

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3899/2015

Order Reserved on: 20.10.2015
Order pronounced on: 20.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Sh. Ashseesh Kumar Gupta
Age 36 years
S/o Sh. Kashi Nath Gupta
R/o Flat No.111, Express Apartment
Sector-4, Vaishali, Ghaziabad, UP
Working as Deputy Director (Technical)/Scientist 'C'
Under the respondents Applicant

(By Advocate: Sh. R.N.Singh with Sh. Amit Sinha)

Versus

1. National Institute of Electronics and Information
Technology (NIELIT)
Department of Electronics & Information Technology
Electronics Niketan
6, CGO Complex, Lodhi Road
New Delhi – 110 003.
(Through: its Managing Director)

2. Dr. Ashwini Kumar Sharma
Managing Director
National Institute of Electronics and
Information Technology (NIELIT)
Department of Electronics & Information Technology
Ministry of Communications and Information Technology

Electronics Niketan
6, CGO Complex Lodhi Road
New Delhi – 110 003. .. Respondents

O R D E R (on admission)

By V. Ajay Kumar, Member (J):

The applicant, a Deputy Director (Technical)/Scientist-C in the respondent- National Institute of Electronics and Information Technology (NIELIT), filed the OA questioning the Annexure-A, Office Order No. 1(34)/2015-NIELIT/1071, dated 21.09.2015, in transferring him from Delhi to Guwahati, on his promotion from the existing post of Scientist 'B' to the next higher post of Scientist 'C', and the Annexure A1, Office Memorandum No.NIELIT/HQ/SPF/20/12/1156 dated 12.10.2015, in rejecting his representation made against the said transfer order.

2. While the applicant was working as Scientist 'B' in the respondent-NIELIT at its Head Quarters at New Delhi, the respondents promoted him to the next higher post of Scientist 'C' under Modified Flexible Complementing Scheme (MFCS), with immediate effect, or from the date of assumption of charge, whichever is later, vide the impugned Annexure 'A' Office Order dated 21.09.2015. Vide the same order, the respondents also transferred the applicant, in public interest, to Guwahati Centre with immediate effect. In obedience to the said Order the applicant, vide Annexure A2 – Joining Report, dated 22.09.2015, joined on the promotional post of Scientist 'C' w.e.f. 22.09.2015 (FN). However, the applicant vide Annexure A3

representation dated 28.09.2015 requested the respondents to cancel his transfer to Guwahati by submitting as under:

a) I have already served tenure of approximate 4 years in North-Eastern Region (NER) at NIELIT Aizwal Centre from December, 2008 to August, 2012. As per transfer policy applicable in NIELIT an employee is liable to serve only for a period of 3 years in the NER once in his NIELIT career.

b) Transfer of employee should be considered for those who have worked for more than five years at one place whereas I have completed 3 years only at NIELIT Headquarters. It may also be noted that most of the employees of NIELIT have never served in NER while they have completed more than 10 years of service in NIELIT. Further, most of the employees who have been promoted have not been transferred from their existing place of duty and no one has been transferred to NER.

c) My father (aged 70 years) is suffering from heart disease, spine problem and prostrate. His treatment is undergoing of different hospital of Delhi/NCR. In case of heart disease doctor has recommended by-pass surgery as one of the artery is totally damaged. His treatment is going under Pushpanjali Hospital, Vaishali and Medanta Hospital, Gurgaon. In case of spine problem doctor has recommended surgery. His treatment is going under Indian Spinal Injuries Centre, New Delhi. In case of prostrate, surgery has been already completed but regular follow up is required. My father resides with me therefore, my presence in Delhi/NCR is essential to look after treatment activities of my father.

d) My only daughter (Anika Gupta) is studying in Pre-Nursery in Kidzee, Vaishali. Annual fees and monthly fees (approx. Rs.40000/-) for the session 2015-2016 has been already deposited. Admission for 2016-17 in nursery has been also completed in Jaipuria School, Vasundhra, Ghaziabad, where Admission fees and tuition fees of Rs.8200/- has also been deposited in the school, which is non refundable. Thus, my transfer will affect education of my daughter and give me a financial loss also. Even the transfer policy of NIELIT says that transfers as far as possible should be synchronized with the end of the academic year.

e) My transfer is said to be in public interest however the huge public interest involved in the activities which are being looked after by me here in NIELIT HQs have been ignored which are as under:

- i. Practical Examination O/A/B/C Level
- ii. Implementation of Single Module Certificate.
- iii. Projects O/A/B/C Level
- iv. National Call Centre
- v. NSE-IT Project
- vi. NDLM Examination.

