

Central Administrative Tribunal
Ernakulam Bench

OA No.180/00227/2017

Wednesday, this the 7th day of March, 2018

CORAM

Hon'ble Mr.U.Sarathchandran, Judicial Member

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Jose T.Varghese

Deputy Director

Directorate of Census Operations

CGO Complex, Poonkulam,

Vellayani P.O., Thiruvananthapuram-695 522

Residing at PLRA 101, Panachimoodu Lane

Patom, Thiruvananthapuram-695 004.

Applicant

(By Advocate: Sri Vishnu S.Chempazhanthiyil)

Versus

1. The Additional Secretary & Registrar General, India
Office of the Registrar General, India
2/A, Mansingh Road
New Delhi-110 011.

2. Union of India represented by
the Secretary
Ministry of Home Affairs
New Delhi-110 001.

3. Sri Santhosh Kumar
Under Secretary to Government of India
Office of the Registrar General, India
2/A. Mansingh Road
New Delhi-110 011.

Respondents

(By Advocate: Mr.T.C.Krishna, Sr.PCGC for R1 to 3)

The Original Application having been heard on 28th February, 2018., this Tribunal delivered the following order on 07.03.2018:

O R D E R

By E.K.Bharat Bhushan, Administrative Member

The OA is filed by Sri Jose T.Varghese who, at the time of filing the OA, was working as Deputy Director, Directorate of Census Operations (DCO) at Trivandrum. He had been posted to DCO Kerala in June 2015 after having served for over 20 years in north Indian States. The next promotional post of the applicant is Joint Director of Census Operations. Prior to DPC proceedings were initiated for promotion, the applicant had submitted a request dated 17.2.2017 pointing out various personal reasons such as his son, being in the 12th standard and his father, who is aged 75 facing health issues and requested that on promotion, he may be retained in Kerala itself. However, without taking any of these factors into consideration, the applicant was ordered to be posted as Joint Director of Census Operation at DCO, Uttarakhand with Hqs at Dehradun. The transfer order by which the applicant was promoted as Joint Director is at Annexure A3.

2. It is alleged in the OA that Annexure A3 will show that 6 officers who were working as Deputy Directors in ORGI, New Delhi have been promoted as JDCO and retained at ORGI, New Delhi itself despite the fact that Uttarakhand is only an overnight journey from New Delhi. It is further stated that, as against the existing 5 posts of JDCO, 11 persons have now been accommodated. This shows the complete ad-hocism prevailing in the matter of transfer in the respondent-organization. Aggrieved by his transfer, the applicant made a representation dated 1.3.2017 (Annexure A5) which was replied to by the first respondent instructing him to join as JDCO at DCO Uttarakhand and informing that if leave was required for personal reasons, the same would be considered (Annexure A6). The applicant continued to represent his case. His son was appearing for the crucial 12th standard

Board Examination and various entrance examinations at Trivandrum. His wife, Smt.Rajni Jose, had been granted deputation and has been working in DCO Kerala since July 2015. The latter had been accommodated in DCO Kerala as per the instructions relating to mandatory posting of husband and wife at the same station. The applicant also pointed out that there were vacant posts of JDCO available in Goa and Tamil Nadu and there will be no difficulty in accommodating the applicant in either of these two places. It was represented that the applicant had joined DCO Kerala only on 1.6.2015 after serving for more than 20 years in North India and his spouse had also joined at the same place as recently as in July 2015.

3. It is further maintained that the Department of Personnel and Training had brought out an office memorandum No.11013/10/2013-Estt.A dated 2.7.2015 (Annexure A12) regarding the requirement for a Comprehensive Transfer Policy. Such a policy is conspicuous by its absence in ORGI (Office of Registrar General, India) and personnel are being shifted at the whims and fancies of the authorities. This has resulted in grievances to many persons as well as several instances of litigation.

4. The reliefs sought in the OA are as follows:

(i) Call for the records leading to the issue of Annexure A3 and set aside A3 to the extent the applicant is posted to Directorate of Census Operations, Uttarakhand.

(ii) Direct the respondents to permit the applicant to join as Joint Director of Census Operations at the Directorate of Census Operations, Kerala by accommodating him against vacant post of JDCOs available as of now.

(iii) Direct the respondents to consider granting the applicant the same treatment as sanctioned to Sl.No.2,3,6,7,10 & 12 in Annexure A3 order and enable the applicant to join duty as Joint Director of Census Operations.

(iv) Direct the 1st respondent to take steps in accordance with the instructions of DoPT at Annexure A12 and frame transfer policy in respect of the cadres under ORGI.

