

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.1217/2016

Reserved on :12.04.2016
Pronounced on:21.04.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agarwal, Member (J)

Rishabh Agrawal, Dy Director
S/o Shri (Late) Manak Chand Agrawal
R/o A-2/45, Ist Floor, Rohini,
New Delhi-110086.

...Applicant.

(By Advocate: Shri Jagjit Singh with Shri Preet Singh)

Versus

1. Union of India
Through it's Secretary,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi-110001.

2. The Director General
National Productivity Council,
5-6, Institutional Area,
Lodhi Road, New Delhi-110003.

...Respondents.

(By Advocate: Shri R.N.Singh)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA approached this Tribunal on 29.03.2016, being aggrieved by the order dated 21.12.2015 passed by Respondent No.2, by which he stood transferred to the Mumbai Regional Office of Respondent No.2 National Productivity Council (NPC, in short), and being further aggrieved by the order

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dated 28.03.2016, by which his request for extension/cancellation of his transfer order had been rejected.

2. When the case was listed on 31.03.2016, it was ordered to be listed on 08.04.2016 for hearing on the point of interim relief. On 08.04.2016, the learned counsel for the respondents sought time to seek instructions from the respondents, and the case was ordered to be listed before the Vacation Bench on 12.04.2016. When the case was taken up before the Vacation Bench, learned counsel for the applicant pointed out that in the meanwhile he had filed an MA No. 1331/2016 on 11.04.2016, praying for bringing certain documents on record, which were annexed to that MA as Annexures A-10 to A-15.

3. On the other hand, Shri R.N.Singh, learned counsel for the respondents waived his right to file counter reply, and submitted that he was prepared to argue the case finally, to which learned counsel for the applicant did not raise any objection, and agreed. The case then came to be heard and reserved for orders.

4. The facts of this case lie in a very narrow compass. The first impugned order regarding transfer of the applicant was passed through Annexure A-1 dated 21.12.2015 stating as follows:

"NATIONAL PRODUCTIVITY COUNCIL
LODI ROAD, NEW DELHI-110 003

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OFFICE ORDER NO. 640/Pt./2015
DATED 21.12.2015 (File No.22894)

Shri Rishabh Agarwal, Deputy Director (EM) posted at RD Delhi is transferred to RD Mumbai and is relieved with immediate effect. RD Delhi may relieve Shri Rishabh Agarwal on 22.12.2015 to enable him to join his new place of posting. He will be entitled for transfer TA/DA and joining time as per NPC rules. His salary for the months of December, 2015 will be credited to RD, Mumbai.

This issues with the approval of competent authority.

(S.P. Tripathi)
Group Head (HR&ED/Legal Cell)
for Director General"

5. As per the document at Annexure A-10 brought on record by the applicant through MA, the applicant was thereafter, the same day, ordered to be relieved on 22.12.2015 (AN), stating as follows:

"NATIONAL PRODUCTIVITY COUNCIL
Inter Office Memo

From : DG

No.22894

To: Functional Director (EM), RD Delhi/ 21st Dec. 2015
In-charge (EM), RD Delhi

Sub: Relieving Order

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With reference to Office Order o. 640/Pt.1/2015 dated 21st December, 2015 Shri Rishabh Agarwal, Deputy Director (EM) posted at RD Delhi is hereby relieved from his duties in Energy Management Group, RD Delhi 22.12.2015 (A.N.) to enable him to join his new place of posting i.e. RD Mumbai. Shri Rishabh Agarwal is directed to hand over all the files pertaining to the project(s) handled by him to Mr. Prashant Srivastava, In-charge (EM)/Deputy Director, NPC, RD Delhi.

