

(Reserved on 14.12.2017)

**Central Administrative Tribunal
Allahabad Bench
Allahabad**

This the **23rd** day of **March, 2018**.

PRESENT:

**HON'BLE MR JUSTICE DINESH GUPTA, MEMBER-J
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A**

ORIGINAL APPLICATION NO. 330/01531/2016

Jai Prakash Narayan Mishra aged about 58 years son of Shri Rishikesh Mishra r/o H.No.253/FI, Factory Quarter Hidil By Bag, Tehsil Sadar, District Shahjahanpur presently posted on the post of PGT in OCF Inter College, District- Shahjahanpur.

Applicant

By Advocate: Sri Rama Shankar Misha

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. Director General, Ordinance Factory Board (Ordinance House), 10 A, Shaheed Khudiram Bose Road, Kolkatta.
3. General Manager, Ordinance Cloth Factory, Shahjahanpur.

Respondents

By Advocate: Sri Prabhash Pandey

ORDER

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

The applicant preferred the OA u/s 19 of the Administrative Tribunals Act, 1985 with the following main relief:-

- “i) To issue order direction rule or direction for quashing and set aside the impugned order dated 23.11.2017 and transfer order dated 6.12.2017 and release certificate dated 8.12.2017 passed by the

respondent No. 2 (Annexure A-1 in compilation No. part 1 of this O.A.).

ii) To issue an order or direction in the nature of mandamus directing to the respondent No. 2 to not force to the applicant to join at new place of posting i.e. Chanda Maharashtra and permit to teach in OCF Inter College, Shahjahanpur as PGT teacher.”

2. The brief facts of the case, as stated in the O.A are that the applicant working as PGT Teacher in OCF Inter College, Shahjahanpur, was transferred from the OCF Inter College, Shahjahanpur to Ordinance factory Chanda, Maharashtra vide order dated 30.7.2015 (Annexure A-3). Applicant submitted a representation dated 11.8.2015 (Annexure A-4) to cancel the transfer order. Without considering the representation of the applicant, respondents have passed the order dated 15.10.2015 (Annexure A-5), by which it was stated that on 31.10.2015, the applicant was released from the service to join at Chanda. The applicant filed the O.A. No. 1741/2015 challenging the order dated 15.10.2015, 24.11.2015 and 27.11.2015 and this Tribunal vide order dated 30.8.2017 (Annexure A-6) quashed the order dated 24.11.2015 and 27.11.2015 and directed the respondents to pass a fresh reasoned and speaking order on the representation of the applicant dated 11.8.2015.

3. In compliance of the order passed by this Tribunal, respondent No. 2 has passed the impugned order dated 23.11.2017 rejecting the representation of the applicant for the reasons that on the basis of the CVO's report, the applicant is engaged in malpractices in OCFS School and other personal reasons given by the applicant were not acceptable. Respondent No. 2 has also passed the transfer order dated 6.12.2017 transferring applicant to Chanda again and release certificate has also been issued on 8.12.2017.

4. It is alleged by the applicant that he had earlier lodged a complaint against the Satish Kumar Tripathi, TGT/OCFS regarding allegation like under taking private business, forced students to join private tuition, running LIC agency in the name of his wife and vitiating the atmosphere of the institution and in place of inquiry against Satish Kumar Tripathi, CVO has submitted report that the present applicant is engaged in various malpractices.

5. Applicant has preferred this O.A. for quashing of impugned order dated 23.11.2017, the transfer order dated 6.12.2017 and release certificate dated 8.12.2017 passed by the respondent No. 2 on the ground that there is no mention about in which type of malpractices the applicant was engaged and he was never called for by the CVO or any other inquiry officer in this regard and that the impugned transfer order is against the O.M. dated 30.9.2009 of Govt. of India (Annexure

A-8)which was issued for posting of husband and wife at the same station. It is also stated that applicant's daughter is studying in class XII and the applicant is aged about 58 years, going to retire on 30.12.2019.

