

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

18.07.2013

OA No. 278/2013

Mr. Saransh Saini, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 278/2013

DATE OF ORDER: 18.07.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Patel Chand Sharma S/o late Shri Prabhu Dayal Sharma, aged about 55 years, R/o 15, Shiv Shakti Nagar 'B', Jagatpura Road, Malviya Nagar, Jaipur, Rajasthan, last posted Jaipur Trademan 'G' ETDC Jaipur.

...Applicant

Mr. Saransh Saini, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Department of Information Technology, STQC, Directorate, Electronics Niketan, 6, C.G.O. Complex, Lodi Road, New Delhi.
2. The Director General, Department of Information Technology, STQC, Directorate, Electronics Niketan, 6, C.G.O. Complex, Lodi Road, New Delhi.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER (ORAL)

The applicant had filed Original Application No. 278/2013 praying for the following reliefs: -

- “(i) the respondents may kindly be directed to reconsider the original applicant at any places referred in the memo of the Original Application preferably at Jaipur itself so as to comply with the undertaking made before the Hon'ble Apex Court referred in the memo of the Original Application. It is also prayed that the respondents may be directed specifically to comply with the orders passed by the Hon'ble High Court and the Hon'ble Apex Court in their letter and spirit honoring the intention in passing such orders by retransferring the original applicant at Jaipur itself.

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(ii). Any other order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case and in the interest of justice be also passed in favour of humble applicant;

(iii). Costs be awarded in favour of the applicant."

2. This Original Application was disposed of by this Bench of the Tribunal vide order dated 04th of April, 2013. The relevant para 4 of the order is quoted below: -

"4. Having considered the submissions made on behalf of the applicant as well as in view of the orders passed by the Hon'ble High Court and Hon'ble Supreme Court, I am of the view that the directions issued by the Hon'ble Supreme Court and Hon'ble High Court shall be complied with by the respondents in true letter and spirit of law and transfer the applicant to ERTL (North), New Delhi. It is expected from the respondents to undertake this exercise to adjust the applicant at ERTL (North), New Delhi expeditiously, but in any case not beyond the period of one month from the date of receipt of a copy of this order."

3. Aggrieved by this order, the respondents-UOI filed a D.B. Civil Writ Petition No. 7334/2013 before the Hon'ble High Court Rajasthan, Jaipur Bench, praying to quash and set aside the order dated 04.04.2013 whereby the O.A. No. 278/2013 was disposed of by this Tribunal in limine with a direction to transfer the applicant to ERTL (North), New Delhi.

4. The Hon'ble High Court vide its order dated 14.05.2013 quashed and set aside the order dated 04.04.2013 passed by this Bench of the Tribunal in OA No. 278/2013 with a direction to the respondent no. 1 to again approach the Tribunal which may decide the matter afresh after affording opportunity of hearing to the parties. While passing the order dated 14.05.2013, the Hon'ble High Court observed that the Tribunal

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could not have passed the ex-parte order without notice to the respondent no. 1. The Hon'ble High Court further held that the Tribunal had no jurisdiction to indicate the place of posting of the respondent and that too without providing opportunity of hearing to the petitioner-UOI. The Hon'ble High Court further directed both the parties to appear before the Tribunal on 27.05.2013. The Hon'ble High Court also directed the petitioner-UOI to file reply before the Tribunal, in the meantime.

5. In compliance of the orders of the Hon'ble High Court, the respondents have filed their preliminary objections regarding maintainability of the Original Application before this Bench of the Central Administrative Tribunal on the ground of jurisdiction.

6. Heard the learned counsel for the respective parties and perused the documents available on record.

7. Learned counsel for the respondents submitted that the applicant was transferred from Jaipur to Electronics Regional Test Laboratory(s), Thiruvananthapuram vide order dated 22.10.2010 and after joining there, at present, he is working / posted at Thiruvananthapuram. Further, the applicant has also submitted his representation dated 31.01.2013 (Annexure A/1) from Thiruvananthapuram to respondent no. 2 at New Delhi. Thus, neither the applicant is posted at Jaipur nor any cause of action has arisen within the jurisdiction of this Bench of the C.A.T.

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8. Learned counsel for the respondents further submitted that as per Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, the Original Application can only be filed before the Bench within whose jurisdiction, the applicant is posted or cause of action, wholly or in part has arisen. He also submitted that the applicant is posted at Thiruvananthpuram and not at Jaipur and further the applicant has submitted his representation to the respondent no. 2 at New Delhi. The competent authority to take a decision about the transfer of the applicant is the Director General, Department of Information Technology, STQC, Directorate, New Delhi. Therefore, the aforesaid Original Application is not maintainable before this Bench of C.A.T. and is liable to be dismissed on the ground that this Bench has no jurisdiction to decide this Original Application.

