

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4726/2014 with MAs 963/16, 568/15, 936/15, 964/15, 1221/15, 2873/15

And

C.P.No.239/2016 in O.A.No.4726/2014

Order Reserved on: 08.07.2016
Order pronounced on 29.07.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

O.A.No. 4726/2014 with M.A.No.963/2016:

Jitendra Narain
S/o Late Rabindra Narain
R/o Govt. Quarter, 36 Ashoka Road
New Delhi. Applicant

(By Advocate: Shri M.K.Bhardwaj)

Versus

Union of India & Others, through

1. Secretary
Ministry of Home Affairs
North Block,
New Delhi.
2. The Joint Secretary (UT)
Ministry of Home Affairs
Govt. of India, North Block
New Delhi.
3. The Chief Secretary

Govt. of NCT of Delhi
 New Secretariat, I.P.Estate
 New Delhi. Respondents

(By Advocate: Shri Sanjay Jain, ASG with Shri Rajeev Kumar for R-1 and R2 and Mr. N.K.Singh for Mrs. Avnish Ahlawat for R-3)

C.P.No.239/2016 in O.A.No.4726/2014:

Jitendra Narain
 S/o Late Rabindra Narain
 R/o Govt. Quarter, 36 Ashoka Road
 New Delhi. Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Versus

Union of India & Others, through

1. Shri Rajiv Mehrishi
 Secretary
 Ministry of Home Affairs
 North Block,
 New Delhi.
2. Sh. Rakesh Kumar Singh
 Joint Secretary (UT)
 Ministry of Home Affairs
 Govt. of India, North Block
 New Delhi.
3. Sh. K.K.Sharma
 Chief Secretary
 Govt. of NCT of Delhi
 New Secretariat, I.P.Estate
 New Delhi.

4. Sh. Rajender Kumar
 Principal Secretary (Services)
 Govt. of NCT of Delhi
 New Secretariat, I.P.Estate
 New Delhi. ... Respondents

(By Advocate: Shri Sanjay Jain, ASG with Shri Rajeev Kumar for R-1 and R2 and Mr. N.K.Singh for Mrs. Avnish Ahlawat for R-3 & R-4)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, a 1990 batch (HAG level) AGMUT cadre, senior IAS officer, filed the OA questioning the Annexure A1-Order dated 14.11.2014 in transferring him from Delhi to Puducherry, as modified vide Annexure M1 dated 07.03.2016 (enclosed to MA No.963/2016) in finally transferring him to Arunachal Pradesh.

2. The brief facts, as narrated by the applicant in his OA, are that the applicant was appointed to IAS in the year 1990. He was posted at Andaman Islands, a hard area posting, from 1990 to 1994. The applicant was posted at Delhi during 1994-1998. Though the applicant was not due for hard area posting, still he was transferred to Arunachal Pradesh in the year 1998 and accordingly he worked there upto 2004. The applicant was again posted in Delhi during 2004 to 2006. Thereafter, he was posted at Government of India during the years 2006-2013. The applicant was again posted under the Govt. of NCTD during 2013-2014. Again, though the applicant was not due for

transfer, as per the transfer policy guidelines, he was transferred to Mizoram vide Annexure A1-A dated 18.02.2014.

3. It is further submitted that against the aforesaid order, the applicant submitted a representation and when the same was not considered, he filed OA No.730/2014 which was disposed of on 27.02.2014 with a direction to the respondents to consider the representation of the applicant and to pass a speaking order. In compliance of the said orders, the respondents vide Annexure A8 order dated 18.07.2014 cancelled the transfer order of the applicant dated 18.02.2014.

4. However, the respondents vide the impugned Annexure A1 order dated 14.11.2014, transferred the applicant to Puducherry. Aggrieved with the same, the applicant filed the present OA and this Tribunal by its order dated 30.12.2014, directed the respondents to maintain status quo as of the said date. Since the respondents violated the said order, the applicant preferred CP No.239/2016. Since the respondents vide the impugned Annexure M1 order dated 07.03.2016 retransferred the applicant to Arunachal Pradesh, he filed MA No.963/2016, questioning the said order by seeking amendment of the prayer of the OA.

