

**Central Administrative Tribunal
Principal Bench**

OA No.3628/2015

Orders Reserved on: 26.07.2016.
Pronounced on: 16.08.2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Sukhveer Singh,
Assistant Chemical Examiner,
H.No.C-177/G-2, Ramprastha Colony,
Ghaziabad.

-Applicant

(By Advocate Shri Srigopal Aggarwal)

-Versus-

1. Union of India through
Secretary,
Dept. of Revenue, Ministry of Finance,
North Block, New Delhi.
2. Dr. Y.S.K. Rathore,
Director, Head Qtr.
Central Revenue Control Laboratory,
Pusa, N. Delhi 8-12.

-Respondents

(By Advocate Shri R.N. Singh)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant praying for the following reliefs:

“(i) to quash and set aside the impugned orders dated 4-9-2015 & 7-9-2015 i.e. Annexure A-1 Colly.

(ii) to direct the respondents to consider the case of the applicant for his transfer to Delhi in terms of his Application dated 03-03-2015 in view of number of vacant posts.

(iii) to pass any orders, which this Hon'ble Tribunal thinks deem fit in the facts and circumstances of the case."

2. The brief facts of this case are as under:

2.1 The applicant was appointed as Assistant Chemist (AC) in the Central Revenue Control Laboratory (CRCL) on 13.05.1999. He was initially posted at Ghazipur, which is considered as a hard station. On 26.06.2013, on promotion as Assistant Chemical Engineer (ACE), he was posted at Customs House Laboratory, Calcutta. The said transfer order was modified at the request of the applicant to enable him to attend his several court cases at Ghaziabad, which also included his matrimonial dispute case. On modification of the transfer order, he was posted at Neemuch vide order dated 31.07.2013.

2.2 On 03.09.2015, he is stated to have requested the respondent no.2 for his transfer to Delhi so that he could attend to his court cases at Ghaziabazd more conveniently. The respondent no.2 vide impugned Annexure A-1 order dated 04.09.2015, posted him to Customs House Laboratory, Calcutta on 18.09.2015 with a direction to the controlling officer at Neemuch to relieve him immediately so that he

could join at Calcutta by 18.09.2015. He was relieved from Neemcuuh on 07.09.2015.

2.3 Aggrieved by the impugned Annexure A-1 transfer order the applicant has filed the instant OA, praying for the aforementioned reliefs.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 26.07.2016. Shri Srigopal Aggarwal, learned counsel for the applicant and Shri R.N. Singh, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant during the course of his submission made the following points:

i) There is no transfer policy in the CRCL and consequently transparency and fairness in the administrative action pertaining to transfers are completely lacking.

ii) There is a draft transfer policy dated 01.01.2009/11.06.2009, which is supposed to be followed. Regarding 'Fixation of Tenure Posting and Rotation between Groups B, C and D employees, it states as under:

“5. The posting of Govt. Opium & Alkaloid Works, Ghazipur & Neemuch is compulsory & it shall be treated as tenure posting of Minimum 2 years & maximum 5 years....”

The learned counsel stated that applicant's abrupt transfer to Calcutta is in violation of the draft transfer policy.

- iii) The applicant had made a request to respondent no.2 for transfer to Delhi on 03.09.2015. Respondent no.2 instead of acceding to the request of the applicant, transferred him to Calcutta, which smacks of hostile discrimination and mala fide attitude of the respondent no.2 towards applicant.
- iv) Several other officers have been transferred but they have not been relieved; one official at Neemuch had overstayed but he has not been transferred. Hence the transfer of the applicant and his immediate relieving indicate discriminatory attitude of respondent no.2.
- v) Considering the personal circumstances of the applicant, respondent no.2 posted him to Neemuch in the year 2013. The personal circumstances of the applicant have not changed since then. His requirement to go to Ghaziabad frequently to attend to several court cases continues even now. Thus the sudden transfer of applicant to Calcutta is inexplicable.
- vi) There are four vacancies at Delhi, the applicant could have been accommodated against one of those vacancies but respondent no.2 has simply ignored the request of the applicant for transfer to Delhi. The applicant does not

possess any special skills without which the working at Calcutta Laboratory would suffer.

