

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2959/2017

Order Reserved on:29.08.2017
Order pronounced on 05.09.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Mahendra Singh Varma, age 48 years
Director, Central Water Engineering Services (Group-A)
House No.C-402
M.S.Apartments, Katurba Gandhi Marg
New Delhi – 110 001. ... Applicant

(By Advocate: Mrs. June Chaudhari, Sr. Advocate with Ms. Sumeeta Chaudhari)

Versus

1. Union of India
Through Secretary
Ministry of Water Resources
River Development and Ganga Rejuvenation
Shram Shakti Bhawan, Rafi Marg
New Delhi.

2. Chairman, Central Water Commission
Sewa Bhawan, R.K.Puram
New Delhi. ... Respondents

(By Advocate: Shri Sunil Ahuja)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, a Group 'A' Officer of Central Water Engineering Services and in the level of Director, and working as Senior Joint Commissioner in the Flood Management Wing of the Ministry of Water Resources, River Development and Ganga Rejuvenation, New Delhi, filed the OA, aggrieved by the action of the respondents in transferring him to Farakka Barrage Project, vide the impugned **Annexure A1**-Office Order No.381/2007, dated 12.06.2017.

2. The factual matrix of the case, as narrated by the applicant in the OA, are that the applicant on his selection to Central Water Engineering Services, joined in the Ministry as Assistant Director on 10.09.2001 at New Delhi. He was promoted to the post of Deputy Director on 18.04.2006 and posted in the Instrumentation Directorate of Central Water Commission at New Delhi. He was transferred to Ganga Wing on 09.04.2007, however, posted at New Delhi. Again on his promotion to the Junior Administrative Grade, he was posted to the present post of Senior Joint Commissioner on 12.06.2015, however, at New Delhi. As a result, the applicant has been continuously working from 2001 to till date, i.e., for the last about 16 years, at New Delhi only, however, in different capacities.

3. The respondents vide **Annexure A8**-Office Order dated 05.04.2017 transferred various officers in the grade of Directors/Superintending Engineers/Senior Joint Commissioners in public

interest, to various places. The applicant was also transferred under the said proceedings to Bhopal, vice one Shri T.D.Sharma. However, the respondents in partial modification of the aforesaid order dated 05.04.2017, transferred the applicant to Farakka Barrage Project, vide the impugned **Annexure A1** dated 12.06.2017.

4. Heard Mrs. June Chaudhari with Ms. Sumeeta Chaudhari, the learned counsel for the applicant and Shri Sunil Ahuja, the learned counsel for the respondents, on receipt of advance notice, and perused the contents of the OA and its Annexures.

5. The learned senior counsel, appearing for the applicant, submits that in terms of **Annexures A3 and A4** – Rotational Transfer Policy, applicable to the applicant, the applicant submitted his order of preferences for place of posting, i.e., (1) Bhopal, (2) Chandigarh and (3) Nagpur. The respondents having accepted the same, transferred the applicant to Bhopal vide Annexure A8, dated 05.04.2017. Though the applicant was required to be relieved not later than 30.04.2017, as directed in Annexure A8 itself, but was in fact not relieved. On the other hand, transferred the applicant to Farakka Barrage Project, in modification of the Order dated 05.04.2017. The applicant preferred **Annexure A9**-Representations dated 15.06.2017 and 03.08.2017 seeking for retention of the transfer of the applicant to Bhopal, explaining his personal difficulties, along with other reasons for the same, but the respondents have not passed any orders thereon till date.

6. The learned senior counsel strenuously pursued this Tribunal that the transfer of the applicant is against to the Rotational Transfer Policy of the respondents.

7. Per contra, the learned counsel for the respondents drawn our attention to **Annexure A2**-Office Memorandum dated 01.08.2007 and submits that the transfer of the applicant is in public interest and that there is no violation of any of the Rules of the Rotational Transfer Policy of the respondents and that the representations of the applicant have been rejected by the competent authority, and even though the applicant was directed to report for duty at Farakka Barrage Project, immediately, he failed to comply with the said direction. He further submitted that the applicant has already drawn the transfer travelling allowance to aid his joining at Farakka Barrage Project, but even thereafter he has not reported at Farakka Barrage Project, therefore, he was issued with the Annexure A2-Office Memorandum dated 01.08.2017 granting last opportunity to the applicant to join at Farakka Barrage Project within five working days, failing which administrative and/or disciplinary proceedings shall be initiated against him. In spite of the receipt of the said Office Memorandum, the applicant has not reported at Farakka Barrage Project and in fact, unauthorizely absenting himself from duty w.e.f. 12.06.2017.

8. It is not in dispute that the applicant has been working at New Delhi from the date of his initial appointment in the year 2001 to till

date, i.e., continuously for the last about 16 years. It is also not in dispute that the impugned modified transfer order was issued on 12.06.2017 and that the applicant stands relieved from New Delhi w.e.f. 16.06.2017.

9. When a query was raised by this Tribunal, the learned senior counsel, on instructions from the applicant, who is present in the Court, submitted that one of the representations made by the applicant against the impugned modified transfer order dated 12.06.2017 was rejected by the competent authority. The facts of availing the transfer travelling allowance and the relief from duty w.e.f. 16.06.2017 and not joining at the new place of posting, i.e., Farakka Barrage Project till date, also not denied by the applicant.

10. In **State of U.P. v. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Apex Court held as under:

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable

rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

11. In **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583,

the Hon'ble Apex Court observed, as under:

ð6. 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. í í í í í í .ö

12. In **Rajendra Singh & Others v. State of UP & Others**, (2009)

15 SCC 178, the Hon'ble Apex Court held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

13. In view of the aforesaid settled position of law in respect of the transfers of public servants and since the applicant has not shown any valid reason/ground on which the transfer order can be interfered by this Tribunal, such as violation of a statutory provision, mala fides, etc., the OA is dismissed being devoid of any merit.

14. However, in the circumstances and in the interest of justice, the respondents shall not initiate any disciplinary proceedings against the applicant and shall treat the break period as leave available to his credit, if the applicant joins at Farakka Barrage Project, within two

weeks from today. Further, this order shall not preclude the applicant from making any appropriate representation to the respondents seeking transfer from Farakka Barrage Project to any other place, ventilating his personal grievances, if any, on any future date, and if such a representation is preferred by the applicant, the respondents shall consider the same, in accordance with law. No costs.

Registry is directed to issue a copy of this order DASTI to both the parties.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/