5. Heard Shri M. K. Bhardwaj, the learned counsel for the applicant and Shri Sanjay Jain, ASG with Shri Rajeev Kumar for R-1 and R-2 and Mr. N. K. Singh for Mrs. Avnish Ahlawat for R-3 and perused the pleadings on record.

6. M.A.No.963/2016 in O.A.No.4726/2014, filed for amendment of the OA, is allowed, in the circumstances.

7. The learned counsel for the applicant in support of the OA contentions, *inter alia*, raised the following grounds:

- a) The impugned transfer orders are in violation of the Annexure A2-Guidelines for Transfer/Posting of IAS/IPS of Joint AGMUT Cadre, 2010.
- b) The impugned transfer orders are issued due to *mala fide* reasons but not in public interest.
- c) The applicant is discriminated while considering his case in terms of the policy guidelines.
- d) Reliance has been placed on the Judgment of the Hon'ble Apex Court in **Prabir Banerjee v. Union of India & Others**, JT 2007 (11) SC 464.

8. Per contra, the learned ASG would contend as under:

- i) The impugned transfer orders are issued in accordance with the transfer policy guidelines only and that there is no violation. Even if there is any slight deviation, the same is in public interest and that Courts/Tribunals cannot interfere on the said ground, since administrative exigencies prevail over guidelines.

- ii) The applicant having given undertaking, twice, that he is willing to be transferred to any hard area, is estopped from questioning the present impugned transfer orders.
- iii) There is no discrimination in applying the guidelines and the rules.
- iv) The plea of mala fides cannot be entertained as there were no corresponding specific pleadings anywhere in the OA.
- v) Since the applicant has not joined at the place of posting before questioning the transfer order, the OA is not maintainable.
- vi) Reliance has been placed on the Judgments of the Hon'ble Apex Court in **N.K.Singh v. Union of India**, (1994) 6 SCC 98, **Gurusharan Singh v. NDMC**, (1996) 2 SCC 459 and **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583.

9. The learned counsel appearing for the Govt. of NCTD in CP No.239/2016, submits that this Tribunal stayed the transfer order dated 07.03.2016, by its interim order dated 10.03.2016 in OA No.4726/2014, and whereas the respondents relieved the applicant, in pursuance of the impugned transfer order, with effect from 09.03.2016 afternoon itself, and the said relieving order was issued even before the interim order dated 10.03.2016 was received by them, and accordingly while submitting that there is no wilful or deliberate

violation of the orders of this Tribunal, prays for dismissal of the Contempt Petition.

10. The relevant paragraphs of the Guidelines for Transfer/Posting of IAS/IPS Officers of Joint AGMU Cadre-2010 read as under:

"3 (i) Originally, States and UTs serviced by the Cadre were classified into 3 categories, viz. 'A', 'B' and 'C' as indicated below:

- (a) – Delhi
- (b) – Soft Areas – Goa and UTs of Chandigarh and Puducherry.
- (c) – Hard Areas – Arunachal Pradesh, Mizoram and UTs of Andaman and Nicobar Islands, Daman & Diu & Dadra and Nagar Haveli and Lakshadweep

Delhi and its equivalent

(ii) At the meeting held on 6th June, 1994 JCA approved that the following periods will be excluded from the calculation spent outside Delhi segment:

- (a) Period spent on long leave, including study leave during a posting outside Delhi.
- (b) Period spent on a training course of duration longer than six weeks.
- (c) Period spent at a station outside the cadre.

(iii) JCA also approved that the tenure of the Supertime Scale officers posted in the outlying territories should be three years instead of two years. The JCA stressed the need to implement the disincentives laid down in the existing guidelines in letter and spirit.

(iv) No further changes to the transfer and posting policy were made by JCA. However, in 2008, the UT of Daman & Diu and Dadra & Nagar Haveli was declared as 'soft area' and shifted from 'C' to 'B' category.

Need to revise policy guidelines

4. Despite the policy, the following trends have been observed:

- Movement of some officers from Delhi/ soft areas to hard areas tended to remain unimplemented and in the case of most officers implemented after a considerable lapse of time.
- This, inter alia, affected legitimate movement of officers from hard areas to Delhi on completion of their tenure
- Paradoxically, transfer orders of officers to Delhi, especially those promoted to IAS/IPS belonging to home segment viz. Arunachal Pradesh and Mizoram, tended to remain unimplemented or implemented after a considerable lapse of time.

