

**Central Administrative Tribunal
Principal Bench**

OA No.4395/2017

New Delhi, this the 31st day of July, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Vijay Pratap Sharma
Aged about 50 years
Technical Director & HOD (Training), NIC Hqs
S/o Shri IP Sharma
R/o D1/13, Satya Marg,
Chanakya Puri,
New Delhi 110 021.

Posted at

National Informatics Centre
A Block, CGO Complex,
New Delhi.

... Applicant.

(By Advocate, Shri M. K. Bhardwaj)

Vs.

1. Union of India
Through its Secretary
Department of Personal and Training
Ministry of Personnel, Public Grievances & Pensions
North Block,
New Delhi.
 2. Secretary
Ministry of Electronics and Information Technology
Electronics Niketan, CGO Complex,
New Delhi.
 3. Mrs. Neeta Varma, DG,
National Informatics Centre (Attached Office of
Ministry of Electronics & Information Technology)
A Block, CGO Complex,
New Delhi.
- Respondents.

(By Advocates, Shri R. K. Jain and Shri Piyush Gaur for
Shri Arun Bhardwaj)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman :**

The applicant was initially appointed as Scientist-B in National Informatics Centre in 1995. Thereafter, he has been promoted to various levels. As of now, he is holding the post of Scientist Grade-E. Through office order dated 27.05.2017, the applicant was posted to National Informatics Centre (NIC), NCT of Delhi Centre, Delhi. The said order is challenged in this OA.

2. The applicant contends that the Department of Personnel & Training issued Notification dated 27.12.2013, and in compliance with the same, the Ministry of Communication and Information Technology, Government of India, issued Office Memorandum dated 20.02.2014, according to which, the Committee constituted for this purpose for the relevant category of employees must decide the feasibility of transfer, and that, in turn, was accepted by the Secretary, Department of Electronics and Information Technology (DEIT). He contends that the prescribed procedure was not followed in his case and, thereby, the order of transfer is vitiated. The other ground urged by him is that the position to which he is transferred is not equivalent to the one held by him and in a way, it is punitive in nature. Reference is

made to an earlier order of transfer passed in his case and the orders passed by the Tribunal as well as the Delhi High Court in that.

3. Respondents filed the counter affidavit opposing the OA. It is stated that the very induction of the applicant was into NIC, and from time to time his orders of promotion and postings were issued invariably by the Director General of the NIC. It is further pleaded that the NIC framed its own policy in pursuance of the judgment of Hon'ble Supreme Court in **T. S. R. Subramanian & Ors vs Union Of India & Ors**, (2013) 15 SCC 732, and the impugned order of posting of the applicant was passed strictly in accordance with that. It is stated that services of the applicant, as an expert in the field, are very much needed in the other units of NIC.

4. We heard Shri M. K. Bhardwaj, learned counsel for the applicant, Shri R. K. Jain and Shri Piyush Gaur for Shri Arun Bhardwaj, learned counsel for the respondents.

5. Ever since, his having been appointed as Scientist-B, the applicant was working only in Delhi and that too in a particular station. The order of transfer dated 17.11.2014 posting him to NIC Cell, Department of Skill Development & Entrepreneurship was challenged in OA No.4417/2014.

The said OA was allowed on the ground that steps contemplated under transfer policy stipulated by the Ministry of Electronics were not followed. When this order of the Tribunal was challenged before the Hon'ble High Court, the question as to whether the Director General of NIC was competent to transfer was left open, to be decided by the Tribunal.

6. In the present context also, the same ground, namely, the failure to follow the procedure prescribed under the policy has been urged. However, this becomes virtually unacceptable in view of the fact that NIC has formulated its own transfer policy in compliance of the judgment of Hon'ble Supreme Court. Though in the counter affidavit, it was specifically mentioned that the transfer policy was framed, the applicant did not point out any violation of such policy.

7. Time and again, the Hon'ble Supreme Court has held that the transfer is an incidence of service and the guidelines framed by the department are mostly directory in nature. When the observations of the Supreme Court are in the context of there being slight non-compliance of the conditions contained in the relevant transfer policy, the question of interference with the transfer which is

effected in accordance with the policy framed by the NIC does not arise.

8. Serious objection is raised as to very competence of the Director General of NIC who passed the order of transfer/posting. In fact, that very question is left open to be decided by this Tribunal in its order passed by the Delhi High Court (*supra*).

9. Having raised the issue vehemently, the applicant did not place any material worth its name, before the Tribunal. In order to decide the core issue, we directed the respondents to file copies of the orders of appointment and successive posting orders issued to the applicant from time to time.

10. A bunch of such orders are placed before us. Invariably and without exception, all such orders were passed by the Director General of NIC or under his authority. These range from the order of appointment to the orders of posting. The applicant cannot have the luxury of accepting the orders, if they are favourable to him, and to raise an objection when it does not suit his convenience. The inescapable conclusion is that the Director General of NIC is the authority to appoint, as well

as to transfer the applicant and others, holding similar positions

11. In the ultimate analysis, the so called transfer of the applicant is nothing but from one place to another, in Delhi, that too hardly two kilometres away from a place where he is working for the past three decades. If one is to understand the intention of the applicant fairly, it is to the effect that under no circumstances, he shall be shifted from the place of his initial posting. The applicant cannot have such a luxury. The interest of the organisation is paramount. We accordingly dismiss the OA.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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