6. Heard the learned counsel for the applicant Sri Rama Shanker Mishra and learned counsel for respondents Sri Prabhash Pandey at the admission stage.

7. Vide order dated 30.08.2017 (Annexure A-6), this Tribunal had directed the respondents to pass a fresh reasoned and speaking order on the representation dated 11.08.2015 of the applicant since the earlier order was found to be non-speaking and cryptic. The present impugned order has indicated the following reasons for rejecting the representation dated 11.08.2015: -

i). The issue about involvement of the applicant in various malpractices as per the report of the CVO dated 22.07.2015 based on which the competent authority had decided in 2015 to transfer the applicant to Chanda.

ii). The education requirement of the applicant's daughter no more exist as her class 12th examination is over in March 2016 and children are not so young where husband and wife are to be posted on same station.

iii). Transfer to school in Kanpur was considered and since there are no vacancies of PGT it could not be considered finally.

8. In annexure A-8 of the O.A the applicant has enclosed a copy of DOPT circular dated 30.09.2009 stating posting of husband and wife at the same station. The said circular contains instructions about posting of working spouses at the same station in view of importance attached to the enhancement of women's status. In cases where one spouse belongs to central service and another belongs to the State Government (this is the case of the present applicant since his wife is working under Government of UP), the said circular states as under: -

“

(vii). Where one spouse is employed under the Central Govt. and the other spouse is employed under the state Govt. : -

- The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.

.....”

9. It is found that the applicant in his representation dated 11.08.2015 did not point out about this circular dated 30.09.2009. From the impugned order dated 23.11.2017, it is found that there is no mention about the above DOPT circular also. Hence, it is presumed that this circular has not been taken into account by the respondents while taking the decision on the representation of the applicant.

10. Normally, the transfer matters are administrative in nature and the power of the court to interfere in judicial review is very is very limited as per the judgments of Hon'ble Apex Court . In the case of Divisional Manager, Aravali Golf Club Vs. Chander Hass - (2008) 1 SCC 683, it is held that the judges must exercise judicial restraint and must not encroach into executive or legislative domain.

11. In the case of Registrar General, High Court of Judicature of Madras Vs. R. Perachi and others – (2011) 12 SCC 137, Hon'ble Apex Court has upheld the principle of limited scope of judicial interference in transfer by observing the following: -

“22. In the context of transfer of a government servant we may refer to the dicta of this Court in N.K. Singh V. Union of India where this Court observed in AIR para 22 as follows : (SCC p.108, para 23)

“23. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of nay professed norms of principle governing

the transfer, which alone can be scrutinized judicially there are no judicially manageable standards of scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government department. This must be left, in public interest, to the limited judicial scrutiny indicated”.”

12. In this case, there is a possibility of the transfer being vindictive since it is mentioned in the original order as well as the impugned order that reason for transfer to Chanda is about his alleged involvement in various malpractices as per the CVO's report, a copy of which was never communicated to the applicant and the applicant and he was not given any opportunity to explain the adverse contents, if any, in the said CVO's report. Hence, in the light of the judgments discussed above, it will be in order for this Tribunal to interfere in the impugned order dated 06.12.2017. On this ground only, the transfer order may be considered as vindictive. Hence, this Tribunal has in the past also interfered in the said transfer order.

13. Considering the facts and the case laws, as discussed above, we dispose of this O.A at the admission stage itself with the following direction: -

The applicant may file a fresh representation including some of the grounds mentioned by him in this O.A enclosing a copy of his representation dated 29.11.2017 (Annexure A-9), a

copy of the DOPT circular dated 30.09.2009 (Annexure A-6) and a copy of this order before the respondent No. 2, who on receipt of the same shall consider the representation of the applicant in the light of DOPT circular dated 30.09.2009 and pass an appropriate speaking and reasoned order to be communicated to the applicant within two months from the date of receipt of fresh representation from the applicant. Till such time a fresh order is passed by the respondent No. 2, the applicant shall not be forced to join at the new place of posting i.e. Chanda.

14. There will be no order as to costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

Anand...