

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-581/2016

Reserved on : 25.04.2016.

Pronounced on : 03.05.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. V.K. Jha,
Aged about 56 years,
S/o late Gauri Shankar Jha,
R/o V-10, Satya Sadan,
Satya Marg, Chanakyapuri,
New Delhi.

..... Applicant

(through Sh. S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer in Chief,
Integrated Headquarter of MOD (Army),
Kashmir House, Rajaji Marg,
New Delhi.
3. Director General (Personnel) E1B,
Engineer in Chief Branch,
Integrated Headquarter of MOD (Army),
Kashmir House, Rajaji Marg,
New Delhi.

..... Respondents

(through Sh. B.K. Berera, Advocate)

O R D E R

The applicant, who is a member of IDSE, was on deputation to NDMC from 23.04.2008 to 22.03.2015. On his return from deputation to his parent cadre, he was posted as Director, CPGRAM on 31.03.2015. On 15.09.2015, he was transferred to CWE, Jodhpur vide the impugned order. The applicant represented against the aforesaid transfer on 08.10.2015. His representation has,

however, been rejected by the respondents vide Annexure A-2. He has, therefore, approached this Tribunal by filing this O.A. seeking the following relief:-

“(i) quash and set aside the impugned transfer order dated 15.09.2015 (Annexure-A-1) qua the applicant by which, the applicant was transferred to Jodhpur and the impugned communication dated 30.11.2015 (Annexure-A-1A) and communication dated 12.01.2016 (supplied under RTI Act) (Annexure-A-2) may also be set aside with all consequential benefits.

(ii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. On 11.02.2016 when notice was issued in this O.A., it was directed that status quo regarding the posting of the applicant as on date be maintained by the respondents. The applicant has challenged the aforesaid order, mainly, on the following grounds:-

(a) He has been transferred prematurely within six weeks of his assuming charge on the post of CPGRAM Cell. This is in violation of Cadre Management of MES Civilian Officers' Guidelines issued on 13.01.2013, which prescribe a stay of 3 to 4 years on a post for officers of his level.

(b) The respondents have counted his deputation period as stay in Delhi for the purpose of transfer.

(c) Representation made against the transfer was rejected by Additional Secretary even though Office Order No. 9/DEF SECY/96 dated 17.05.1996 (Part-I) (Clause-L) (page-216 of the paper-book) lays down that such cases have to be disposed of at the level of Secretary.

(d) Guidelines issued on 07.04.2014 (pages 220-223 of the paper-book) in Clause-f prescribe that there should be two years cooling period between coming back from deputation and an Executive appointment. The respondents, however, have given him an Executive appointment in violation of these guidelines.

3. Learned counsel for the applicant also argued that the respondents have also ignored the fact that the applicant was a heart patient and had been representing that he be given a non Executive posting considering his health.

4. In their reply, the respondents have stated that his posting in CPGRAM Cell on his return from deputation was only a temporary adjustment for the purpose of drawing his salary. His regular posting has been made along with other officers by the impugned order. Moreover, the applicant had remained in Delhi since September, 2001 on one pretext or another. In totality, his stay in Delhi has been for last 14 years continuously. The applicant has been transferred according to his seniority in the All India Seniority List. He was the senior most officer in the list of officers due for CWE appointment. Further, the respondents have stated that Executive appointment cannot be asked for as a matter of right and individual's choice or preference are not applicable even after completion of tenure posting. Organizational requirement is paramount in such matters. Finally, the respondents have stated that the settled law is that the scope of judicial review in the matter of transfer is restricted only to interfering in such matters when violation of a statutory provision comes to notice or when the order has been passed by an incompetent authority or has been passed mala fide. It has also been laid down that no government servant has a right to be posted to a particular post or in a position once appointed in service.

5. I have heard both sides and have perused the material on record. I find substance in the contention of the respondents that the jurisdiction of the Courts is limited in matters of transfer. In this regard, I draw strength from the judgments of Hon'ble Supreme Court in the case of **Rajinder Singh Vs. State of UP**, 2009(15) SCC 1351 and in the case of **Shilpi Bose (Mrs) and Ors. Vs. State of Bihar and Ors.**, 1991 Supp(2)SCC 659 wherein it has been laid down that Courts can interfere in

transfer matters only when transfer order is seen to be in violation of any statute or has been issued by an incompetent authority or has been issued mala fide. In the instant case, none of the three grounds has been taken by the applicant. He has only alleged violation of the guidelines or executive instructions of the respondents. In the case of **UOI & Ors. Vs. S.L. Abbas**, 1993 AIR 2444 Hon'ble Supreme Court has stated that guidelines issued by the Executive are in the nature of Executive Instructions only and do not have the force of law. It has also been laid down that for violation of such guidelines the Courts should not interfere in transfer matters.

5.1 I also notice that the applicant has approached this Tribunal before joining his new place of posting. This conduct of the applicant as has been rightly pointed out by the respondents is in violation of the law laid down by Hon'ble Supreme Court in the case of **S.C. Saxena Vs. UOI & Ors.**, (2006) 9 SCC 583 wherein the following has been laid down:-

".... a Government servant cannot disobey a transfer order by not reporting at a place of posting and then go to a Court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

5.2 During the course of arguments, learned counsel for the applicant submitted that the applicant was medically unfit to discharge duties of an Executive post but the respondents have not considered this aspect at all. In reply, learned counsel for the respondents had fairly submitted that should the applicant make a representation on these grounds for a non Executive posting, the respondents were prepared to consider the same.

6. On the basis of above analysis, I am of the opinion that the order impugned in this case does not warrant any interference from this Tribunal.

However, I direct that should the applicant make a representation for non Executive posting on medical grounds after joining his place of posting, the respondents may consider the same and pass appropriate order. The O.A. is disposed of accordingly. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/