

**Central Administrative Tribunal
Principal Bench**

OA No. 4345/2013

Order Reserved on: 09.12.2015
Order Pronounced on: 05.01.2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

Dr. S. Kathioli - Scientist-G,
Room No. 310, Prithvi Bhawan,
Ministry of Earth Sciences,
Lodhi Road,
New Delhi-110003.

...Applicant

(By Advocate: Shri Soumyajit Pani)

Versus

1. Union of India,
Through its Secretary,
Ministry of Earth Sciences,
Prithvi Bhawan, IMD Campus,
Lodhi Road, New Delhi-110003.

2. Chairman of Government Council
National Institute of Ocean Technology,
Pallikkaranai,
Velachery-Tambaram Road,
Chennai-600100.

3. Director,
National Institute of Ocean Technology,
Pallikkaranai,
Velachery-Tambaram Road,
Chennai-600100.

...Respondents

(By Advocate: Shri R.N. Singh)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The applicant in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, is aggrieved with the order dated 24.01.2012 whereby he was relieved of his duties at NIOT, Chennai to report to the Chairman, GC, NIOT, New Delhi.

2. The facts of the case in brief is that National Institute of Ocean Technology (hereinafter referred to as “NIOT”) was established as an autonomous society by the Government of India and registered under the Societies Registration Act, 1975. It is being managed and administered by a Governing Council. The applicant joined NIOT as a Joint Project Director in October, 1994 and was selected as Director against an open advertisement for a period of five years. On 24.01.2012, the applicant was relieved and transferred from NOIT Chennai to New Delhi to work for Earth System Science Enterprises (ESSE, for short). The applicant alleges that the instant transfer had taken place despite the fact that earlier Government of India vide OM dated 25.10.1977 had prohibited diversion of post sanctioned for specific purpose to another purpose at the same station or different station and utilized as a stand-by to accommodate officers awaiting posting orders or to make use of services of an officer for some special items of work etc. on the ground that such diversions would amount to creation of new post. On 13.02.2012, the applicant reported for duty in MoES, New Delhi in good faith and requested for providing him identity card etc. commensurate with his rank. However, the same was not provided to him despite his request. The applicant further submits that no secretarial assistance was provided to him and he had been left without any work as well as no supporting structure befitting his dignity. The applicant further submits that no accommodation or CGHS cards have been provided

to him. Thus, he is being harassed and had been driven to the end of the tether.

3. The applicant has sought reliefs above mentioned principally on three grounds:-

- (i) In the first place, the applicant has been appointed to the post of Director, NIOT and he has been brought to Delhi vide impugned order dated 24.01.2012, which is against the OM dated 25.10.1977. His transfer is, therefore, wholly illegal.
- (ii) In the second place, the transfer had been effected by incompetent authority. It is only the President of India, who is the competent authority and therefore, his transfer was not made by the competent authority.
- (iii) In the third place, he does not mind working in Delhi. However, he has to pay Rs. 340/- per day as guest room charges that he is occupying. He has not been getting any deputation allowances; accommodation; CGHS Card or identity card to denote his position.

4. The respondents have submitted a short counter affidavit followed by a detailed counter affidavit. This Tribunal had also directed the respondents to file counter affidavit as to what work has been allotted to him which the respondents have filed vide order dated 22.04.2015. The respondents have resisted the averments made in the OA by submitting that the applicant had initially been working as Assistant Professor with Regional Engineering College,

Calicut from where he was appointed as Joint Project Director on contract for five years in the scale of Rs. 4500-150-5700-200-6300 vide letter dated 14.09.1994. It was at this point of time that he applied for the post of Scientist 'F' in the scale of Rs. 16400-450-20900 in response to an open advertisement and assumed charge on 15.05.1999 following his selection. He was subsequently selected to the post of Director, NIOT, Chennai, where he served for five years till 31.08.2009, when the tenure expired.