(v) Call for the records leading to the issue of Annexure A6 and set aside Annexure A6.

5. By way of grounds, the applicant submits that Annexure A3 order is vitiated by illegalities, arbitrariness, is discriminatory and amounts to colourable exercise of authority. Discrimination is apparent in the fact that six other officers included in Annexure A3 order, who were working in ORGI, New Delhi, have been accommodated in the same station. This has been done by diverting the posts from other States. The applicant had a series of personal reasons requiring his retention in Kerala, which have been disregarded. Annexure A11 guidelines relating to posting of husband and wife at the same station have been ignored. The applicant and his spouse who had come to Trivandrum together only in July 2015 are being separated without adequate reasons. The applicant had served for several years outside the State and moving him now from the southern tip of the country to Uttarakhand, amounts to victimization.

6. Per contra, a counsel statement was filed by the respondents initially wherein it was stressed that the applicant is holding a post with All India Service liability and the Directorate of Census Operations offices are spread all over India and are functioning from the capitals of various States. The applicant was on promotion and a decision had been taken by the competent authority that on promotion, the officer may be transferred as per the requirement of other DCOs. One Sri N. Ravichandran has already been posted as Joint Director of Census Operations in Kerala and there is no post available to accommodate the applicant at Trivandrum. As per Annexure A6, maximum leniency had been shown to the applicant and his representation was replied to stating that *"it has been decided that he has to join as JDCO at DCO, Uttarakhand as per this office order No.A-32012/19/2016-Ad-*

III/167 dated 27.2.2017 first and he may apply for leave thereafter which will be granted by the competent authority” (Annexure A6). In Annexure A11 DoPT O.M. relating to posting of husband and wife at the same station, there is an important proviso contained therein that this is to be done only if the posts are available. That is not the case in DCO Kerala.

7. A detailed reply statement was also filed by the respondents wherein the arguments raised by the applicant have been countered. It has been stressed that the Directorate of Census Operations is an organization which has its footprint all over the country and the personnel working in the organization are bound to be posted to any part of India. The respondents have cited several judgments such as below:-

- (i) Mrs. Shilpi Bose and others vs. State of Bihar and others [AIR 1991 SC 532]*
- (ii) Union of India and others vs. S.L. Abhas [AIR 1993 SC 2444]*
- (iii) Asif Hameed vs. State of J&K [AIR 1989 SC 1899]*
- (iv) Union of India and others vs. H.N. Kritania [1989 11 ATC 269]*

In the judgments cited above, it has been stressed that transfer is an exigency of service which is a matter for appropriate authority to decide and courts of law are to be restrained from interfering in transfer orders unless they are vitiated by malafides or made in violation of any statutory provisions. The contentions raised in the counsel statement have been reiterated in the main reply statement, further adding that the two vacancies available in Goa and Tamil Nadu have since been filled and are not available to the applicant any more.

8. The applicant filed rejoinder reiterating the contentions made in the OA and further contending that there is no exigency of work which requires his transfer from Kerala to Uttarakhand. Emphasis is also laid on O.M. of DoPT at Annexure A12, which among other things, states as follows:-

"The Rotational Transfer Policy should aim to harmonize objectives of institutional memory, avoid development of vested interests, and provide exposure to the employees working in different organizations, inter-alia ensuring the overall growth of an officer. The Transfer Policy should provide for both a minimum as well as maximum tenure. Any transfer before completing the minimum prescribed tenure or stay beyond the maximum tenure should be with the approval of the Committee constituted for the purpose, for reasons to be recorded in writing."

The ORGI, where there is no such transfer policy, exists in clear violation of instructions contained in the DoPT O.M. The arbitrary practice surrounding transfer is continuing unhindered in the respondent organization. The applicant goes on to narrate several instances of what he calls irrational deployment of personnel. Rejoinder also contains the service details of officers in ORGI/DCOs where personnel have been posted and are continuing without any discernible pattern in tenure. The judgments referred to in the reply statement are only specific to the circumstances of those cases and have no general application. In reply to an RTI query at Annexure A17 dated 13.7.2011, it is clearly admitted that there is no transfer policy framed in the respondent organization.

9. Sri Vishnu S.Chempazhanthiyil, learned counsel for the applicant and Sri T.C.Krishna, Sr.PCGC for the respondents were heard. Two Miscellaneous Applications No.895 and 1062 of 2017 were filed by the applicant seeking his posting as Joint Director of Census Operations on the retirement vacancy of Sri Ravichandran on 31.10.2017.