9. On the contrary, learned counsel for the applicant stated that the applicant was earlier posted at Jaipur and since he was transferred to Thiruvananthpuram by the respondents he filed an O.A. No. 476/2010 before this Bench of the Tribunal. This Bench vide its order dated 03rd of December, 2010 dismissed the Original Application.

10. Being aggrieved by the order dated 03rd of December, 2010 passed by this Bench, the applicant filed D.B. Civil Writ Petition No. 16229/2010 before the Hon'ble High Court Rajasthan, Jaipur Bench. The Hon'ble High Court vide its order dated 13.01.2011 passed interim order directing that in the

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meantime, however, the petitioner would not be required to join at the place of his posting in accordance with the impugned order dated 22.10.2010 i.e. at Thiruvananthapuram and the Hon'ble Bench of the High Court inquired from the learned counsel appearing for the respondents whether it was possible for the respondents to transfer the petitioner to any other alternative place within approximate 500 KM of Jaipur as by the impugned order of transfer the petitioner stands transferred to Thiruvananthapuram in Kerala about 3000 KM from Jaipur. Subsequently, vide order dated 07.02.2011, the Hon'ble High Court confirmed the interim order dated 13.01.2011 and it was further directed that operation of the order dated 22.10.2010 shall remain stayed, as the respondents were unable to comply with the suggestions given by the Court vide order dated 13.01.2011 for transferring the appellant-petitioner within 500 Km of Jaipur instead of Thiruvananthapuram in Kerala.

11. Against the stay order dated 07.02.2011, the respondents-UOI preferred a Special Leave to Appeal (Civil) No. 6303/2011 before the Hon'ble Supreme Court of India. Before the Hon'ble Supreme Court, Mr. Rawal, learned Additional Solicitor General submitted that as per his instructions, for the present, there is no vacancy either at Mumbai or at Pune to accommodate the respondent (applicant in present OA). He further submitted that as and when the next vacancy arises, the case of the respondent for posting him at either of the two places, shall be considered sympathetically. In view of the statement, learned counsel

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appearing for the respondent stated that his client shall join at Thiruvananthapuram, where he has now been transferred. In view of the above statement, the Hon'ble Supreme Court vide its order dated 25.04.2011 has observed as under: -

"In that view of the matter, this petition as also D.B.C. Writ Petition No. 16229 of 2010 pending before the High Court are rendered infructuous and are disposed of accordingly.

12. Learned counsel for the applicant also stated that since the respondents have not complied with the orders passed by the Hon'ble High Court and the Hon'ble Supreme Court in true letter and spirit by accommodating / transferring the applicant at any place, therefore, this Original Application is maintainable and this Bench has the jurisdiction to hear this Original Application.

13. Having heard the rival submissions of the parties, it is not disputed that the applicant is at present posted at Thiruvananthapuram and he has sent his representation on 31st January, 2013 to the respondent no. 2 from Thiruvananthapuram, Kerala. It is also not disputed that the office of respondent no. 2 is located at New Delhi. It is also admitted that the respondent no. 2 i.e. the Director General, Department of Information Technology, STQC, Directorate, New Delhi is the competent authority to take a decision on the representation of the applicant dated 31st of January, 2013 (Annexure A/1).

14. I am not inclined to agree with the averments made by the learned counsel for the applicant that it is in continuation of the earlier dispute which arises on account of his transfer

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from Jaipur to Thiruvananthapuram because that controversy has already been settled by the Hon'ble Supreme Court vide its order dated 25.04.2011 (Annexure A/6). In the judgment of the Hon'ble Supreme Court, it has been clearly stated that in view of the statement, learned counsel for the respondent states that his client shall join at Thiruvananthapuram, where he has now been transferred. Subsequently, the applicant has joined at Thiruvananthapuram. Thus, the order dated 22nd of October, 2010 (Annexure A/2) issued by the respondents has been complied with by the applicant. Therefore, the applicant, at present, is not posted within the jurisdiction of this Bench of the Tribunal.

15. It is also not disputed that the decision on the representation of the applicant dated 31.01.2013 (Annexure A/1) is to be taken by the respondent no. 2 whose office is situated at New Delhi.

16. The relevant part of Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 reads as follows: -

"6. Place of filing applications.- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter."

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17. In view of the aforementioned specific provision regarding jurisdiction of this Bench, I am of the considered opinion that this Original Application is not maintainable before this Bench of the Tribunal. This Bench has no jurisdiction to decide this Original Application because neither the applicant is posted within the jurisdiction of this Bench at the time of filing of the present Original Application nor the cause of action, wholly or in part, has arisen within the jurisdiction of this Bench. Therefore, the Original Application is dismissed on the ground that it is not maintainable before this Bench of the Central Administrative Tribunal.

18. However, the applicant is at liberty to redress his grievance(s), if any, before the appropriate forum.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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