5. It is the contention of the respondents that while serving as Director NIOT, Chennai on 17.11.2009, the applicant had submitted an application for the post of Secretary-cum-Chairman, GC seeking mobility to industry under the DSIR Scheme notified by Government of India vide OM dated 25.05.2009. He served the company L&T Ramboli for two years till 09.12.2011 and resumed duties with NIOT on 09.12.2011 (AN). After coming over to Delhi, the applicant reported to Chairman, Governing Council and Secretary, Ministry of Earth Sciences, and was assigned the work to develop a concept of Earth System Science Enterprises (ESSE, for short) and prepare necessary documentation for obtaining approvals. Admitting that no accommodation has been provided to the applicant, the learned counsel for the respondents has submitted that the organization is not entitled to general pool accommodation and, therefore, he could not have been given accommodation. The applicant is presently staying in the Ministry's transit guest house at Vigyan Sadan, R.K.

Puram, New Delhi meant for Directors of Attached/Subordinate offices and autonomous institutes, who are coming to Delhi for short visit related to meetings etc.. The applicant continued to occupy the guest house for more than two years, while he was getting 30% HRA. When he was asked to vacate the guest house, he has filed the instant OA. Subsequently, on account of administrative reasons and under orders of this Tribunal, the applicant has been allotted guest house accommodation at IMD Complex where he continues to stay and for which he has to pay charges.

6. The learned counsel for the respondents further submits that the NOIT is a society under the Tamil Nadu Societies Registration Act, 1975. As per Article 6 of Memorandum of Association, expenditure of the society is subject to such limitations as the Government of India may from time to time impose. The Institute is governed by a Governing Council in accordance with bye-laws registered with the Registrar of Societies. Clause 15 of the bye-laws empowers the Chairman, GC to guide and supervise the working of the Society in general. According to Clause 17(1), all the duties, powers, functions and rights whatsoever or consequential or incidental to carry out the objectives of the Society, shall be exercised by the Governing Council. The powers to appoint, remove or suspend are also vested in the General Council as per Clause 17(2)(xiii). The Chairman (GC) exercises general superintendence over the working of the society, which includes discipline. The respondents further

submitted that there is nothing wrong in the impugned transfer, as the applicant had been brought as per his earlier request. Therefore, there is nothing illegal in the impugned transfer order.

7. The respondents further submitted that the post of Director, NOIT had been advertised on direct recruitment basis on completion of tenure of the applicant, and one Dr. M.A. Atmanand, who had been earlier subordinate to the applicant, was appointed as Director and he is continuing to work. The applicant had challenged his appointment right up to the Hon'ble Supreme Court vide SLP No. 11822/2013 which was ultimately dismissed. Moreover, the respondents further submitted that there were grave irregularities committed by the applicant during his tenure as Director NIOT, particularly in the tender procedure and award of contract for acquisition of Technology Demonstration Vessel (TDV) 'Sagar Nidhi' and the CBI had submitted a charge-sheet against him, of which the applicant is well aware. A departmental proceeding for major penalty has been initiated vide memorandum dated 10.12.2013 by NOIT, Chennai against the applicant and the proceedings are underway. The applicant sought a declaration that the charge memo was illegal and without jurisdiction and hence wanted the same to be quashed. However, Chairman, GC appointed the inquiry authority, and presenting officer with direction to dispose of this case at the earliest.

8. The learned counsel for the respondents further submits that full workload has been provided to the applicant along with all subordinate staff and identity card has also been issued to him. The applicant has an office allocated in the same building where the office of the Minister for the department is situated. There is no allowance which he should get and is not being given to him.

9. The respondents further allege that the applicant is a reticent worker and has not been submitting the progress report in respect of work allocated to him. It is on the account of his gross negligence that the Governing Council have decided to proceed against him under CCS (CCA) Rules vide order dated 10.12.2013. Therefore, the learned counsel for the respondents pleaded for dismissal of the claim.

10. Having heard the arguments advanced by the learned counsel for both the parties, the matter was reserved for orders on 29.06.2015. However, the order could be pronounced, the applicant filed an additional affidavit on 01.09.2015 making mention that the circumstances under which the OA had been filed had changed ever since, and, as such, the matter was listed for re-hearing on 23.09.2015 and was adjourned to 14.10.2015. Finally, after having heard the arguments advanced on behalf of the learned counsel for both the parties, the matter was reserved for orders on 09.12.2015. For the sake clarity, the order dated 09.12.2015 is being extracted hereunder:-

"This matter was heard at length and the order was reserved on 29.06.2015. However, an additional affidavit was filed on 02.09.2015 on behalf of the applicant for bringing certain developments which had taken place subsequently on record.