(Manoj Saxena)
Regional Director
RD Delhi"

6. The applicant thereafter submitted a representation dated 23.12.2015, through Annexure A/5, representing against mental harassments and humiliation and his transfer through the office order dated 21.12.2015. However, a week later, the applicant gave another representation dated 29.12.2015, through Annexure A-11, through proper channel, to the Respondent No.2 and prayed as follows:

"Through Proper Channel

Sub: Application for postponed/cancel the office order No.640/Pt./1/2015 dated 21st Dec.2015

Hon'ble Sir,

I am writing this letter with reference to office order No.640/Pt.I/2015 dated 21st Dec.2015, in this regard I request from you kindly postponed/cancel the above for next three months due to personal reason.

In this period I will maintain integrity and devotion to duty and will maintain good relation with seniors.

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Kindly do for needful.

Kind regards.

(Rishabh Agarwal)"

7. The Respondent No.2 appears to have considered his request favourably, and issued an order dated 31.12.2015 through Annexure A-13 acceding to his request, and extended his stay at Delhi till 31.03.2016, subject to his submitting an undertaking to the effect that he shall join at Mumbai on 01.04.2016, failing which he shall be relieved, as per approval of Competent Authority. Grateful for this magnanimity of the respondents, the applicant gave an undertaking through Annexure A-12 dated 01.01.2016 stating as follows:

"Date :01/01/2016

To
The Group Head (HD)
National Productivity Council
New Delhi

Sub: Undertaking-reg.

Respected Sir,

This has reference to office IOM No. 22894 dated 31.12.2015, I hereby inform you that I will join RD, Mumbai on 01.04.2016 as per the instruction given in IOM with comply the NPC service rule book.

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This is for your kind perusal please.

Kind Regards

(Rishabh Agarwal)
Deputy Director (EM)
RD, Delhi
NPC, New Delhi."

8. After the applicant had given such commitment, his wife gave a complaint to the Respondent No.1-Ministry regarding her husband's transfer, and the letter dated 08.02.2016 Annexure A/5 was issued in reply to her complaint. However, still not satisfied, his wife again sent an email to the Respondent No.2, marking a copy of the same to the Hon'ble Minister for Commerce, through Annexure A/7 dated 10.03.2016. 10 days prior to that, through Annexure A/8 dated 01.03.2016, the applicant had also given a representation to the Respondent No.2, going back on his undertaking dated 01.01.2016 Annexure A-12, and stating as follows:

"Date :01.03.2016

From:
Rishab Agarwal
Deputy Director (EM)
NPC, RD Delhi

To

The Director General

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National Productivity Council
New Delhi.

Sub: Application for extension of the office order No. 640/Pt.1/2015 till 30th Dec.2016.

Hon'ble Sir,

I am writing this letter with reference to office order No.640/Pt.I/2015 dated 21st Dec.2015; in this regard I request to you for kindly extension/cancel the above cited order for next nine months from 01.04.2016 to 30.12.2016 due to **complexity in pregnancy of my spouse.** As she is not well and suffering with heavy blood pressure and other diseases (**medical reports are enclosed in flag "A"**) and taking regular treatment at Delhi. In such circumstances I cannot left her alone and not able to shift at any new place i.e. Mumbai.

I have strong faith in you and your kind justice. Kindly do for needful as it is an urgent and necessary need of the undersigned.

You are my last hope, please do for needful sir.

Kind regards.

(Rishabh Agarwal)
Mob.9310848542."

9. Thereafter, the applicant also got a legal notice issued to Respondent No.2 through Annexure A/9 dated 19.03.2016, which was also against the applicant's own undertaking dated 01.01.2016 Annexure A-12. However, the applicant is aggrieved that the respondents, in reply to his letter dated 01.03.2016 and

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follow-up email dated 15.03.2015, still went ahead and passed the impugned order dated 28.03.2016 stating as follows:

NATIONAL PRODUCTIVITY COUNCIL
INTER OFFICE MEMO

From : GH (HR & ED)
No.22894

To: Mr. Rishab Agarwal, DD (EM), RD Delhi Dt. 28/03/2016

Sub: Your Letter dated 01.03.2016 for extension/cancellation of Transfer Order No. 640/Pt.1/20150 Dated 21st December, 2015 due to complexity in pregnancy of your wife.