Examination of NIELIT are the core activities at Headquarters through which maximum revenue is generated for NIELIT. Exams are nationwide activities, whereas only 4 Officers and 3 Assistants are deployed for the same which are inadequate. By this transfer manpower in Exam section will be reduced further, which will badly affect the examination process."

3. When the said representation was rejected by the respondents vide Annexure A1, dated 12.10.2015, by giving reasons, i.e., the urgent need of manpower in Guwahati Centre, the O.A. is filed.

4. Shri R.N.Singh, the learned counsel for the applicant in addition to the grounds mentioned in (para 2 above) the Annexure A3 representation of the applicant also submits as under:

- a) The impugned transfer order is violation of the Annexure A4 transfer policy.
- b) The respondents not considered the submissions made by the applicant in his representation, i.e., personal hardship of the applicant and the effect of transferring an employee in the middle of the academic session of his children.
- c) The applicant attributed various malafides against 2nd Respondent, Managing Director of NIELIT by making him as respondent by his name.
- d) The learned counsel also placed reliance on the following decisions:
 - i) N. K. Singh v. Union of India, (1994) 6 SCC98.
 - ii) Director of School Education, Madras and Others v. O.Karuppa Thevan, (1994) SCC (Suppl.2) 666.
 - iii) O.A.No.44/2007 (Ashok Mittal v. The Chairman, CBDT & Anr.) dated 31.07.2007 of the CAT, PB, New Delhi.

5. The law on the issue of transfers is well settled. The Hon'ble Apex Court in Director of School Education v. O.Karuppa Thevan, (1994) Supp.2 SCC 666

62. The tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent.
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6. In **Rajendra Singh & Others v. State of UP & Others**, (2009)

15 SCC 178, 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."
7. In **Ashok Mittal** (supra), this Tribunal, after examining the transfer order therein and in the facts of the said case and following another Coordinate Bench order, interfered with the transfer order therein.
8. It is to be seen that the applicant was transferred from Delhi to Guwahati on his promotion as Scientist 'C' and on public interest. A perusal of the Annexure A4 transfer policy indicates that the same is applicable in case of regular transfers only and has no application in case of transfers made on promotion. It is also the settled position of law that the transfer policy guidelines are only directory but not mandatory. Further, the applicant having complied with the impugned Annexure A-Office Order dated 21.09.2015 and having joined in the

promotional post of Scientist 'C', immediately on 22.09.2015, cannot question the same in respect of his transfer. The other submissions made by the applicant both in his representation and in the OA are relating to his personal difficulties and in view of the public interest involved, i.e., the urgent need of manpower at Guwahati, his personal difficulties have to yield to the public interest.

9. It is to be seen that the transfer order is dated 21.09.2015 and that the applicant complied with the same to the extent of accepting promotion to the higher post of Scientist 'C' on 22.09.2015, and made a representation against the transfer on 28.09.2015. The applicant though levelled various mala fides against the 2nd respondent in the present OA, but has not whispered about the same in his representation made against the transfer order. Hence, it is clear that the allegations of mala fides are an afterthought and created for the purpose of filing of the OA. Hence, the same are rejected.

10. The Hon'ble Apex Court in **Rajender Singh** (supra) has considered the decision in **N.K.Singh** (supra) on which the applicant placed reliance and the same is also not supporting the case of the applicant. Even in **Karuppan Thevan** (supra) the Hon'ble Apex Court categorically held that there is no Rule that a transfer cannot be effected during the mid academic term, however, in the facts of the said case, directed the appellant therein not to effect the transfer till the end of the academic year.

11. The learned counsel for the applicant tried to persuade us that there is a necessity of continuing the applicant at the present place in view of ongoing activities being managed by him and that there is no requirement of the applicant at Guwahati. It is for the administrative authorities to place the required manpower at the appropriate places in the administrative exigencies and they are the best judges and this Tribunal cannot substitute them on those matters.

12. In view of the aforesaid discussion and settled position of law, which in fact followed in the decisions relied upon by the applicant's counsel, and in view of the fact that the applicant's transfer was effected in public interest, i.e., in view of the urgent need of manpower in Guwahati Centre and that was effected on the promotion of the applicant, we are not inclined to interfere with the impugned orders. Accordingly, the OA is dismissed, as being devoid of any merits, at the admission stage. However, in the circumstances, the applicant may be permitted to join at Guwahati, if requested, within two weeks from the date of receipt of this order. No costs.

By Dasti.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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