4.1 To buttress his arguments, the learned counsel placed reliance on several judgments of the higher Courts which are:

a) Judgement of the Kerala High Court in the case of **State of Kerala v. Balakrishnan**, [1992 (1) KLT 420] in which it has been held as under:

“When transferring authorities seek to justify the transfer order on the premise of public interest as the transfer would otherwise be in violation of the norms established by the Government or the authority concerned, court has power to scrutinize whether the transfer was in Public Interest. In other words, Public interest should not be a camouflage or a smoke-screen.”

[Ref. *K. Ramachandran Vs. Director General, All India Radio, N. Delhi & Ors.* 1994 (27) ATC 650].

b) Judgment of Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty vs. International Airport Authority of India**, AIR 1979 SC 1628, in which it has been held as under:

“It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them.”

c) Judgment of the Bombay High Court in the case of **Seshrao Nagorao Umap v. State of Maharashtra**, [1985 (1) BomCR 30, (1985)IILLJ73 Bom], in which it has been held as under:

"A transfer is mala fide when it is made not for professed purpose, such as in normal course of in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair. Frequent unscheduled and unreasonable transfer can uproot a family, cause irreparable harm to the employee and drive him to desperation. It disrupts the education of the children and leads to numerous other inconvenience and problems and results in hardship and demoralisation."

d) Judgment of the Hon'ble Supreme Court in the case of

Madhya Pradesh State Cooperative Dairy Federation Limited and Another v. Rajnish Kumar Jamindar and others, [(2009) 15 SCC 221], in which it has been held as under:

"The power of judicial review of a superior court although a restricted one, has many facets. Its jurisdiction is not only limited in the cases where the administrative orders are perverse or arbitrary but also in the cases where a statutory authority has failed to perform its statutory duty in accordance with law. An order which is passed for unauthorized purpose would attract the principles of malice in law."

e) Judgement of the Ernakulam Bench of this Tribunal in the case of **K. Ramachandran v. Director General, All India Radio, New Delhi & Ors.**, [OA no.1411/1993, decided on 06.10.1993, wherein this Tribunal, in regard to transfers of officers belonging to SC/ST categories (the applicant belongs to SC category), observed as follows:

"6. This Tribunal followed the above decision in R. Nonoo v. Divisional Railway Manager, Trivandrum, (1989) 10 ATC 137 and quashed the transfer of a Head Clerk (SC member) when it found that it was violative of the instructions referred to above and held as follows :-

"The postings and transfers of the members of SC/ST stand on a different footing and unless there are overriding and exceptional reasons of public interest and administrative exigency, the transfer of SC/ST officials away from their native places should not be made."

7. Recently, following the above decision, the Jaipur Bench of the Tribunal in S.S. Verma V. Union of India, (1993) 23 ATC 596 (JAI) quashed the transfer of Assistant Commercial Superintendent II, who belongs to ST community, giving concentrated attention to a circular issued by the Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) on 24-6-1985 and observed as follows :-

14. In the case of the persons of the ST and SC there is prohibitory as well as mandatory direction. Officers have been directed that the employees belonging to the SC and ST should be transferred very rarely and for very strong reasons only. Thus there is a prohibition that there should not be general transfers of the officials of the ST and SC and, if at all, they have to be transferred they should be transferred for very strong reasons. Very strong reasons stand on a higher pedestal than the sufficient reasons or administrative exigencies. Persons of the ST and SC cannot be transferred on administrative exigencies only or on sufficient grounds but they can only be transferred when there are very strong reasons compelling the administration to transfer them."