With reference to your request letter dated 01.03.2015 and follow-up e-mail dated the 15.03.2016 on the above subject, it is inform you that your request has not been acceded to, by the competent authority. However, during any medical Emergency or the personal/family reasons, you can avail the Admissible Leaves, as per NPC service rules.

This IOM is issued with the approval of the Competent Authority.

(S.P. Tripathi)
Group Head
(HR&ED/Legal Cell)
for Director General"

10. The applicant thereafter the very next day filed the present OA on 29.03.2016, but the respondents still passed an order dated

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31.03.2016, Annexure A-14, relieving the applicant on 31.03.2016 (A/N), during the pendency of the OA.

11. The applicant has alleged the actions of the respondents to be illegal, arbitrary and against their policy and malafide also. He was an Assistant Director with the Respondent No.2 with effect from 08.09.2008 to 07.09.2015, and was promoted as Deputy Director thereafter. He has submitted that though, as per the instructions of the Respondent No.1-Ministry, any person can be transferred only after five years of service at one place, the same has not been followed in his case, as he was transferred only in the month of January 2014, without indicating in his pleadings as to from where to where he was so transferred.

12. The applicant has submitted that he was astonished when the order of his transfer to Mumbai was passed through order dated 21.12.2015, and in his detailed representation dated 23.12.2015, Annexure A-5, he had pointed out about his mother's illness, his wife being in advanced stage of pregnancy, and his having a minor daughter, who is school going, and that there was no male member in the family to take care of his ailing mother, pregnant wife and the minor daughter.

13. He has further taken the ground that as per the guidelines of the Respondent No.2-NPC, issued through the Administrative Instructions No.582 dated 09.04.1999, the request of an employee of Respondent No.2-NPC for retention of his posting at a place can be considered, if the spouse of employee is in a non-transferable job. His main grievance is in respect of the respondents not having considered deferment of his transfer order while rejecting his request through the impugned order dated 28.03.2016 (supra).

14. The applicant has assailed his transfer on the ground that the actions of the respondents have not only been unjust, arbitrary and violative of Articles 14 & 16 of the Constitution, but are also against the finding/ratio of the Ernakulam Bench of this Tribunal in the case of **Y.Kurikesu vs. The Sr.Supdt. & Ors** (ATJ-1994(1)-71, that transfer order was not supported on any principle, rule or other known norm, because of which, in that case, the respondents had been directed to reconsider the matter. He has further taken the ground that since he is the lone male member in the family, and he is not in a position to move on transfer out of Delhi, therefore, his case merits consideration for at least deferment of his transfer for a period of nine months up to 31.12.2016, but no humanitarian consideration is being given by

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the authorities, in spite of their standing guidelines in regard to those NPC employees, whose spouse is in a non- transferable job.

15. He has further sought shelter behind the Order of the Jodhpur Bench of this Tribunal in **Ved Bajaj vs. Union of India & Others** 1992 (2) ATJ 456, that if a finding of misconduct is arrived at, without observing the principles of natural justice, and is the operative reason for the transfer order, then the order of transfer is liable to be quashed. He has further taken the ground that the impugned order dated 21.12.2015 is punitive in nature, and deserves to be quashed and set aside, as no such transfers have been made for any officers in the same rank for the last many years, and that because his transfer order does not disclose any reason for transfer, and the reasons had been disclosed only through the reply received by his wife to her representation through Annexure A-5 (Colly) page 19 of the Paperbook, which gave an impression that his transfer was by way of punishment. In the result, the applicant had prayed for the following reliefs and interim relief:

"8. Relief Sought

(a) Quash/Set aside the impugned order dated 21.12.2015 and Order dated 28.03.2016 by declaring the action of the respondents as illegal, unjust, arbitrary in transferring the applicant from R.D. Delhi to R.D. Mumbai without any reason and justification,

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consequential the applicant may be retained in his parent office.

