the competent authority to transfer the applicant. The transfer has been issued by the competent authority and it is not in violation of

Anil Kumar

OA 672/2013

any statutory provision, Act or Rule. Therefore, there is no justifiable ground to interfere with the transfer order.

27. The learned counsel for the applicant argued that in the transfer order, correct designation is not shown. The applicant is Drilling Engineer (Sr.) whereas in the transfer order his designation is shown as Assistant Executive Engineer. On the other hand, the respondents in their written reply have stated that the applicant has been transferred in his capacity as Assistant Executive Engineer. However, even for the sake of arguments it may be admitted that the correct designation of the applicant is Drilling Engineer (Sr.), it will not make the transfer order illegal. The respondents can always make correction/amendment in the transfer order, if so required.

28. Thus on the basis of above discussion, I find no merit in the OA and it is dismissed being devoid of merit with no order as to costs. The interim relief granted to the applicant vide order dated 26.09.2013 is vacated forthwith.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul