

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3210/2015

New Delhi this the 13th day of May, 2016

Sunil Kumar Mishra,
Assistant Accounts Officer
S/o Sh. Devendra Mishra,
R/o H.No.4 16/10, Laxmi Vihar,
Burari, Delhi-110084.

... Applicant

(By Advocate Ms. Priyanka Bhardwaj for Mr.M.K.Bhardwaj)

VERSUS

Union of India and others through,

1. The Secretary,
Ministry of Finance,
North Block, New Delhi.
2. The Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhawan,
New Delhi.

... Respondents

(By Advocate Mr. D.S.Mahendru)

ORDER

The brief factual matrix of the case is that the applicant herein initially joined as LDC and got appointment as Accountant in the office of CCA (Finance), under Controller General of Accounts (CDA). On qualifying the AAO (C) examination conducted by CDA, the applicant promoted to the post of Assistant Accounts Officer (AAO) vide order dated 20.11.2014 and was posted in Central Board of Direct Taxes (CBDT) Delhi where he joined without any delay. But suddenly the respondents have transferred the applicant from CBDT Delhi to CBEC, Raipur vide order dated 23.07.2015 which is the impugned transfer

order assailed by the applicant herein. After being transferred vide order dated 23.07.2015, the applicant preferred representation dated 24.07.2015 followed by reminder dated 03.08.2015 but the respondents till date have not passed any orders on those reminders preferred by the applicant.

2. It is the contention of counsel for the applicant that as per Office Memorandum dated 14.05.2008 published by the respondents themselves the tenure on transfer on promotion as Assistant Accounts Officer/Junior Accounts Officer is 4 (four) years in one Ministry/Department but respondents in violation of the above said policy issued the impugned transfer order. In this regard, counsel for the applicant drew my attention to page no. 27 which is an Office Memorandum dated 14.05.2008 published by Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts which gives guidelines about transfer on promotion as Junior Accounts Officer and Pay & Accounts Officer. Para 11 of the above said office memo quoted below:-

"Apart from the above instructions relating to all- India transfer liability on promotion as Junior Accounts Officer/Pay & Accounts Officer, it is mentioned that this office is also following the policy of making inter-Ministry transfers of SrAOs /PAOs and AAOs/JAOs on completion of four years tenure in one Ministry/Department after which they are transferred to other Ministry/Department. This policy will continue to be followed, except that in case of posting to Ministry of External Affairs, tenure will be two years for a SrAO/PAO and three years for a AAO/JAO, after which he/she may be posted to another Ministry/ Department.

3. Counsel for applicant states that bare reading of this para 11 clearly states/reflects that the minimum tenure of an employee holding post of AAO is 4 (four) years and the applicant herein has been

transferred from Delhi to Raipur within seven months of his posting at Delhi which is in violation of their own office memo dated 14.5.2008 which is very much in vogue today also. She also drew my attention to page no. 30 which is office memo dated 14.05.2009 published by Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts. Subject matter of this office memorandum is inter-ministry transfer to Ministry of External Affairs-amendment to existing transfer policy dated 14-5.2008. The relevant portion of this OM is quoted below:-

"In partial modification of para 11 (Eleven) of this office OM No. A-32014/1/2002/MF CGA (A)/Gr.B/Vol.III/224 dated 14.5.2008, it has been decided with the approval of the competent authority that the tenure of Sr. AOs/AOs/AAOs & JAOs posted in Ministry of External Affairs will be the same as applicable in other Ministries/Departments i.e. four (4) years.

This OM comes into force with immediate effect."