In view of the aforesaid additional affidavit, the matter was directed to be listed for re-hearing and accordingly it was listed on 23.09.2015 and was adjourned to 14.10.2015 with liberty to the learned counsel for the respondents to give reply to the affidavit filed on behalf of the applicant. On 14.10.2015, learned counsel for the respondents also filed an additional affidavit. Both the affidavits, i.e., the one dated 02.09.2015 filed by the applicant and the other by the respondents dated 14.10.2015, are on record.

We have heard learned counsel for the parties at length.

Arguments concluded. Order Reserved."

11. The applicant has submitted that he has been transferred back to ESSO-IMD, Chennai vide Office Order dated 27.08.2015 in public interest with immediate effect to develop atmospheric technology especially related of observatories and coordinate with all concerned institutes. He has further brought to the notice of this Tribunal that the Director NIOT vide order dated 30.07.2015 had been relieved from his duties as the ACC had refused to approve his extension as Director (Additional Charge) vide order dated 27.07.2015. The DoP&T was further directed to fix responsibility of officers concerned for promoting Dr. Atmanand as Scientist 'G' w.e.f. 21.10.2009 without having followed the due process and without the approval of the competent authority.

12. During the course of oral submission, learned counsel for the applicant submitted that the applicant has since joined at Chennai, therefore, his relief qua the impugned order dated 24.01.2012 has

become infructuous. However, the only relief that survives is that the applicant's stay at Delhi may be treated on tour and accordingly he may be reimbursed necessary TA/DA in accordance with relevant rules as per his entitlement on tour.

13. We have carefully considered the issue. The impugned transfer letter dated 24.01.2012 reads as under:-

"NATIONAL INSTITUTE OF OCEAN TECHNOLOGY, CHENNAI

F.No.NIOT/E&P/PF-R/001/SG/2012/996

24th January 2012

OFFICE ORDER

In pursuance to Chairman, GC, NIOT's approval vide note dt. 13.01.2012, the Competent Authority ordered transfer and posting of Dr. S.Kathirolu, Chief Scientist of this institute at New Delhi in the Public interest to work for Earth System Science Enterprise with immediate effect. Accordingly, Dr. S. Kathirolu is relieved of this duties at NIOT, Chennai on the afternoon of 24th January, 2012. He shall report to Chairman, GC, NIOT, at New Delhi.

His pay and allowances shall continue to be drawn from NIOT account."

14. We have also taken note of the fact that NIOT is a Society registered under the Tamil Nadu Societies Registration Act 1975. It is to be noted that Rule 17 of the Bye-laws delineates powers and functions of the Governing Council. Sub clause 2(xiii) of Rule 17 provides as under:-

"17. POWERS AND FUNCTIONS OF THE GOVERNING COUNCIL

(2) In particular and without prejudice to the Generality of the foregoing provisions and subject to the provisions of Memorandum, the Governing Council may:

(xiii) Appoint and at their discretion remove or suspend such staff members, scientists, managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time think fit and to determine their powers and duties and fix their salaries or emoluments and

to require security in such instances and for such amount as it thinks fit."

15. Since the posting of the applicant at Delhi is no longer under challenge, we need not go into the legality of the said order and assume that the order was legally sustainable. Though the order was one of transfer vide which the applicant had been posted to Delhi, but it was stipulated therein that his pay and allowances shall continue to be drawn from NIOT fund. This implies that his headquarters had been fixed at Delhi.

16. The respondents in their counter affidavit (page 41 of the paper book) have affirmed that the applicant had been given transit accommodation in the guest house where he had been staying for more than two years though such kind of accommodation is provided only for a short period. The respondents further submitted that the applicant had also been drawing HRA @ 30% of his basic pay and allowances.

17. We have taken note of the fact that once the applicant had been transferred to Delhi and joined there, his headquarters came to be fixed at Delhi under SR 59, which is being extracted below for the sake of better clarity:-

"S.R. 59. The Headquarters of a Government servant shall be in such place as a Competent Authority may prescribe."

Further, admittedly the applicant has also been drawing HRA @ 30% of his basic pay. Hence, there is no way that he could lay a claim to

treat his stay at Delhi as tour particularly having availed HRA and his headquarters having been fixed at Delhi. Hence, finding no merit in this OA, the same is dismissed with no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/Ahuja/