Based on the experience of operation of these guidelines and the lacunae/distortions observed, it is proposed to revise the guidelines. The revision is to ensure that no unit serviced by the Cadre remains starved of Cadre officers and that onus to serve in the constituents outside Delhi and also in both 'hard' area and 'soft' area is shared among the officers equitably.

xx x x xxx

IAS Officers

	A	B	C	
	Delhi/Chd.	DD/DNH/Goa/ Puducherry	AP/MZ/ ANI/LKD	
Senior Scale Posts	23	26	61	= 110
Tenure	6 years (2 Tenures)	3 years (2 to 3 tenures)	5 years	= 14 years
Supertime Scale & above posts	42	10	21	= 73
Tenure	13 years (3 tenures including Central deputation)	2 years (3 tenures)	4 years	= 19 years

8. While posting IAS/IPS officers to different areas, as indicated above, following factors would be kept in view:

Xxx x xx

(v) Officers at the Supertime Scale and above level would have a tenure of two years in the constituents outside Delhi / Chandigarh in view of the table in para 7.

x x xxxx

11. Notwithstanding anything contained in this policy, Government (MHA) has the absolute right, if necessary, to transfer or post any officer to any constituent at any time on administrative grounds/in public interest."

11. Proceedings of the order/letter No.F.No.14020/01/2016.UTS-1 dated 02.05.2016, i.e., in partial modification of the aforesaid Guidelines, read as under:

"In supersession of this Ministry's letter of even number dated 18.04.2016, Para 10(ii) of the Guidelines for Transfer/posting of IAS/IPS officers of Joint AGMU cadre, 2010 is amended as under:

The officers shall be considered for Central Deputation or any other deputation provided,

- (a) They shall have completed minimum three years of service in Category 'C' (Hard) areas below Super Time Scale for consideration to the posts of Deputy Secretary/Director level in the Government of India.
- (b) They shall have completed minimum five years of service in Category 'C' (Hard) areas, preferably two years in Super Time Scale and above (out of five years) for consideration to the posts of Joint Secretary and above level in the Government of India.

The above conditions shall also apply respectively for Foreign Training Course of any duration or Foreign Assignment or Study Leave of any kind with or without fellowship.

For the purpose of calculation of tenure in Category 'C' areas, the probation period shall be excluded. The Service rendered from Junior Scale onwards shall be counted.

- 3. All the IAS/IPS officers of AGMUT cadre may be informed accordingly."

12. It is the specific contention of the applicant that since he worked for five and half years in Arunachal Pradesh and two years at Andaman Islands, both are hard stations, he has already worked for seven and half years in hard stations, i.e., more than the required period, as per the transfer policy guidelines. However, as rightly pointed out by the learned ASG, appearing for the respondent-Union of India that the applicant is a super time scale officer and now promoted to HAG Scale and his hard area tenure in super time scale posts and above is nil, and hence, the impugned transfer cannot be said to be issued in violation of the transfer policy guidelines.

13. The contention of the applicant, with regard to discrimination, is also unsustainable as the Annexure R7, i.e., tenure details of the applicant, indicates that the applicant spent most of his service in Delhi, either under Govt. of NCTD or under Central Deputation.

14. The contention of the applicant that since he refused to open the sealing of certain towers of DLF, while he was working as Labour Commissioner, against to his order dated 13.08.2014, the respondents with mala fide intention issued the transfer orders, cannot be entertained, as rightly contended by the learned ASG that there were no corresponding specific pleadings anywhere in the OA.

15. The case of **Prabir Banerjee** (supra) is pertaining to the non-complying with regard to transfer between two Collectorates under the Central Board of Excise and Customs, will not help the applicant, in view of above finding that there is no violation of the transfer policy guidelines.

16. In **Rajendra Singh & Others v. State of UP & Others**, (2009) 15 SCC 178, a decision later to the decisions on which the respondents placed reliance, the Hon'ble Apex Court held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is made

in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

17. In the circumstances and in view of the law laid down by the Hon'ble Apex Court, the OA and CP are dismissed. Accordingly, notices issued in the CP are discharged. The pending MAs, if any, stand disposed of. No order as to costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)