

**Central Administrative Tribunal
Principal Bench**

OA No.3111/2012

Order reserved on : 18.05.2016
Order pronounced on : 27.05.2016

Hon'ble Mr. V.N. Gaur, Member (A)

Shri Arvinder Singh Dutta
S/o Shri Dalip S. Dutta,
R/o C-7/65 B,
Keshav Puram,
Delhi-110035

...applicant

(By Advocate : Shri Anand Mishra)

Versus

Union of India
Through Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

...respondent

(Shri M.D. Jhangra for Ms. Priyanka Chopra)

ORDER

The applicant has filed this OA claiming the following reliefs:-

- “8.1 Set aside the impugned transfer order dated 22.08.2012 and direct the Respondent to not to disturb the posting of the Applicant till the expiry of three years of his posting with all the consequential benefits;
- 8.2 Quash the operation of resolution of 206th Meeting of the SEB held on 09.08.2012 to the extent showing the post of the Applicant as ‘vacant’ on 21.09.2012; and
- 8.3 pass such further order/s in the interest of justice and in favour of the Applicant as this Ld. Tribunal may deem fit and proper.”

2. The OA came up for hearing on 23.01.2013 but the same was dismissed by this Tribunal in default and also noting that OA had become infructuous, since the applicant had already joined the new place of posting by that time. The applicant filed MA No.789/2013 for restoration of OA No.3111/2012, *inter alia*, submitting that the cause of action still survived as the respondent had not disclosed the reasons for denying extension of deputation of the applicant. However, when the matter was called on 30.10.2013, none appeared on behalf of the applicant even on the second call and the OA was dismissed in default. The applicant filed another MA No.3227/2013, in which notice was issued, for restoration of the OA, which came up for hearing on 21.01.2014 and again the Tribunal was constrained to dismiss it as none appeared on behalf of the applicant even on the revised call. The applicant filed another MA No.435/2014 to set aside the order dated 21.01.2014 in MA No.3227/2013, which was allowed on 17.09.2014 by recalling the order dated 30.11.2012 and restoring the OA to its original number. After a good number of adjournments mostly on behalf of the applicant, the matter was finally heard on 18.05.2016.

3. The learned counsel for the applicant giving the background of the case explained that the applicant who was serving as Principal Private Secretary (PPS) in the Ministry of External Affairs was transferred to Embassy of India at Kabul in the year 2010 and he joined there on 22.09.2010. According to an order dated

07.11.2003, the prescribed tenure for postings of all India based personnel in the Embassy of India in Kabul was two years but “the requests of personnel working in Afghanistan for an extended tenure of three years will be considered, provided the requests are purely on a voluntary basis, and have the recommendation of HOM/HOP.” Before completion of his tenure in Kabul, Ambassador of India in Kabul vide letter dated 20.06.2012 communicated to the MEA the readiness of the applicant for extension of tenure in Kabul for another one year and recommended the same from his side. The Senior Establishment Board (SEB) of MEA which considers the postings of India based personnel to the missions abroad in its meeting held on 16.07.2012 decided that as the last date for representations for extension of tenure was 20.06.2012, any representation received after that date would not be considered. The recommendation in respect of the applicant was sent on 20.06.2012 and, therefore, it was within time. The fact that the request of the applicant was not considered by the respondent was reflected by the vacancies projected to the SEB as shown in the list of vacancies annexed to the minutes of SEB (Annexure-A/4). The name of the applicant figured at Sl. No.17, showing his tenure as two years and the date of vacancy as 21.09.2012. On request of the applicant, the Indian Embassy in Kabul again wrote to the MEA on 24.07.2012, for reconsideration of its decision by SEB with regard to the extension of the tenure of the applicant. The respondent,

however, rejected the representation vide E-mail to the Embassy dated 01.08.2012 with cryptic reply that "The request for extension of tenure was considered at the appropriate level and it was not found possible to accede to his request".

4. According to the learned counsel, the applicant had volunteered for a posting in Kabul at a time when the situation was difficult there due to the incident of attack on the Embassy. There were not many takers for the assignment but the applicant in true spirit of service of the nation offered to serve in Kabul in the face of considerable risk to his life. During his tenure, he discharged his duties to the best of his ability and sincerity and as a result the highest functionary there, i.e. the Ambassador, recommended the extension of his tenure twice to the respondent. But the respondent in violation of their own policy of 2003 without assigning any reason rejected the request. In the past, no such request for extension of tenure from Afghanistan was rejected by the respondent.