10. The applicant works in an organization which has All India transfer liability. It is also true that he has spent a lion's share of his service outside the State and was posted in Kerala only in June 2015. His wife also joined him in the same organization at Trivnadrur in July 2015. There are compelling circumstances, according to the applicant, which require his presence in Kerala. He has been

repeatedly representing to respondent No.1 requesting that he may be retained in Kerala and if it is not possible as he had been promoted, to post him to any neighbouring State. As these posts also were subsequently filled up, he had requested the respondent organization to retain him against the retirement vacancy of Sri Ravichandran.

11. During the hearing, we understand that the applicant has joined at Uttarakhand in July 2017 in compliance with Annexure A3 order. This Tribunal had declined to interfere in the case by way of an interim order mainly on the ground that, transfer in the case of All India organization, is an exigency of service and none can claim any particular place or posting by way of right. Besides, there are several orders as brought out in the reply statement which discourage interference in transfer orders as a general principle. However, having stated thus, it is also true that the respondent organization does not appear to have conducted themselves in an impartial manner so far as issuance of Annexure A3 is concerned. The applicant has pointed out that by special benevolence extended, six office compatriots who figured in the promotion order, are being retained in New Delhi itself. We are at a loss to understand why one of them could not have been transferred to Uttarakhand which is only an overnight journey from New Delhi. Instead, the respondents have chosen to despatch the applicant from the southern most tip of India to his posting place in the north which is more than 3000 kilometers away. The grievance of the applicant becomes all the more accentuated because he and his wife had obtained a posting to Kerala and were united on spouse grounds only in mid 2015 after serving several years outside the State.

12. While conceding that transfer is one of the unavoidable auguries of Government service, the O.M. referred to in Annexure A12 by the applicant is clearly intended to ameliorate grievances which could result from postings. While most organizations under the Govt of India enacted transparent transfer policies, we are at a loss to understand why ORGI has chosen to turn a blind eye to this necessary task. We would not like to go to the extent of alleging malafide or vested interest in the fact that the respondent organization is yet to formulate a transfer policy; but then, this situation cannot be allowed to continue. The applicant clearly has a valid grievance on this count. There is a reference to some movement being made by the respondent organization towards this end as per the document dated 28.12.2017 which is a letter from the Under Secretary to the Govt of India addressed to Central Government Senior Panel Counsel Sri T.C.Krishna, the contents of which are quoted below:

“Reference is invited to your e-mail dated 14.12.2017 on above subject and to request to inform the Hon'ble Tribunal that a Transfer Posting Policy of Officers in ORGI is under finalization and is being issued very shortly. As per the Transfer policy, the Transfer Posting Committee has to take view on the above matter. The request of Sh.Jose T.Varghese, JDCO for transfer to Kerala or nearby State on spouse ground will be placed before the said committee at appropriate time for taking decision in the matter.”

13. This is indeed a welcome development. Since a lot of time has been lost in the process, a policy has to be formulated in the shortest possible time so that the grievance of persons such as the applicant can be duly considered and redressed without any room for allegation of discriminatory treatment. After examining the case in detail and taking into consideration all pleadings and documents on record, we allow the OA to the extent that a well thought-out transfer policy should be published by respondent No.1 within two months of receipt of this order. In the

meanwhile, the case of the applicant's transfer to the vacant post of Joint Director in DCO Trivandrum is to be considered and decision communicated in line with the transfer policy. OA is disposed of as above. No order as to costs.

14. In view of the disposal of the OA, Miscellaneous Application Nos.995/2017 and 1062/2017 stand closed.

(E.K.Bharat Bhushan)
Administrative Member

U.Sarathchandran
Judicial Member

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Annexures filed by the applicant in the OA:

Annexure A3: Copy of the order vide File No.A-32012/ 19/2016-Ad-III/167 dated 27.2.2017 issued by the 1st respondent.

Annexure A6: Copy of communication No. F.No. A-32012/ 19/2016-Ad-III(Pt)/211 dated 10.3.2017 issued by the 1st respondent.

Annexure A1: Copy of order No.F.No.A-24011/14/2015-Ad-III/323 dated 1.4.2015 issued by the 1st respondent.

Annexure A2: Copy of request dated 17.2.2017 to the 1st respondent.

Annexure A4: Copy of the office order No.F.No.A-48014/4/2015-Ad-V dated 11.4.2016 issued by the 1st respondent

Annexure A5: Copy of the representation dated 1.3.2017 to the 1st respondent.

Annexure A7: Copy of the representation dated 15.3.2017 to the 1st respondent.

