

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4281/2016

Order reserved on 04th day of May 2017

Order pronounced on 9th day of May 2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. J.P Singh, JD (E),
Group 'A'
Aged about 50 years
s/o Mr. Ballam Singh
r/o House No.996, Type IV
NH-4, Faridabad, 121001

..Applicant

(Mr. M K Bhardwaj, Advocate)

Versus

Union of India & others through

Secretary
Ministry of Agriculture & Farmers Welfare
Department of Agriculture, Cooperation &
Farmers Welfare, Krishi Bhawan, New Delhi – 110 001

..Respondent

(Ms. Shiva Lakshmi and Mr. Ashok Kumar Sharma, Advocates)

O R D E R

Mr. K.N. Shrivastava:

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) quash and set aside the impugned transfer order No.413/2016 and 414/2016 dated 16.12.2016 of the applicant.

(iii) To declare the action of the respondents in transferring the applicant alongwith post to Jodhpur as illegal and unjustified and direct the respondents to continue the applicant at present place of posting as per transfer policy.”

2. The brief facts of the case are as under:-

2.1 The applicant is presently holding the post of Joint Director (Entomology) under Directorate of Plant Protection, Quarantine & Storage (PPQ&S), Faridabad, which comes under the administrative control of the respondent. He is posted in Plant Quarantine Division (PQD) at the Directorate of PPQ&S.

2.2 Vide Annexure A-3 order dated 19.10.2016, the applicant was transferred to CIPMC, Guwahati in the same grade of Joint Director (Entomology) and was relieved of his duties vide Annexure A-4 Office Order No.329/2016 dated 24.10.2016. However, the order transferring the applicant to CIPMC, Guwahati was modified vide Annexure A-5 Office Order dated 03.11.2016. He was retained at the Headquarter of the Directorate of PPQ&S but was shifted from PQD to Locust Division.

2.3 The respondent - Department of Agriculture, Cooperation & Farmers Welfare (DAC&FW), vide letter No.44021/3/2014-PP-Estt. (Pt.) dated 06.12.2016, shifted one post of Joint Director (Entomology) from the Directorate Headquarters, Faridabad to the Locust Field Headquarters at Jodhpur with immediate effect. In pursuance of the *ibid* letter, DAC&FW, vide its letter No.44021/3/2014-PP-Estt. dated 16.12.2016, transferred the applicant to the shifted post of Joint Director (Entomology), Locust Field Headquarters at Jodhpur.

Aggrieved by his transfer to Locust Field Headquarters at Jodhpur, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The main grounds pleaded by the applicant in this O.A., in support of the reliefs claimed, are as under:

3.1 There is no post of Joint Director (Entomology) at the place of his new posting (Jodhpur) and that the post of Joint Director (Entomology) cannot be shifted from the Headquarters of the Directorate to Locust Field Headquarters, Jodhpur without explicit approval of the Ministry of Finance and Department of Personnel & Training (DoPT).

3.2 The applicant has already suffered fifteen transfers/postings in his service career spanning over 26 years and 10 months; out of which, for 9 years, he was posted at hard stations. None of his juniors have done posting to hard stations even half of this duration.

3.3 The transfer of a public servant is effected in exigencies of service or public interest, whereas in the case of applicant the transfer, vide impugned order Annexure A-5 Office Order dated 03.11.2016, has been done neither in exigencies of service nor in public interest.

3.4 The Hon'ble Supreme Court in the case of **C. Ramanathan v. Acting Zonal Manager, FCI** [1980 LLJ (1)] has held that "if the circumstances surrounding such an order leads to a reasonable inference by a well-instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant considerations, then the arm of the Court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design and motive or circumventing disciplinary action"

3.5 This Tribunal in **Dr. M. Hari v. Union of India** [2007 (2) SLJ 145 CAT] has held that a transfer order, if done arbitrarily, can be interfered with by the Court.

3.6 The applicant being senior-most Joint Director (Entomology) is due for his next promotion to the post of APPA shortly. The impugned order has been issued just to harass the applicant.

3.7 The transfer order is also in violation of the transfer policy of the respondent dated 11.04.2002 wherein it has been clearly mentioned that the normal tenure for a sensitive post is 5 years and that for a non-sensitive post is 7 years. The applicant has not completed his tenure, as he was posted to the Headquarter in September 2014 on transfer from Regional Plant Quarantine Station (RPQS), Mumbai.

3.8 This Tribunal in O.A. No.196/2014 and O.A. No.1993/1999 has held the transfers done in violation of the existing transfer policy as illegal.