ALTERNATIVELY

The respondents may be directed to consider the deferment/extension of the Transfer order of the applicant till 31.03.2017 in view of the complication of the pregnancy of the wife of the applicant.

(b) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

"9. Interim Order, if any,

Pending final hearing/disposal of the main O.A., the applicant most respectfully prays that this Hon'ble Tribunal may graciously be pleased to restrain from relieving the applicant from the present place of posting or direct the respondents to maintain the Status-quo in respect of applicant.

Any other order as may be deemed just and proper in the facts and circumstances of the case."

16. Heard. During his arguments, learned counsel for the applicant relied upon the aforesaid documents as already described in detail, as also Annexure A-6 NPC guidelines for consideration of requests for transfer, which do not appear to be applicable in the instant case. Learned counsel for the applicant also very laboriously took us through various Annexures, and medical records of the treatment of the applicant's wife, at pages 24 to 40 of the Paper Book of the OA, as well as Annexure A-15, through which the applicant has tried to show that though others in his rank and the higher ranks within the respondent-organization NPC, who have been serving at the same place of their stay for much

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longer years, though his stay at Delhi has been only for 8 years, which is equal to that of 9 other persons within the organization, yet he has been chosen to be transferred.

17. In his reply arguments, learned counsel for the respondents submitted that the cause title of the O.A. itself was defective, in as much as the applicant could have only named Respondent No.2- National Productivity Council through the Director-General, and could not have named the Director-General himself as a party respondent. He also took a preliminary objection that after having given his word and promise through Annexure A-12 dated 01.01.2016, regarding obeying orders of his transfer, when his request dated 29.12.2015, at Annexure A-11, had been accepted magnanimously by the respondents, through Annexure A-13, the applicant has himself gone back on his own undertaking.

18. He pointed out that the applicant had filed this OA on 29.03.2016, even before the cause of action had accrued to him through Annexure A-14 dated 31.03.2016, when the Respondent No.2 had passed orders relieving him from his duties, as per his own solemn commitment and undertaking given on 01.01.2016 (supra). Learned counsel for the respondents also relied upon judgments of the Apex Court in **Union of India & Others** vs. **S.L.Abbas**; 1993 AIR 2444, **S.C.Saxena vs. Union of India and**

Others; (2006) 9 SCC 583, and the judgment of Delhi High Court in **Sujata Kohli vs. High Court of Delhi**; 2008 (2) AD (Delhi) 538.

19. Para 14 of the judgment of the Hon'ble High Court of Delhi in **Sujata Kohli vs. High Court of Delhi** (supra) reads thus:

"14. In view of the aforesaid dicta, it is clear that transfers normally are not to be interfered with in exercise of the power of judicial review under Article 26 of the Constitution. The only grounds on which the Court can strike down an administrative order of transfer are - (a) when the order is mala fide; or (b) when service rules prohibit such transfer; or (c) when the transfer order is issued by incompetent authority."

20. Para-6 of the Hon'ble Apex Court's judgment in **S.C.Saxena vs. Union of India and Others** (supra) had stated as follows:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the 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. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur

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or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.”

21. We have considered the facts of this case. It is trite law that an employer has all the freedom to utilize the services of his employee at any place of posting, as per the administrative requirements of the employer. Contrary to the submissions of the learned counsel for the applicant, we have not found that there are any reasons of punitive nature which are included in his transfer order dated 21.12.2015, and the 2nd impugned Memo dated 28.03.2016 at Annexure A-1 (Colly).