4. Counsel for the applicant also drew my attention to page no. 31 which is also an office memorandum published by Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts dated 25.11.2014, the subject matter of office memorandum is transfer on promotion as Assistant Accounts Officer and Pay & Accounts Officer-amendment to existing transfer policy dated 14.05.2008 and subsequent amendment dated 14.05.2009. The OM quoted as under:-

"In partial modification of Para-8 (eight) and Para-11 (Eleven) of this office OM No.A-32014/1/2002/MF.CGA (A)/Gr.B/Vol.III/224 dated 14-5-2008 and subsequent amendment dated 14-5-2009, following has been decided with the approval of the competent authority:

1.

xxx

xxx

2. To insert below para-11 that "The Controller General of Accounts may if satisfied that it is necessary or expedient in public interest so to do, by order, and for reasons to be

recorded in writing, transfer a Sr.AO/AO/AAO from one Ministry to the other in the same grade before completion of above prescribed tenure.

This OM comes into force with immediate effect.'

5. Counsel for the applicant states that even if the respondents want to transfer the applicant on public interest or in service exigency as per this OM, the Controller General of Accounts has to be satisfied and the reasons to be recorded in writing for transferring SrAO/AO/AAO from one Ministry to other. Here the respondents before transferring the applicant have not stated in the transfer order dated 23.07.2015 what is the necessity occurred within seven months from the date of posting of the applicant at Delhi to transfer again to him at Raipur.

6. It is stated by the counsel for the applicant that in the transfer orders dated 23.07.2015 and 20.11.2014, it has nowhere been stated that these transfer orders are issued in public interest or due to service exigency. Hence, the transfer orders dated 23.7.2015 and 20.11.2014 are in direct contravention of the OM issued by the respondents dated 25.11.2014 which is very much in existence when the transfer order was issued by the respondents.

7. Counsel for the applicant contended that the applicant has also given a representation and it is the duty of the respondents at least to give a reply either in affirmative or negative to the applicant. She also vehemently argued that even the transfer is against the education policy as the transfers have been done in the mid academic session, being transfer order dated 23.7.2015. She states that the applicant

has undergone knee surgery at Safdarjung Hospital on 20.06.2014 and after this surgery he needs physiotherapy and also personal care as he has undergone knee surgery only on 20.06.2014 and he has been transferred vide order dated 23.07.2015, hence the request of the applicant on medical ground is also very much justified as the surgery has taken place at Delhi. She states that even though the OM dated 23.07.2015 reflects that the applicant has been transferred from Delhi to Raipur against existing vacancy but as such there is no vacancy existing at Raipur. While arguing, the counsel for applicant has placed her reliance on the judgment passed by this Tribunal in OA No. 749/2013 decided on 9.05.2013 in the case of **R.K.Sharma Vs. Union of India and Ors** and drew my attention to paragraph 19 of the judgment which is quoted below:-

“In the circumstances, OA is disposed of with direction to respondents to pass a fresh order indicating their articulated stand i.e. whether the transfer of the applicant is in deviation of Clause 5.5. & 5.6 of the policy being warranted by public interest and administrative exigency or the same is in consonance with the provisions of the policy. Till then the applicant would not be forced to join as Commissioner (Appeal), Kolkata Customs and would be treated on duty in Delhi with consequential benefits. No costs.’

8. Counsel for the applicant states that para 11 of the OM dated 14.05.2008 and partial modification dated 14.05.2009 and also subsequent amendment to existing transfer policy dated 14.05.2008 and subsequent amendment dated 14.05.2009 published on 25.11.2014 are in contradiction with the transfer order issued by the respondents vide order dated 23.07.2015. She vehemently argued that in the absence of any specific declaration by the respondents whether the transfer is in public interest or service exigency, the

transfer within seven months of his posting wherein the transfer policy states of a period of completion of four years tenure in one Ministry/Department the transfer order is completely in contravention of the OM dated 14.05.2008 and accordingly the transfer order is arbitrary and bad and liable to be quashed and set aside. The applicant is transferred at Delhi only before seven months and by this time he must have just settled his children to school and again transferring him will suddenly in mid academic session will create problem to the applicant for again getting admission for children in a new place.