4. Pursuant to the notice, the respondent entered appearance and filed its reply. The respondent has made the following important averments in its reply:

4.1 The applicant has been posted at the Headquarter of the Directorate of PPQ&S, Faridabad/New Delhi since 16.04.2008. He was, however, given additional charge of RPQS, Mumbai for about 8 months from 06.01.2014 to 05.09.2014. Thus, he has been working in NCR area for more than 8 years. Thus the transfer of the applicant to Jodhpur vide the impugned office order is not in violation of the transfer policy.

4.2 The desert locusts have been a major threat to humans' well beings. The magnitude of the damage and the loss caused by the locusts is gigantic and beyond imagination. Locusts do cause damage by devouring the leaves, flowers, fruits, seeds, trees, etc. The Food and Agriculture Organization (FAO) of the United Nations is coordinating the global locust control efforts of the member countries. There are 10 Locust Circle Offices, with Headquarters at Jodhpur, spread over in the States of Rajasthan and Gujarat to conduct surveillance and monitoring of locust in India. There is a laboratory at Bikaner to conduct research on management of locust.

4.3 Considering the impending threats from desert locust on vegetation and its control through strengthening the monitoring system and liaisoning with FAO/ other countries/ State Governments and other stakeholders, the competent authority decided to post one Joint Director level Officer at Locust Field Headquarters at Jodhpur, Rajasthan. Accordingly, with the approval of the Hon'ble Union Agriculture Minister, one post of Joint Director (Entomology) was re-allocated from the Directorate Headquarters to Locust Field Headquarters at Jodhpur, Rajasthan, against which the applicant has been posted vide the impugned order dated 16.12.2016.

4.4 The applicant filed a representation dated 19.12.2016 (Annexure R-3) against his transfer to Jodhpur but even without awaiting disposal of the said representation, he chose to file the instant O.A. on 22.12.2016. The applicant's transfer to Jodhpur has been done in public interest.

5. The applicant in his rejoinder to the reply filed on behalf of the respondent, controverting the averments of the respondent, has stated that

according to the respondent, the proposal to shift one post of Joint Director (Entomology) from the Directorate Headquarters, Faridabad to Locust Field Headquarters at Jodhpur was moved in September 2016. In that case, why was he initially posted to CIPMC, Guwahati on 19.10.2016 (Annexure A-3)? It is also stated that the shifting of the one post of Joint Director (Entomology) to Jodhpur has been done without proper administrative approval and without the Staff Inspection Unit (SIU) studying such a requirement.

5.1 Explaining the reasons of filing the instant O.A. immediately after submission of his representation dated 19.12.2016 (Annexure R-3) against his transfer to Jodhpur, the applicant has stated that the relieving and transfer orders were served upon him simultaneously late in the evening or 16.12.2016 itself by *email* while he was to proceed on leave to avail LTC and hence in such an exigency, he had no option except to approach this Tribunal in the instant O.A. immediately thereafter.

5.2 The applicant has also filed an additional affidavit placing on record the following documents:-

- i) O.M. dated 12.04.2017 issued by the Department of Expenditure, Ministry of Finance on the subject "Compendium of instructions for Creation, Revival, Continuation and Transfer of posts".
- ii) Fortnightly Locust Situation Bulletin of the respondent (DAC&FW) for the period 01-15 October 2016.
- iii) Judgment of Hon'ble High Court of Delhi in **Janak Digal v. Union of India & others** (W.P. (C) No.5401/2013) decided on 29.08.2013

6. With the completion of pleadings, the case was taken up for hearing the arguments of the parties on 04.05.2017. Arguments of Mr. M.K. Bhardwaj, learned counsel for applicant and Ms. Shiva Lakshmi with Mr. Ashok Kumar Sharma, learned counsel for respondent were heard.

7. Mr. M.K. Bhardwaj, learned counsel appearing for the applicant, reiterating the averments made in the O.A. and rejoinder, stated that the respondent-DAC&FW was not competent to shift one post of Joint Director (Entomology) from Directorate Headquarters, Faridabad to Locust Field Headquarters, Jodhpur without the approval of the Department of Expenditure, Ministry of Finance. In this connection, he drew our attention to the O.M. dated 12.04.2017 issued by the Department of Revenue, Ministry of Finance and particularly to paragraph 7 thereof, dealing with 'transfer of posts', which reads as under:-

“7. Transfer of Posts:

A post sanctioned for a specific purpose in an organization may not be diverted for another purpose at the same or different station. Cases of transfer/diversion/ adjustment of posts would amount to creation of new post with simultaneous abolition of existing post and prior approval of Department of Expenditure is required for the same.”