22. Though the applicant has, in para-5.6 of the O.A., submitted that the orders passed in his case are not in administrative exigency, or in public interest, but are arbitrary and malafide, but, on the other hand, he has not been able to disclose any malafide in law, or malafide in fact, on the part of the respondents, in any of the correspondence between him and his official superior. It is trite law that a letter addressed to his wife by the respondents on 08.02.2016 through Annexure A-5 (colly) will not give rise to any cause of action in the hands of the applicant, as the email sent by his wife, to which it was the reply, is not on record, and in any

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case the applicant was never incapable of himself corresponding with his superiors, and pointing out any discrepancies in their orders, or making any requests directly to them. Also, in terms of the law as laid down by the Hon'ble Apex Court in **Commissioner of Police, Bombay vs Gordhandas Bhanji**, AIR 1952 SC 16, something or anything which has not been stated by a public authority, in the order passed by it, cannot later be read into, or considered a part of such order, as public authorities are barred from supplementing their orders through reasons which are stated or supplied later on.

23. The applicant had addressed his request regarding deferment of his transfer by three months to the respondents through Annexure A-5 (colly) dated 23.12.2015 (supra), and his request at Annexure A-11 dated 29.12.2015 (supra), which were heeded to by the respondents while passing the order dated 31.12.2015 (Annexure A-13) (supra), acceding to his request for extending his stay at Delhi till 31th March 2016, even after an order dated 21.12.2015 relieving him on 22.12.2015 (AN) had been passed. Grateful for this, the applicant had given a solemn undertaking and commitment to the respondents through Annexure A-12 dated 01.01.2016 (supra) that he would join at Mumbai on 01.04.2016, and comply with the orders, but, instead of doing so, he rushed to

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this Tribunal to file the present OA on 29.03.2016, even before the respondents had passed the order dated 31.03.2016 (supra) actually relieving him.

24. Since the respondents had conceded to his request, and had even postponed his transfer till 31.03.2016, even after having passed an order relieving him on 22.12.2015, therefore we do not find that the orders passed by the respondents are malafide in any manner whatsoever, whether malafide in law, or malafide in fact. We also find that the service rules as applicable to the applicant do not prescribe such a transfer as prohibited, just because of his spouse holding a non-transferable post at Delhi.

25. The third component, on the basis of which we could have considered the order of his transfer to be liable to be set aside, as per Para-14 of the Hon'ble Delhi High Court's judgment in **Sujata Kohli vs. High Court of Delhi** (supra), could have been when the transfer order had been issued by an incompetent authority.

26. Here, in the instant case, the Competent Authority has conceded to his request through Annexure A-11 for his retention at Delhi till 31.03.2016, and had passed favourable orders, through Annexure A-13, and for which the applicant was grateful and he had given a solemn commitment/undertaking on 01.01.2016

through Annexure A-12, stating that he would join at Mumbai after his delayed transfer, but he has not done so.

27. It is trite law that it is the duty of the Government servant to first report for work where he is transferred, and then 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, as has been stated by the Hon'ble Apex Court in **S.C.Saxena vs. Union of India and Others** (supra).

28. Also, on the aspect of malafide, in Para-44 of its judgment, the Bangalore Bench of this Tribunal had in **Mahesh Joshi vs. Union of India & Others**; 2008 1 STJ 82 NULL had held as follows:

"44. Though, as held by the Constitution Bench of the Supreme Court in E.P. Royappa's case (supra), the burden of establishing mala fides is very heavy on the person who alleges mala fides in view of the discussion above and our findings above the said burden is discharged. It is made clear that we have arrived at the aforesaid findings only on the basis of the admitted facts and by way of reasonable inference drawn on the admitted facts."

29. Since we do not find that the actions of the respondents have been vindictive, in any manner whatsoever, and even the reasons, on which the learned counsel for the applicant has made a

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submission regarding malafide, were not contained in any correspondence between the applicant and the respondents, but were only mentioned in a reply to the email of applicant's wife, that does not give rise to any cause of action, and does not satisfy the heavy burden upon the applicant for establishing malafide, as per the Hon'ble Apex Court's judgment in **E.P. Royappa vs. State of Tamilnadu**; 1974 AIR 555.

30. Therefore, we do not find any merit in the OA, and the same is dismissed, but there shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