9. Per contra, counsel for the respondents vehemently opposes the arguments of the counsel for applicant and states that transfer is an incident of service and the applicant is having all India transfer liability and hence the applicant being a Government servant as per various judgments passed by Hon'ble Apex Court should have joined his new place of posting and after that he should have preferred representation detailing his grievances and problem to the respondents for consideration. He also states that though it is mentioned in the OM dated 14.05.2008 the tenure is of four years but if the circumstances of the organization demands any employee can be transferred at any point of time as the interest of the organization is paramount. Learned counsel also denied that the applicant has not been transferred against existing vacancy. He states categorically that the applicant has been posted against existing vacancy and it is not correct that there is no vacancy at Raipur. He also states that applicant's contention that there are several requests from others to transfer them to Raipur is also not correct as there is no such request lying pending with the respondents as of today. He states that he will place in this regard the original

records which will prove that vacancy is existing at Raipur. As the post of AAO in CBEC, Raipur is lying vacant since long and request is made from there that is why the applicant has been posted at CBEC Raipur and he has handed over the original record and showed that in original record also a decision was taken on 20.07.2015 proposing the name of applicant for posting at CBEC Raipur. In this regard, he places his reliance on a judgment passed by this Tribunal in OA 3563/2015 decided on 15.03.2016 in the case of **Ashok Kumar Vs. UOI and Ors**, wherein the OA has been dismissed, wherein also the applicant was transferred before completion of his tenure of four years. In para 6 of the judgment it is specifically quoted that ".....since October, 2011, the applicant, only except for a stint of less than 3 months remained posted at Karnal, and then, transfer of the applicant out of Karnal cannot be said to be in violation of the transfer policy." The transfer order is of dated 11.08.2015 which clearly reveals that the applicant almost completed his tenure of four years at Karnal. Hence, the situation of the applicant is not similar that of Mr.Ashok Kumar in OA 3563/2015. In this judgment in para 10, it has been discussed about the judgment passed by Hon'ble Apex Court in the case of **Union of India and Others Vs. H.N.Kirtania** (1989) 3 SCC 445), wherein it was held that "transfer of a public servant made on administrative grounds, or in public interest, should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules, or on the ground of mala fide."

10. The instant case is clearly distinguishable as the transfer order dated 23.07.2015 nowhere states that transfer is on administrative ground or in public interest. Hence the facts and circumstances of the

case is clearly distinguishable and the argument of the respondents counsel does not hold good.

11. Heard both the counsels for the parties and perused the documents on record.

12. It is not disputed and also settled proposition of law by through various judgments passed by Hon'ble Apex Court that transfer orders are generally not to be interfered with by the Courts/Tribunals unless found arbitrary, in violation of statutory rules, mala fide or under the garb of colourable exercise of power or issued by incompetent authority. But time and again transfer orders have been challenged and orders have been passed. There in this instant case even the representation preferred by the applicant dated 24.07.2015 through proper channel has not been decided by the respondents. Any policy made by Government (respondents) is not a single day job. Before making a policy various discussions on various problems take place and after putting deliberate consideration any policy is made. In this eventuality, when any policy is made and some guidelines are framed, it is for the respondents to follow as it is made by themselves, and if they have to deviate from their own policy, they have to give a reason as to what circumstances have necessitated for deviation from their own guidelines framed. I feel in the interest of justice as the transfer order does not reflect any thing whether it is in public interest or service exigency and deviated from their own guidelines, the respondents need to re-look into the transfer order issued by them. Accordingly the respondents are directed to decide the representation of applicant preferred on 24.07.2015 through proper channel taking

into consideration the above said discussions, especially what necessitated or forced the respondents to deviate from their own circular, within two months from the date of receipt of certified copy of this order. Transfer order dated 23.07.2015 in regard to the applicant is quashed and set aside. The OA is allowed. No costs.

(Smt. Jasmine Ahmed)
Member (J)

'sk'