8. Mr. Bhardwaj alleged that the applicant has been subjected to frequent transfers. He controverted the averment made in the reply of the respondent that the applicant has been posted at the Directorate Headquarters in Faridabad/ New Delhi for over 8 years. He said that the applicant, in fact, has been posted at the Headquarters in September 2014 on transfer from Mumbai.

9. Mr. Bhardwaj contended that the respondent had transferred the applicant to CIPMC, Guwahati vide Annexure A-3 order dated 19.10.2016 but thereafter chose to modify/cancel the said transfer vide Annexure A-5 Office Order dated 03.11.2016. If the applicant was to be transferred ultimately to Locust Field Headquarters at Jodhpur, then what was the necessity of transferring him earlier to CIPMC, Guwahati.

10. The learned counsel questioned the locust problems in the desert region of the country, as highlighted by the respondent in its reply. In this connection, he drew our attention to the Fortnightly Locust Situation Bulletin for the period 01-15 October 2016 issued by the respondent, which, *inter alia*, reads as under:-

“1. India continued to be free from gregarious and solitary desert locust activity during the 1st fortnight of October, 2016. Total 136 spots (shown in map with “N” means survey undertaken and no locust found) were covered in distant, cross country surveys in the Scheduled Desert Areas (SDA) of Rajasthan and Gujarat during the period under report.”

11. Mr. Bhardwaj submitted that the Hon’ble High Court of Delhi in **Janak Digal’s** case (supra) had held that a person cannot be posted to a post not commensurate in rank to the one held by him. He stated that since no locust emergency occurred for the last many years, the locust establishment at Jodhpur had been headed by an officer in the rank of Deputy Director (Entomology).

Concluding his arguments, the learned counsel submitted that the applicant’s transfer to Jodhpur has been done with the sole intention of harassing him and is not at all in public interest. It has been done in violation of the instructions of the Ministry of Finance and as such the

transfer order is not sustainable and hence the prayers made in the O.A. may be allowed.

12. *Per contra*, Ms. Shiva Lakshmi, learned counsel appearing for the respondent stated that the Fortnightly Locust Situation Bulletin for the period 01-15 October 2016 gives information on the status of the locust problems for that fortnight only. The respondent, in the reply, has given a comprehensive picture of looming locust problem in the country and the steps taken both nationally and internationally to control this menace. She said that the decision of the competent authority to re-allocate one post of Joint Director (Entomology) from the Directorate Headquarters, Faridabad to Locust Field Headquarters, Jodhpur has been taken in the national interest and as such the posting of the applicant to that place vide the impugned order cannot be faulted upon.

13. Ms. Shiva Lakshmi controverted the submissions made on behalf of the applicant that he was posted to RPQS, Mumbai from 06.01.2014 to 05.09.2014. She said that the respondent in paragraph 4.2 of the reply has clearly stated that the applicant was only given an additional charge of RPQS, Mumbai during the said period and that his substantive posting continued to be at the Directorate Headquarters itself.

14. Regarding the cancellation of the posting to Guwahati, vide Annexure A-3 order dated 19.10.2016 and subsequent modification/cancellation vide Office Order at Annexure A-5 dated 03.11.2016, the learned counsel stated that the modification/cancellation has been done at the request of the applicant, as has been stated by the respondent in its reply to paragraph 4.6 of the O.A. It was also submitted that 6 Joint Directors have been

transferred to various places. This list also included the applicant. No other Joint Director, except the applicant, has protested his transfer.

15. She further argued that by shifting one post of Joint Director (Entomology) to Jodhpur, the respondent-DAC&FW has not violated the instructions contained in O.M. dated 12.04.2017 of Department of Expenditure, Ministry of Finance in view of the fact that no diversion of the post has been done for any other purpose. The post of Joint Director (Entomology) shifted to Locust Field Headquarters at Jodhpur would continue to be utilized for the same purpose, for which it was being used at the Headquarters.

Concluding her arguments, the learned counsel prayed for dismissal of the O.A., as it lacks any substance or merit.

16. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

17. The issues that arise for consideration before us are:

- a) Whether the applicant's transfer to Locust Field Headquarters at Jodhpur is in violation of the respondent's transfer policy dated 11.04.2002 (Annexure R-2)?
- b) Whether the transfer of one post of Joint Director (Entomology) from the Directorate Headquarters, Faridabad to Locust Field Headquarters at Jodhpur is in violation of the O.M. dated 12.04.2017 issued by the Department of Expenditure, Ministry of Finance?

c) Whether the transfer is arbitrary and against public interest?

