

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3431/2015

Order reserved on 09.05.2016

New Delhi this the 7th day of June, 2016

Hon`ble Smt. Jasmine Ahmed, Member (J)

S.S.Chawla
S/o Late Sh.Gurmukh Singh Chawla,
Age 55 years Approx.
R/o B-4/337, Ist Floor,
Sector-8, Rohini,
Delhi-110085

... Applicant

(By Advocate : Mr.S.C. Kaul for Mr. Vinod Zutshi)

VERSUS

1. Union of India,
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.

2. National Building Construction Corporation Ltd.,
Through it's Chairman cum Managing Director,
NBCC Bhavan, Lodi Road,
New Delhi-110003.

... Respondents

(By Advocate Mr. K.M.Singh for R-1 and Mr. Abir Phukan
for Mr. Surya Prakash, respondent no.2)

ORDER

By way of this Original application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged order dated 15.06.2015 transferring him from SBG Office Jaipur (Rajasthan) to Zonal Office Aizawal (Mizoram). It is the contention of the learned counsel for applicant that the applicant has been transferred after 19 months whereas as per the transfer policy dated 24.02.1995 the tenure is of 3 (three) to 5 (five) years. He contends that transfer order

does not reflect that transfer is in public interest or in service exigency, hence it is the routine transfer and in absence of any service exigency or public interest the applicant should have been allowed to remain at Jaipur for minimum three years as tenure to remain at any place is prescribed as 3 (three) to 5(five) years. He states that the period of tenure is applicable for posting in Zonal and Corporate Offices for various levels of officers. He states that it is not disputed that in a life time of his service career he has to serve at least one posting for about a period of three years in difficult areas i.e. North Eastern State and Union Territory of Andaman and Nicobar Islands during his service in Corporation but for that the minimum tenure period prescribed cannot be curtailed. He contended that the transfer is mala fide as he asked some information through RTI and CIC refused to give information and ultimately he got the information and after that applicant filed writ petition before the Hon'ble High Court against the order dated 29.05.2015 passed by the Central Information Commission and notices were issued on 31.07.2015 by the Hon'ble High Court and the applicant has been transferred in between. Counsel for the applicant also states that the applicant has stated his inability to handle project amounting Rs.21503.00 lakhs approximately and gave representations dated 16.06.2015 and 23.06.2015 and he also took other relevant points for reconsideration relating to his transfer order dated 15.06.2015. The applicant states that he has joined at Mizoram on 12.10.2015. He states that impugned transfer order, being routine in nature, is simplicitor. Hence transfer order is bad in law as there is no reason to transfer him after 19 months of posting at Jaipur.

2. Counsel for the respondents vehemently opposes the contention of counsel for applicant and states that transfer is exigency of service

and as per the settled principles of law by various judgments of Hon'ble Apex Court, the applicant should have joined first and then represented, but instead of doing this, the applicant was trying to escape the joining at Mizoram but ultimately joined on 12.10.2015 and after joining refused to take over the charges. He states that applicant is not interested in working instead he takes interest in other matters and he filed also PIL (W.P (C) 3194/2013) before the Hon'ble Delhi High Court which was dismissed by the Hon'ble High Court vide order dated 11.10.2013. Counsel for the respondents also states that the applicant preferred two representations dated 16.06.2015 and 23.06.2015 which have been rejected by the respondents vide letter dated 02.07.2015 but the applicant has not challenged or assailed that orders through this OA. He also states that applicant is in habit of giving representations to the department and in this regard he drew my attention to page no 32 (Annexure A-6) of the OA, page No. 36 (Annexure A-7) of the OA and Annexure A-9 (page 40 to 43) in the OA. Counsel for the respondents states that respondents vide letter dated 18.03.2015 has provided all the informations sought for by the applicant. He states that instead of performing the work in department, the applicant was in the habit of creating problem in the place of working and in the habit of filing frivolous litigations before different forum. He also categorically states that the applicant though joined after a long time from the date of transfer to the place of posting i.e. Mizoram but straightway refused to take over the charge from his reliever which showed his attitude. He also states that as per various judgments and settled principles of law, in transferring the applicant from Jaipur to Mizoram, there is nothing arbitrary or illegal on the part of respondents.