Annexure A8: Copy of the communication No.A.1/10264/2008 dated 16.3.2017 from DCO Kerala to the 1st respondent.

Annexure A9: Copy of admit card for the Board Examination and the hall tickets for various crucial engineering entrance examinations.

Annexure A10: Copy of the medical prescription in respect of applicant's father.

Annexure A11: Copy of O.M.No.F.No.28034/9/2009-Estt.(A) dated 30.9.2009 issued by the Government of India.

Annexure A12: Copy of office memorandum No.11013/10/2013-Estt.A dated 2.7.2015 issued by the Department of Personnel and Training.

Annexure A13: Copy of order issued vide file No. 24011/41/2015-Ad-III/512 dated 26.5.2016 issued by the 1st respondent.

Annexures along with MA No.376/2017:

Annexure A14: Copy of office order vide No..A-32012/19/2016-Ad-III(Pt)/244 dated 22.3.2017 issued by the 1st respondent.

Annexure A15: Copy of tabulation prepared by the Applicant to show the posting details of officers who have been currently posted as IDCO in ORGI New Delhi.

Annexures with Reply Statement:

Annexure R1: Copy of order dated 9.9.2016 of the CAT, Ernakulam Bench.

Annexure R2: Copy of order dated 23.2.2017 of the Hon'ble High Court of Kerala.

Annexure R3: Copy of order dated 3.4.2017 of the CAT, Ernakulam Bench in MA No.180/376/2017.

Annexures along with rejoinder.

Annexure A16: Copy of the information supplied under RTI Act vide No.A-26011/7/2017-Ad-III/462 dated 29.5.2017.

Annexure A18: Copy of the information supplied by the respondents under RTI Act vide communication No.A-26011/7/2017-Ad-III/571 dated 22.6.2017.

Annexure A18: Copy of the information supplied by the respondents under RTI Act vide communication No.A-26011/7/2017-Ad-III/571 dated 22.6.2017.

Annexure A19: Copy of order No.A-36013/1/2016-Ad-III/557 dated 22.6.2017 issued by the office of the Registrar General, India.

Annexure A20: Copy of the request dated 23.6.2017 to the Joint Director, Directorate of Census Operations, Kerala.

Annexure A21: Copy of the final seniority list of Joint Director of Census Operations as on 1.4.2016.

Annexure A22: Copy of the relevant portion of information supplied under RTI Act vide No.26011/7/2017-Ad.III/572 dated 22.6.2017.

Annexure A23: Copy of the incumbency position vide communication A-12021/2011/Admn dated 15.3.2011 for February 2011.

Annexure A23(a): Copy of the incumbency position vide communication A-12021/2011/Admn dated 8.3.2012 for the month of February 2012.

Annexure A23(b): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 19.3.2013 for the month of February 2013.

Annexure A23(c): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 10.3.2014 for the month of February 2014.

Annexure A23(d): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 23.4.2015 for the month of February 2015.

Annexure A23(e): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 16.3.2016 for the month of February 2016.

Annexure A23(f): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 16.1.2017 for the month of November and December 2016.

Annexure A23(g): Copy of the incumbency position vide communication A-12021/2012/Admn dt. 16.3.2017 for the month of February 2017.

Annexure A24: Copy of the incumbency position vide communication DCO(E)26/98//Pt.III dt.21.4.2011 for the month of February 2011 in DCO Assam.

Annexure A24(a): Copy of the incumbency position vide communication DCO(E)31/2011/985 dt.7.3.2012 for the month of February 2012 in DCO Assam.

Annexure A24 (b): Copy of the incumbency position vide communication DCO(E)31/2011/418 dt.4.3.2013 for the month of February 2013 in DCO Assam.

Annexure A24 (c): Copy of the incumbency position vide communication DCO(E)31/2011/559 dt.6.3.2014 for the month of February 2014 in DCO Assam.

Annexure A24 (d): Copy of the incumbency position vide communication 1296/F.5/Cen/Estt/2011-44 dt. 1.3.2011 for the month of February 2011 in DCO Rajasthan.

Annexure filed along with MA 996/17

Annexure A25: Copy of representation dated 1.8.2017 to the 1st respondent.

Annexures filed along with MA 1074/2017:

Annexure A26: Copy of O.M.No.F.No.A-26011/01/2015-Ad-III/945 dated 3.10.2017 issued by the 1st respondent.

Annexure A27: Copy of order No.F.No.A-36013/1/2016-Ad.III-904 dated 12.9.2017 issued by the 1st respondent.

Annexure A28: Copy of communication dated 17.10.2017 to the 1st respondent.