

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER OF THE TRIBUNAL


Date of order : 15.4.2014

OA No.677/2013 with MA No.291/00121/2014 and
MA No.291/00140/2014

Mr. Rakesh Kumar, counsel for the applicant.
Mr. V.K.Pareek, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate
sheets for the reason recorded therein.


(Anil Kumar)
Member (A)

ADM/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 677/2013
With
MISC. APPLICATIONS NO. 291/00121/2014
AND 291/00140/2014

DATE OF ORDER : 15.04.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Jitendra Narayan Choudhary son of Late Shri Dinesh Narayan Choudhary, aged about 43 years, resident of Quarter No. 5/4, G.S.I. Officers Colony, Indira Nagar, Jaipur.

... Applicant

(By Advocate: Mr. Rakesh Kumar)

Versus

1. Union of India through Secretary, Ministry of Mines, Government of India, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta.
3. Director Geology, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta.

... Respondents

(By Advocate: Mr. V.K. Pareek)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA being aggrieved by his transfer order dated 12.09.2013 from WR, Jaipur to STSS, HQ, CHQ, Kolkatta (Annexure A/1). The learned counsel for the applicant submitted that the present transfer order of the applicant is in violation of the transfer policy of the respondents dated 07.01.2010. That the applicant is holding the charge of Vigilance

Anil Kumar

Officer. Therefore, some senior officers are annoyed with him and hence he has been transferred.

2. The applicant is presently pursuing his Ph.D from IIT, Delhi for which he has obtained the necessary permission from the Department (Annexure A/7). That the daughter of the applicant is a student of Class XI and, therefore, two years are crucial for her career.

3. That the applicant has been transferred, who has only seven years stay at Jaipur, whereas there are officers posted at Kolkatta since 1997. Thus the impugned transfer order is contrary to the rotation policy. That the respondents are acting in discriminatory manner. Even at Jaipur Shri V.K. Nagpal has a longer stay since 2004 but he has not been transferred.

4. The present transfer order has not been made in any administrative exigency. No other officer has been posted in place of the applicant at Jaipur.

5. That post of Director (Drilling) has a mandatory tenure of eight years and the applicant has been transferred before the completion of tenure and that too in the mid session.

6. The designation of the applicant in the transfer order has been wrongly shown as Executive Engineer (NFSG) whereas the

Anil Kumar

applicant is working on the post of Director (Drilling) in junior administrative grade.

7. The learned counsel for the applicant further argued that the applicant has been transferred on the post which is not in existence as on date. Therefore, the impugned order is liable to be quashed and set aside. The learned counsel for the applicant also submitted that since the applicant was also working as Vigilance Officer of GSI, Western Region, Jaipur, hence, he could not have been transferred without concurrence of the CVO of the GSI. Therefore, he prayed that the impugned transfer order of the applicant may be quashed and set aside.

8. The respondents have filed their reply. In their reply, they have stated that the applicant was transferred in the capacity of Executive Engineer (NFSG), Western Region, Jaipur in public interest vide order dated 12.09.2013.

9. That there is acute shortage of experienced drilling officers both at Kolkatta and Nagpur. The competent authority after assessing the functional requirement of the department viz.a.viz experience of the individual officers and after due diligence, decided to deploy the applicant. His transfer order is in public interest and in administrative exigency.

Anil Kumar

10. With regard to the contention of the learned counsel for the applicant that he has been given permission to pursue Ph.D from IIT Delhi, the learned counsel for the respondents submitted that whenever such permission is granted, this expressly indicates or implies that such permission should not in any way come in the way of the Government servant to discharge his regular and normal official duty. Therefore, the averment of the learned counsel for the applicant that applicant has been given permission to pursue Ph.D is not relevant in the present context.

11. The learned counsel for the respondents further submitted that ground of his daughter studying in Class XI cannot be taken as a ground to retain him at Jaipur. The applicant has all India transfer liability. The learned counsel for the respondents further submitted that it is settled law that Tribunals/Courts have limited powers of judicial review in the matter of transfer.

12. In support of his arguments, the learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the cases of **Rajendra Singh & Others vs. State of U.P. & Others**, 2010 SCC (L & S) 503, and **Kerala, Solvent Extraction Ltd. vs. A. Unnikrishnan**, 2008 (2) SCC (L&S) 155. Therefore, he argued that the present OA has no merit and it should be dismissed with costs.

Anil Kumar

13. The applicant has filed the rejoinder and an additional affidavit.

14. The respondents have filed MA No. 291/00121/2014 for taking reply to the rejoinder on record. The same is taken on record. Accordingly, this MA is disposed of.

15. The respondents have also filed MA No. 291/00140/2014 for taking certain documents on record. The documents annexed with this MA are taken on record. Accordingly, this MA is also disposed of.

16. Heard the learned counsel for the parties, perused the documents on record and case law referred to by the learned counsel for the respondents. It is not disputed by the respondents that the applicant was also working as Vigilance Officer of GSI, Western Region, Jaipur on the date of his transfer. A request was made on 28.06.2012 to the CVO of the Department to relieve him from the responsibility of Vigilance Officer. However, this request was not acceded to and the CVO directed that the applicant be continued until further orders. The respondents have now produced a copy of the letter dated 31.03.2014 wherein it has been stated that Dr. S.K. Sharma, Director (Chemical), GSI, Western Region, Jaipur has been assigned additional duties of Vigilance Officer in place of Jitendra Narayan Choudhary, who is under order of transfer and has completed four years as Vigilance Officer in

Anil Kumar

Western Region, Jaipur. Thus it is clear even from this order that on the date of transfer of the applicant dated 12.09.2013, the clearance from the CVO was not obtained. This protection is given to the Vigilance Officers because they conduct certain inquiries against the officers and employees of the department and as a consequence they may be annoyed with the Vigilance Officer.

17. The applicant has also submitted that he has been transferred to Kolkata without any post being available there. The learned counsel for the respondents could not clarify whether there is any vacant post at Kolkata. The transfer order does not suggest that the applicant has been transferred to Kolkata along with his post or on a vacant post. I have carefully perused the letter dated 19.11.2013 (Annexure A/13), which is reply to the applicant under Right to Information Act and a Note sheet dated 10.09.2013 which states that Deputy Director General and Head of Science Technology Support System STSS has requested DG, GSI to post one senior level experienced Drilling Engineer at CHQ, Kolkata as a nodal person to assist the Deputy DG (STSS) in monitoring the overall drilling operations in GSI. Thus it is clear from this noting that there is no vacant post of Director (Drilling) or equivalent at Kolkata. The applicant has been posted in addition to the sanctioned strength in the office of Deputy Director General, Head of Science & Technology System at the request of DDG. It is for the consideration of the respondents that how an officer can be posted at any place without a sanctioned post. If the applicant had to be

Anil Kumar

transferred without a sanctioned post at Kolkata then he could have been posted along with his post from Jaipur by following the due procedure but in this case it appears that there is neither any post against which the applicant has been posted at Kolkata nor his present post at Jaipur has been shifted to Kolkata after taking prior permission from the competent authority. Every regular employee draws his pay against a sanctioned post. The case law referred to by the learned counsel for the respondents is not applicable under the facts and circumstances of the present OA. Therefore, I am of the opinion that the transfer order dated 12.09.2013 (Annexure A/1) qua the applicant is liable to be quashed and set aside. Accordingly the transfer order dated 12.09.2013 (Annexure A/1) qua the applicant is quashed and set aside. However, it is made clear that the respondents are at liberty to examine the issue of availability of a post at Kolkata and then pass a fresh order of transfer of the applicant, if necessary.

18. With these directions, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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