3. Counsel for the applicant placed his reliance to the judgment passed by the Allahabad Bench of this Tribunal in the case of **Sukhbir Singh Vs. Union of India and Ors** (OA Nos. 1413, 1414, 1415, 1416 and 1417/2012) decided on 16.05.2014 and states that Allahabad Bench, while dealing with the matter of transfer, has dealt in paragraph 18 of the judgment about routine transfer:

"18. Thus, from the above authentic definitions, it is clear that an administrative exigency is a very pressing necessity, a critical necessity and a situation of great urgency. Thus, normal situations or circumstances do not come under the purview of "administrative exigency". If the situation is a "routine situation" or a "normal prevent situation", then the contention of administrative exigency/requirement etc. has to be rejected. Further, to invoke the defence of administrative exigency/requirement or its various synonyms like in the interest of the organization or in public interest, the "pressing need", or the "critical situation" etc must be demonstrated in the pleadings of the respondents duly supported by the office files on the basis of which such counter affidavits are prepared. Thus, to summarize, to advance the argument of administrative exigency or its various synonyms as noticed above, the pressing need, critical situation etc. must have been considered by the Competent Authority in the files and also must have been demonstrated in the counter affidavit. Conversely, in the absence of any pleadings containing details of pressing needs, urgent or difficult situation necessitating a deviation from the professed norms, the defence of administrative exigency and its various synonyms would not be available to the respondents."

4. He also places his reliance to the judgment passed by Bombay Bench of this Tribunal in the case of **Sugriva Meena Vs. Union of India and Anr.** (OA No. 405/2012) decided on 10.10.2012 and states that in para 36 of the judgment, giving reference to the case of **Union of India and Others Vs. S.L.Abbas** (1993 (4) SCC 357), it has been held that although guidelines do not confer upon the government servant any legal enforceable right, but in the same judgment the Hon'ble Apex Court held while ordering the transfer there is no doubt

that the authority must keep in mind the guidelines issued by the Government on the subject. Hence, he states that as there are guidelines that the minimum period is of 3 (three) to 5 (five) years, the respondents could not have transferred the applicant after completion of 19 months only. Counsel for the applicant also placed his reliance on para 48 of the judgment passed in *Sugriva Meena* (supra) but it is distinguishable in the facts and circumstances as there was no placement committee in this case for seeking approval for effecting transfer.

5. Heard the rival contentions of the parties and perused the pleadings on record.

6. Though there are guidelines about transfer and generally the guidelines framed by the respondents should have been followed while transferring any employee but as transfer is an incidence of service the interest of organization is paramount and if for smooth functioning of an organization and for better administration respondents feel that any employee needs to be transferred, it cannot be termed as bad in law or mala fide or even arbitrary. Though the applicant showed that the minimum tenure period is 3(three) to 5 (five) years and he has been transferred after 19 months but even if the tenure is prescribed minimum three to five years, it does not mean that an employee cannot be transferred before three years. Documents on record somehow reflect that the applicant is in the habit of making representations repeatedly, as he himself stated during the course of argument that he tried to act as a whistleblower and accordingly he has filed public interest litigation before the Hon'ble High Court and also filed complaint before Central Information Commission which shows and reflect about his litigating character. Being or claiming

oneself as whistleblower for unearthing of irregularities may be termed as good cause but in digging out others irregularities not giving importance or refusing to undertake responsibilities of own duty cannot be termed proper or justified. The applicant's representations have been rejected by the respondents which has not been challenged by the applicant which implies he has accepted the refusal. As he has already joined, the applicant is directed to perform his duties at the new place of posting within one week from the date of receipt of certified copy of this order. Accordingly, the OA is dismissed. No costs.

(Jasmine Ahmed)
Member (J)

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