

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4157/2017

Order Reserved on: 27.11.2017
Order pronounced on 30.11.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

D. Rajashekhar (Aged-50), Group – A
Associate Professor & Centre
Co-ordinator-Leather Design
National Institute of Fashion Technology
Rajive Gandhi Salai
Taramani, Chennai-600 113. Applicant

(By Advocate: Shri R. Prabhakaran)

Versus

1. The Director General
National Institute of Fashion Technology
NIFT Campus
Hauz Khas, Near Gulmohar Park
New Delhi – 110 016.
2. The Registrar,
National Institute of Fashion Technology
NIFT Campus
Hauz Khas, Near Gulmohar Park
New Delhi – 110 016.
3. The Director
National Institute of Fashion Technology, NIFT Campus
Rajiv Gandhi Salai
Taramani
Chennai – 600 113.

4. The Secretary
 Ministry of Textiles
 Udyog Bhawan
 New Delhi.

5. The Chairman
 National Institute of Fashion Technology
 NIFT Campus
 Hauz Khas, Near Gulmohar Park
 New Delhi – 110 016.

6. Chairman
 National Commission for Scheduled Castes
 Lok Nayak Bhawan, 5th Floor
 Khan Market, New Delhi – 110 003. .. Respondents

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, an Associate Professor and Center Coordinator- Leather Design in the National Institute of Fashion Technology (in short, NIFT), Chennai, filed the OA questioning the transfer and relief Order dated 27.10.2016, whereunder he was transferred to NIFT, Kolkata, on administrative reasons.

2. Heard Shri R. Prabhakaran, the learned counsel for the applicants.

3. The applicant, earlier, filed OA No.1711/2016 before the Madras Bench of the Central Administrative Tribunal questioning the same impugned orders and by praying as under:

"To quash the impugned order of the 2nd respondent in NIFT/HO/E-II/Chennai/2016 dated 27.10.2016 and the consequential impugned relieving order issued by 3rd respondent in NO.14(130)/NIFT/CHE/ESTT/DR/12 dated 27.10.2016 and to pass such further or other orders as this Hon'ble Tribunal may

deem fit and proper in the facts and circumstances of the case and thus render justice."

4. The Madras Bench of this Tribunal by its Order dated 24.10.2017 (Annexure A6), after hearing both sides and after considering all the contentions raised by the applicant, dismissed the said OA, as under:

"5. It is not in dispute that the applicant was initially appointed as Assistant Professor in the National Institute of Fashion Technology (NIFT), Kolkatta on 15.07.2003 by direct recruitment. Thereafter, on his own request he was transferred to Leather Design Centre, Hyderabad, NIFT Kannore, Kerala and while working there he was appointed to the post of Associate Professor as a regular on selection basis on 02.08.2008. Thereafter at his request, he was transferred to NIFT Chennai on 12.09.2012. The applicant is now aggrieved by the order dated 27.10.2016 transferring him from NIFT Chennai to NIFT Kolkatta and also the consequential relieving order dated 27.10.2016. Even though the applicant has alleged malafide against the 3rd respondent quoting various incidents, on perusal of the material placed before us, we find that there is no malafide intention behind the transfer of the applicant and it is seen that the transfer has been effected by the 1st respondent purely on administrative grounds. It is also pertinent to note that on earlier occasions, the applicant has been given posting to Hyderabad, Kannore and Chennai at his own request. Further, we also do not appreciate that the applicant has not joined the transferred place of NIFT Kolkata even though he has been relieved from NIFT Chennai on 27.10.2016 itself. From the above discussion, we feel that there is no need to interfere in the impugned order of transfer dated 27.10.2016 and the consequential relieving order. The contentions raised in the OA are devoid of merit and accordingly the OA is dismissed with no order as to costs.

ORDER

The OA is dismissed with no order as to costs."

5. Aggrieved with the said order, the applicant filed WP(C) No.8810 of 2017 and the Hon'ble High Court of Madras by its Order dated 03.10.2017 (Annexure A7), dismissed the said WP as under:

"2. The writ petition is filed challenging the order passed by the Central Administrative Tribunal declining to interfere with the relieving order passed by the third respondent transferring the writ petitioner from Chennai to Kolkatta.

3. The order under challenge being one of transfer, which is an incident of service, we are not inclined to interfere with the same, especially when no mala fide intention could be attributed on the part of the employer for passing the the order of transfer. Moreover, having heard the learned counsel

appearing for the petitioner earlier and after perusing the materials available on record, when this court was inclined only to grant some time to the petitioner to join in the transferred place, it was represented on the side of the petitioner that the petitioner intends to engage a different counsel and on that score, he sought for an adjournment. Therefore, it appears that by such attitude, he attempts to get a better order.

4. In that view of the matter, we dismiss the petition. However, we extend a period of two months to the appellant to join in the transferred place accordingly, he is directed to report in the transferred place on or before 1st December 2017. No costs. The connected miscellaneous petitions are closed."

6. The applicant filed SLP No.30765-30767 of 2017 against the aforesaid orders and the Hon'ble Apex Court by its order dated 20.11.2017 (Annexure A8), dismissed the SLP, as under:

"Heard.

Delay condoned.

We do not see any ground to interfere with the impugned orders. The special leave petitions are accordingly dismissed.

Pending applications, if any, shall also stand disposed of."

7. In spite of upholding of the impugned transfer of the applicant to Kolkata, upto the Hon'ble Apex Court, the applicant filed the instant OA, once again questioning the very same transfer Order dated 27.10.2016.

8. Shri R. Prabhakaran, the learned counsel appearing for the applicant, while admitting that his transfer to Kolkata was upheld upto the Hon'ble Supreme Court and that he has been continuing at Chennai by virtue of the time granted by the Hon'ble High Court while dismissing his Writ Petition No.8810 of 2017 on 03.10.2017, as he was permitted to report at Kolkata on or before 01.12.2017, however, submits that since his SLP was dismissed without assigning any

reasons, the rule of *res-judicata* has no application to his case, and also placed reliance on **Ahmadabad Manufacturing and Calico Printing Company Limited v. Workmen and Another**, (1981) 2 SCC 663, in support of the said submission.

9. The decision in **Ahmadabad Manufacturing and Calico Printing Company Limited** (supra), is applicable to those cases where the SLP was dismissed by way of a non-speaking order and when a Civil Appeal is filed even after dismissal of the SLP. But in the present case, the OA of the applicant was dismissed on merits and that the Writ Petition filed by the applicant against the OA order was also dismissed on merits and that the applicant is continuing at Chennai, by virtue of the permission granted by the Hon'ble High Court while dismissing the said Writ Petition. Hence, the said decision has no application to the applicant's case.

10. The learned counsel for the applicant further submitted that since while filing the earlier OA No.1711/2016 at Madras Bench of this Tribunal, he failed to raise certain grounds and hence, he is entitled to file a fresh OA questioning the very same impugned orders which were already upheld upto Supreme Court by raising those new grounds. The said submission is unsustainable and against to all settled principles of law and hit by the principle of *res-judicata*.

11. In the circumstances and for the aforesaid reasons, the OA is dismissed with costs of Rs.25,000/- payable to the Delhi Legal

Services Authority by the applicant within four weeks from the date of receipt of a copy of this order.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/