18. The relevant portion of the policy (O.M. dated 11.04.2002) dealing with the tenure of posting at normal and difficult stations is extracted below:-

“(3) The benefit of transfer to a place of choice in respect of those who have completed the prescribed tenure of 2/3 years at a difficult station(s) will be strictly adhered to by the Dte. as per the relevant guidelines of DOPT. Officers/Officials with 10 years of service will become eligible for transfer after 3 years and others after 2 years of service at difficult stations. Those who have not served at difficult stations will be considered first for posting at such stations.

(4) Officers/Officials who have completed five years or more in a sensitive post shall be transferred to a non-sensitive post. Others will be transferred after a period of seven years.”

19. From the records, it is evident that the applicant was posted at NCR, i.e., Headquarters, Faridabad/New Delhi w.e.f. 16.04.2008. Thereafter, in between for 8 months, i.e., from 06.01.2014 to 05.09.2014, he was placed in additional charge of RPQS, Mumbai, but continued to have his substantive posting at the Headquarters itself. He has thus completed more than 8 years at the Headquarters. In this view of the matter, we are quite convinced that his transfer to Jodhpur is not at all in contravention of the transfer policy.

20. As regards the transfer of one post of Joint Director (Entomology) from the Directorate Headquarters, Faridabad to Locust Field Headquarters at Jodhpur, we notice that the post of Joint Director (Entomology) at the Directorate Headquarters was in Locust Division occupied by the applicant. The said post has been transferred to Jodhpur. The incumbent of the post has been made Incharge of the Locust Field

Headquarters at Jodhpur, which has got 10 Locust Circle Offices spread over in the States of Rajasthan and Gujarat to conduct surveillance and monitoring of locust in India. There is a laboratory at Bikaner attached to it to conduct research on management of locust. Therefore, the purpose of the post hasn't undergone any change. The O.M. dated 12.04.2017 of Department of Expenditure, Ministry of Finance embargoes diversion of any post for another purpose at the same or at different station. We are satisfied that no such diversion has taken place. Hence, we hold that the transfer of the applicant from Directorate Headquarters, Faridabad to Locust Field Headquarters at Jodhpur is not in violation of the O.M. dated 12.04.2017.

21. In its reply, the respondent-DAC&FW has explained, in great details, about the gigantic dimensions of the locust problem. It has also elaborated the national/international efforts being put in for controlling this menace. As per the records placed on record, no doubt, the locust problem appears to be under control in the country. The efforts being put in controlling the locust problem have yielded fruitful results. But then, one cannot lose sight of the fact that any laxity in the vigil or lackadaisical approach in controlling this problem can allow the problem to assume diabolic proportion in a very short span of time. The country, therefore, is to be on constant guard against this menace. In this scenario, the decision of the respondent to post a senior person at the level of Joint Director (Entomology) as head of the Locust Field Headquarters at Jodhpur, has to be acknowledged and appreciated. Thus, we are of the view that applicant's transfer to the post of Joint Director (Entomology), Locust Field Headquarters at Jodhpur is in public interest and no other meaning need to be derived from this posting.

22. We have also gone through the judgments of the superior courts, referred to at paragraphs (3.4), (3.5) & (5.2) above as well as judgment of the Lucknow Bench of the Tribunal in **Jitendra Kumar Saxena v. Union of India & others** [2000 (3) ATJ 657] relied upon by the learned counsel for applicant. These judgments deal with the issues of frequent transfers, transfer to a post not commensurate in rank, circumstances surrounding transfer order leading to a reasonable inference that such an order was made in the colourable exercise of power and transfer order issued in arbitrary manner. We are of the view that none of these judgments are applicable to the instant case. As has been analyzed by us, the applicant has been working at the Directorate Headquarters, Faridabad since 2008 and he has been transferred along with his post to Locust Field Headquarters at Jodhpur placing him Incharge of the Field Units, set up for monitoring and controlling the locust problems. Thus we are of firm opinion that such a transfer cannot be called arbitrary and done with colourable exercise of power. It also does not come in the category of frequent transfers either.

23. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in this O.A. and the interim order dated 23.12.2016 is vacated. Accordingly, the O.A. is dismissed. No order as to costs.

(**K.N. Shrivastava**)
Member (A)

(**V. Ajay Kumar**)
Member (J)

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