

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 4575/2017

Reserved On:22.12.2017
Pronounced On:26.12.2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Nitin Bagga (Aged 34 years)
Designation-C.S.B.O.
S/o Late Shri Jagjeet Singh
R/o House No.921, Gali No.8
Govind Puri, Kalkaji,
New Delhi-110019.

.. Applicant

(By Advocate: Shri Atul Kumar Singh)

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block,
New Delhi -110011
Through its Secretary.
2. 1 Army HQ Signal Regiment
Through the Commanding Officer,
Col. Anuresh Sharma
At: 1 Army H.Q. Signal Regiment,
Signals Enclave, Rao Tula Ram Marg,
Delhi Cantt.-110010.
3. Lt. Co. Sanjay Kumar (Administrative Officer)
At: 1 Army H.Q. Signal Regiment,
Signals Enclave, Rao Tula Ram Marg,
Delhi Cantt.-110010.
4. Vandana Dube (Deputy Director)
Integrated HQ of MOD (Army)
DTE General of Signals Sigs 4 (c)
General Staff Branch,
New Dehi-110011.

.. Respondents

(By Advocate : Shri S.M. Zulfiqar Alam)

ORDER**By Hon'ble Ms. Nita Chowdhury, Member (J)**

The applicant has filed this Original Application (OA) seeking the following reliefs:-

“(i) Quash and set aside the order dated 07.11.2017 and order dated 04.12.2017 passed by the respondents and direct the respondents to withdraw the transfer of the applicant to Jaipur Division.

(ii) Pass such further and other order(s) which this Hon'ble Tribunal may deem fit and proper in the interest of justice”.

2. The facts, in brief, are that applicant was appointed in the organisation on 01.08.2006 and since then he is working with utmost sincerity and to the best of his abilities having clear service record. On 01.06.2008, he was permanently transferred to Delhi at 1 Army Headquarter Signal Regiment. He was transferred on compassionate basis on the ground that he was posted to Mathura UP, however, his family used to reside in Delhi and his mother was seriously ill. On 24.11.2015 and 26.11.2015, respondents arbitrarily deducted his salary. Thereafter, he preferred an application under RTI, 2005 and came to know that his leave is pending with the respondents and illegal deduction has been made arbitrarily which is against the principles of natural justice.

3. Applicant further submitted that he was assaulted, mishandled by the officials of the respondents organisation. The said official even directed the applicant on 24.11.2015, to join the

other office in Delhi and for not complying with his transfer order, therefore, 2 days' salary was deducted. Applicant even registered criminal complaint on 26.11.2015 at South Avenue Police Station but nothing was done. Ultimately, on 07.11.2017, he was issued transfer order, which was challenged by the applicant in the present OA. Thereafter, he gave representation on 09.11.2017 to withdraw the said transfer order. The aforesaid impugned transfer order was even challenged by the applicant in **OA No.4332/2017** (supra) earlier filed by him. The said OA was disposed of on 08.12.2017 by passing the following orders:-

“2. It is submitted that the respondents vide the impugned order dated 07.11.2017 (Annexure A-1) transferred the applicant from Delhi to Jaipur. It is also submitted that the applicant made a representation dated 09.11.2017 against the impugned order, however, copy of the same is not filed along with the O.A.

3. In the circumstances, the O.A. is disposed of at the admission stage itself, without going into the other merits of the case, by directing the respondents to consider the applicant's representation dated 09.11.2017, if such a representation is received by the respondents, and to pass appropriate reasoned and speaking order thereon, in accordance with law, within four weeks from the date of receipt of a copy of this order. The applicant shall join at Jaipur, however, joining of the applicant is without prejudice to his rights. No order as to costs”.

4. In this OA, the applicant has challenged the impugned order dated 04.12.2017 (Annexure A-2) which has been passed after the Tribunal gave direction to the respondents to dispose of his representation dated 09.11.2017 by passing a reasoned and speaking order. The said order dated 04.12.2017, reads as under:-

“1. Please refer to your personal application dated 09.11.2017 addressed to the Chief of Army Staff with a copy to the SO-in-C.