5. Concluding his arguments, the learned counsel prayed for allowing the OA and granting the reliefs claimed.

6. Per contra, learned counsel for the respondents opposed the pleadings made in the OA as well as the arguments put-forth by the learned counsel for the applicant. He made the following important points during the course of his submissions:

- a) The applicant's transfer vide the impugned order has been done in public interest and no rule or policy has been violated.
- b) In view of the settled law on the subject of transfer of government servants, this Tribunal may not like to interfere

in the transfer of the applicant, exercising its judicial power. Reliance in this regard was placed on the following judgments of the superior courts:

- i) **Mrs. Shilpi Bose & Os. Vs. State of Bihar**, [AIR 1991 SC 532];
- ii) **Union of India v. S.L. Abbas**, [(1993) 4 SCC 537];
- iii) **State of U.P. & Ors. v. Gobardhan Lal**, [AIR 2004 SC 3165]; and
- iv) Decision of the Hon'ble Delhi High Court in **Sujata Kohli v. High Court of Delhi**, [148 (2009) DLT 17 (DB)].

c) The CRCL has 13 Subordinate Laboratories, out of which 11 are under various Commissionerates of Customs at various places in the country and only two of them, namely, Government Opium Alkaloid Factory (GOAF) at Neemuch and Ghazipur under the direct control of Chief Controller. The Commissioner of Customs, Calcutta vide his Annexure R-3 letter dated 24.08.2015 had specifically requested respondent no.2 that two ACEs and two CAs may be posted to Kolkata Laboratory urgently as there are a large number of vacancies (18 posts lying vacant out of 24 sanctioned posts) and there is huge pendency of samples to be examined, about 1500.

d). The Assistant Commandant, CISF Unit, New Delhi has intimated that the seized drugs at Neemuch are being misused by some officers, including the applicant.

e) The learned counsel submitted that the OA is not maintainable at the Principal Bench as the applicant stands transferred to Calcutta and he ought to have filed his OA before the Calcutta Bench of this Hon'ble Tribunal.

7. Concluding his arguments, the learned counsel submitted that the applicant has been transferred in public interest taking cognizance of large number of vacancies at the Calcutta Laboratory and also in view of the fact that there are allegations of misuse of his authority against the applicant at Neemuch. The learned counsel, therefore, prayed for denial of the reliefs claimed in the OA.

8. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. We find that genesis of the impugned Annexure A-1 transfer order dated 04.09.2015 are Annexure R-3 letter dated 24.08.2015 from the Commissioner of Customs, Calcutta to respondent no.2 seeking posting of two ACEs and two CAs urgently to the Laboratory at Calcutta to attend to huge accumulation of samples and the Annexure R-2 letter dated 18.11.2014 from

Chief Controller, Government Opium Alkaloid Factory, addressed to respondent no.2 wherein it is stated that the Assistant Commandant, CISF Unit, New Delhi has made certain allegations against the applicant regarding misuse of his position. In the impugned order, both these letters have been cited. Hence, we do not accept the averments of the applicant that respondent no.2 has indulged into any kind of hostile discrimination or arbitrariness towards him. Although the applicant has been requesting for his transfer to Delhi to respondent no.2 but respondent no.2 being at the helm of CRCL has to take into consideration the overall interest of the CRCL in the matter of manpower deployment. As a matter of fact, the applicant was initially posted to Calcutta but at his request, respondent no.2 was kind enough to post him to Neemuch on the ground that he has to come to Ghaziabad frequently to attend to his several court cases. We would like to observe that given the excellent connectivity between Calcutta-New Delhi/Ghaziabad the applicant shall have no difficulty in coming to Ghaziabad for attending to his court cases.

9. In the matter of transfer of government servants, the Hon'ble Supreme Court in the case of **S.C. Saxena v. Union of India**, [2006 SCC (L&S) 1890] at para-6, has held as under:

“....a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to the 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....”

10. The applicant is, therefore, required to first go and join at the transferred place and thereafter he can represent to his higher authorities against the said transfer.
11. In view of the discussions held in the previous paras, we do not find any merit in the OA. The OA is accordingly dismissed.
12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’