5. In the counter reply filed by the respondent, it has been stated that the conduct of the applicant when he was posted in Embassy of India Berlin, Germany had brought bad name to the Ministry as the applicant harassed his wife by not only abusing her verbally but also beating her physically. A complaint had been filed by his father-in-law to the then Foreign Secretary. The learned counsel for

applicant submitted that this was nothing but an attempt made by the respondent to mislead the Tribunal as the allegations against the applicant pertain to the year 2003 and thereafter, the applicant had done a posting at Washington before returning to the Headquarters. If the complaint against the applicant had any basis, the respondent would not have considered him for a prestigious posting at Washington. During a hearing in the Central Information Commission on 10.02.2014, the representative of the respondent had categorically stated that matrimonial complaint of 2002 had nothing to do with the decision of the Ministry not to grant him extension in stay at Kabul, as the complaint was not opened after its closure in 2003. The learned counsel reiterated that the respondent had in an illegal and arbitrary manner or in violation of its own policy had denied the legitimate expectation of one year extension of the tenure of the applicant at Kabul. Relying on ***The Management of the Syndicate Bank Ltd. Vs. The Workmen***, in Civil appeal No.248 of 1965, the learned counsel submitted that this Tribunal was duty bound to interfere in a transfer order that is issued out of malafide or some ulterior motive and the case of the applicant was a fit case for such intervention by the Tribunal.

6. The learned counsel for the respondent was vehement in denying the allegations made by the applicant and submitted that it

was a well settled law that the transfer was an incidence of service and an employee cannot claim legal right to continue at a particular place, as per his liking or continue to be posted forever at one particular place. The Court should not interfere with the Order of transfer, which is made in public interest and due to administrative exigency. The learned counsel referred to the judgments of Hon'ble Supreme Court in the cases of **Major General J.K. Bansal Vs. UOI** (2005) 7 SCC 227, **UOI Vs. H. Kirtaniya** (1989) 3 SCC 445, **Shilpi Bose & Ors. Vs. State of Bihar and Ors.** AIR 1991 SC 532 and **National Hydro Electric Power Corporation Ltd. Vs. Sh. Bhagwan** (2001) 8 SCC 574, in support of his contentions. Responding to certain factual details given by the learned counsel for the applicant, the learned counsel submitted that though there was a policy that permitted extension of the tenure of persons posted in Afghanistan by one year, it was not mandatory for the respondent to grant such extension in each and every case. The policy also envisaged that any request for extension should come six months before the normal tenure of two years. In the present case, the request of the applicant came just about three months before the expiry of the tenure. It was also not true that all requests for extension in Kabul was accepted; for example the request of Shri Vijay Ranjan, UDC for extension in July, 2009 was not accepted by the respondent. In general, out of 17 requests received from various missions/posts abroad almost 50% requests

were rejected. Learned counsel denied that there were no takers for the posts in the missions/posts in Afghanistan. The vacancies in Kabul were circulated on 10 occasions since September, 2010 and 34 applications were received for 10 vacancies. He also refuted the submissions of the applicant that he had enthusiastically taken up the assignment in Kabul in the year 2010, as reflected by the fact that his posting order was issued in April 2010 but he moved only on 21.09.2010, after a Memo was issued to him to proceed to Kabul immediately. His claim of eagerness to serve in Kabul, therefore, "is without any basis." According to the learned counsel, respondent has a right to choose the person to be posted at different locations abroad taking into account the efficient functioning and other administrative factors.

7. I have carefully perused the record and considered the arguments presented by the learned counsels from both sides. *Ex facie* the sequence of orders passed by this Tribunal dismissing this OA in default shows that the applicant has lost interest in this OA. The impression is reinforced by the fact that the counter reply by the respondent was filed on 01.11.2012, but rejoinder was filed on 30.10.2014. However, I, now proceed to examine the issue raised by the applicant that the denial of extension of tenure in Kabul to the applicant was *dehors* the rules and policy of the respondent.