2. Issues raised by you in your personal application have been deliberated upon. Parawise comments on the issues are given in succeeding paras.

3. **Comments on Para 1 about Pending Action on Earlier Applications.** It is informed that only one application dated 13.05.2017 from you, addressed to the COAS was received by DG Sigs on 25 May, 2017. The same application with a different date, 18 Jun 2017 was received through DCOAS (IS&T) Sectt. On 04 Jul 2017. No other application has been received by this Dte.

4. **Comments on Para 3 about Wrongful Deduction of Salary.** It is informed that salary deduction was carried out by the unit for the absence period as per provisions of Leave Rules since you had absented yourself without authorised leave.

5. **Comments on Para 4 about Not Being Informed about Posting.** A Movement Order has been issued by 1 AHQ Sig Regt to you wherein the authority of Signals Records posting order has been mentioned. No separate transfer order is required to be given. It has been informed by the unit that you have refused to accept the Movement Order. Hence, your contention is factually incorrect and misleading.

6. **Comments on Para 5 about individual Being a Non-transferable Employee.** Your contention that you are a non-transferable employee is incorrect. Your service liability is for all India posting, for which you had given consent at the time of applying for the post. Your kind attention is invited to the advertisement in Employment News of 2-8 Jul 2005 based on which you had given application to undergo selection process.

7. You are advised to comply with the posting order issued and join the next duty station”.

5. Heard Shri Atul Kumar Singh, learned counsel for the applicant and Shri S.M. Zulfiqar Alam, learned counsel who appeared on behalf of the respondents on receipt of advance notice.

6. We may mention that all the points raised by the applicant had already been raised by him in the earlier OA. In this OA, except 2nd impugned order dated 04.12.2017 (Annexure A-2), nothing new has been mentioned. The applicant is heavily relying that once he has been transferred from Mathura to Delhi on

compassionate ground, he cannot be transferred to any other station outside Delhi since he is working on a non-transferable post. The respondents have clearly indicated in order dated 04.12.2017 that applicant is working on a non-transferable post.

7. The respondents have clearly indicated in reply to the present application given by the applicant on 09.11.2017 addressed to the Chief of Army Staff that “your contention that you are a non-transferable employee is incorrect. Your service liability is for all India posting, for which you had given consent at the time of applying for the post. Your kind attention is invited to the advertisement in Employment News of 2-8 Jul 2005 based on which you had given application to undergo selection process”.

8. The short question involved in this case is whether applicant can be retained in Delhi or asked to join at Jaipur immediately. From the above, we find that he has been transferred as per rules. He has made representations to the respondents which have been duly disposed off. The contention of the applicant that his order of transfer is perverse and cryptic, cannot be accepted especially in view of the detailed reply given to him with regard to his application dated 09.11.2017 which has been reproduced in detail, point wise, in para 4 of the above judgment. It is very true that in the matters of transfer, the Courts/Tribunals are not required to intervene. In normal circumstances, intervention of the court would be only

confined to such cases where either mala fide is alleged and proved or there is a violation of some statute or where the laws of natural justice have not been respected. It is fully considered that the courts are not to go into the issue like justification of the administrative orders. In **Sarvesh Kumar Awasthi versus U.P. Jal Nigam and Others [2003(11)SCC 740]** wherein the Hon'ble Supreme Court has held as under:-

“3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.”

Similarly in **Somesh Tiwari Vs. Union of India & Others [AIR 2009 SC 1399]**, the Hon'ble Supreme Court has held as under :-

“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved...”

9. Further, the Hon'ble Supreme Court in its judgment in **S.C. Saxena Vs. Union of India & Ors., 2006 SCC (L&S) 1890** has held as under:

“6. 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.”

10. In view of the law settled by the Hon’ble Supreme Court as well as the facts of this case, we find absolutely no merit in the applicant’s plea and this OA is, therefore, dismissed at the admission stage. No costs.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

Rakesh