8. The mainstay of the argument of the learned counsel for the applicant is the policy letter of the respondent of 2003 which reads as follows :-

“Ministry of External Affairs
(Administration Division)

No.Q/GA/663/1/98

November 7, 2003

ORDER

The prescribed tenure for postings of all India-based personnel in the Embassy of India in Kabul is two years and in the CGIs in Herat, Mazar-e-Sharif, Kandahar and Jalalabad is eighteen months only.

2. The requests of personnel posted in Mission/Posts in Afghanistan, for continuation in the place of posting for a normal tenure of three years, have been examined in the Ministry. It has been decided that the requests of personnel working in Afghanistan for an extended tenure of three years will be considered, provided the requests are purely on a voluntary basis, and have the recommendation of the HOM/HOP.

3. The option should be exercised six months before completion of the normal tenure of two years/eighteen months, whichever is applicable.

4. No additional facility of Home Leave Fare will be available during the extended period of tenure.”

9. As can be expected, in this policy the respondent have not provided for automatic extension of the tenure to the third year, even if such a request is made by the employee and the same is recommended by the HOM/HOP. In a Ministry like the Ministry of External Affairs, in the national interest, the respondent have to consider various factors like personality disposition of the employee, his behaviour, the number of volunteers opting for posting at that place, the rotation policy, need of the personnel in Headquarters

and so on. Besides, the personnel dimensions of the decision, the factors that may impinge on the security of the mission and its personnel also have to be taken into consideration. The respondent have the following to say in the counter reply about the applicant (page 6 of the counter reply filed on 01.11.2012) :-

“Even from the contents of OA filed by the applicant it is evident that the applicant does not have quality of a discipline employee inasmuch as, he has made false arguments in his original application. So far as the contentions that he is working extra hours is concerned, it is humbly submitted that the working hours in a Ministry are prescribed and the method of communication through various channels has also been prescribed. The applicant has not followed any of the aforesaid methods, therefore, the method of protest adopted by the applicant violates the discipline and rules of organization. Considering the conduct of the applicant, the respondent can not take any chance to continue the applicant in Kabul. The Indian mission in Kabul has faced diplomatic challenges of the highest order while operating in extremely complex and unsafe environment, therefore, it has become more important for the officers and staff to conform to the highest standard of discipline. Furthermore, it is for the competent authority to decide about the extension of service for extra year in Kabul and applicant can not ask for extension as a matter of right. The competent authority has found that no functional ground is served by retaining applicant for an extra year in Kabul and continuation of applicant in Kabul will be detrimental to the functioning of mission and to the national interest.”

10. In the affidavit filed on 16.08.2013, it has been further stated that :-

“Further, the Applicant submitted a note dated 11.09.2012 stating that he would be working 12 hours everyday, including weekends, to protest against the decision of the Ministry by not granting him the third year of tenure at Kabul. The Applicant subsequently submitted another note dated 13.09.2012 stating that he would be undertaking a fast on 13.09.2012.”

11. The submissions of the applicant that there were no exceptions to the norm of automatic extension of the tenure of the employees in Afghanistan and that there are view takers for the post occupied by him have been effectively countered by the respondent in their counter reply. I, therefore, do not find violation of any rules or law that gives a right to the applicant for extension of his tenure while posted in Kabul.

12. The learned counsel for the applicant has relied on the ***Management of the Syndicate Bank Ltd.*** (supra) to exhaust upon this Tribunal to 'intervene' in this matter by quashing the impugned order that denied extension of tenure of the applicant in Kabul. In the aforesaid judgment the Apex Court has further added that :

“But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds.”

13. In the present OA, the applicant has failed to place on record an iota of evidence that could indicate any malafide or an intention to punish the applicant. He was transferred out after completion of his normal tenure and he can not claim a right to an extended tenure as already discussed earlier. The Hon'ble Supreme Court in ***H. Kirtanya, Shilpi Bosae, NHEPC Ltd., Major General J.K. Bansal*** (supra) and a catena of judgments has ruled that an

employee has no legal right to continue in a particular place as per his liking and the courts should not interfere with a transfer which is made in public interest and for administrative exigencies.

14. In the background of the aforementioned discussion, I do not find any merit in the OA, and the same is dismissed, as such. No costs.

(V.N. Gaur)
Member (A)

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