

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00114/2017

TODAY, THIS THE 15TH DAY OF SEPTEMBER, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID ... MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN ... MEMBER (A)

NareshRaghobaKadwadkar,
S/o. NeelakantRaghobaKadwadkar,
Aged about 35years,
Occ: : MTD (OG), No. S/1787,
Indian Coast Guard Station,
Karwar : 581308
Karnataka

...

Applicant.

(By Advocate Shri Sunil S Choudhari)

Vs.

1. Union of India,
Reptd.By its Secretary,
Ministry of Defence,
South Block,
New Delhi – 110 001
2. The Director General,
Indian Coast Guard Headquarters,
National Stadium Complex,
New Delhi – 110 001
3. The Commander,
Coast Guard Headquarters Region (West),
WorliSeaface Post Office,
Worli Colony,
Mumbai – 400 030
4. The Commanding Officer,
ICGS, Karwar,

501/1, NH – 17,
Chendia Village,
Karwar- 581 324

5. The Commanding Officer,
Coast Guard Station Ratnagiri,
Airport Building, MIDC Area,
Ratnagiri District – 415639

...Respondents.

(By Advocate Shri M.V. Rao, Senior Panel Counsel)

ORDER (ORAL)

Hon'ble Shri Prasanna Kumar Pradhan, Member (A) :

The applicant in the present OA filed under Section 19 of the Tribunals Act, 1985, has prayed for the following relief:

“To quash the impugned transfer order dated 15.02.2017 passed by Respondent No.3 vide Annexure A-6 as illegal, arbitrary, unjust, malafide, punitive besides being violation of natural principles.”

2. The applicant submits that he was appointed as Motor Transport Driver (Ordinary Grade) on 15.06.2011 in the respondents' organization. After completion of his probation for two years, he has continued to work there only. On 17.11.2016, the applicant was harassed and assaulted by one Assistant Commandant who used filthy language which resulted into filing a complaint by the applicant against the Assistant Commandant before the Civil Police, Karwar and a case was registered as NC (Non Crime) No. 66/2016. Immediately thereafter, the applicant was transferred to Mangalore on temporary duty with effect from 28.11.2016 to 19.01.2017. The applicant was also admitted in Government Civil Hospital, Karwar. He was discharged on 21.11.2016 with an advice to take rest for 07 days. The applicant submitted a representation stating his inability to attend the transfer duty on 22.11.2016. Though he made a representation to the 3rd respondent about the harassment on 09.01.2017, no heed was paid towards the same. Meantime, he was again transferred to his original place of posting. Thereafter, by the impugned order dated 15.02.2017, the applicant

was transferred to Ratnagiri, Maharashtra, against an existing vacancy. The applicant made a request to cancel the transfer order issued on 15.02.2017 on account of his mother's illness. He also learnt that there was no vacancy existing at Ratnagiri to place him on transfer. He further submitted that in addition to transfer, the applicant was handed over the memorandum of articles of charges under Rule 14 of the CCS (CCA) Rules, 1965. The memorandum of articles of charge bears the same number as that of the impugned transfer order. Being aggrieved by the same, the applicant has filed the present O.A. According to the applicant, the transfer order is stigmatic in nature and it is by way of punishment. Therefore, the impugned transfer order is unjustified and should be set aside.

3. The respondents have filed their reply statement in which they submitted that while the applicant was working as Motor Transport Driver, he was asked by the Assistant Commandant as to why he was not wearing his uniform of MTD (OG) while on duty. In response to that the applicant indulged in abusing, threatening and argument with the Assistant Commandant inside the Executive Officer's office. Thereafter, he made a concocted allegation before the police authorities of being harassed and beaten by ICGS staff, Karwar. They have also stated that the applicant while functioning as Motor Transport Driver, ICGS, Karwar, has been advised and counselled by the office in the past to improve his overall conduct, but he failed to do so. On the misconduct of the applicant, it was decided to hold an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 and a charge memorandum was served on him. Since the applicant has completed more than 05 years of service, he was transferred to another station, i.e. Ratnagiri.

4. The applicant has filed a rejoinder to which the respondents have also filed their additional reply. However, both the parties have only reiterated their contentions made in the OA and in the reply statement respectively.

5. During hearing, the learned counsel for the applicant reiterated the submissions made in the O.A and highlighted the fact that the applicant was being harassed by the

ICGS staff. Since he filed a police complaint against the assault made to him, he has been penalized and transferred. Simultaneously, a charge memo was also issued to him. He referred to the judgement of the Hon'ble High court of Karnataka in Writ Petition No. 25903 of 2005 decided on 22.12.2005, *Dr. M. Sumithra vs. The Bangalore University JnanaBharathi and Another* (ILR 2006 Karnataka 1122), wherein it was held that in case of proved misconduct it is open to the employer to impose a punishment. But transfer should not be considered by way of punishment.

6. Learned counsel for the respondents while referring to the details mentioned in the reply submitted that insimilar case of absenteeism, neglect to duty etc. by the applicant, a letter of advice came to be issued to him vide Annexure R-14 wherein the applicant was informed of the misconduct and absenteeism and also giving driving training for a driving School registered in his father's name and directed to improve his conduct. They submitted that the applicant has been warned, advised and counselled several times in the matter as is evident from the enclosures annexed to the reply statement. Ultimately, the authority decided to initiate the disciplinary proceedings against him. Since he has already completed more than 05 years of service, he was transferred to another station. Learned counsel for the respondents referred to Hon'ble Apex Court judgements in *Union of India vs. Janardhan Debanath and Another* in Civil Appeal Nos. 1010-11 of 2004 and *Registrar General, High court of Judicature of Madras vs. R. Perachi and Others* in Civil Appeal No. 7936 of 2011 to submit that there is nothing wrong in transfer on the ground that the employee's misbehaviour is undesirable or there is disciplinary proceedings against him.

7. We have carefully considered the facts of the case and the arguments put forth by either side. From the records, it appears that the applicant had earlier been issued memos, advice, and warning on several occasions regarding his arrogant behavior, neglect to duty, absenteeism, not wearing uniforms and also his involvement in a private motor driving school run by family. There has been an allegation about the incident of beating for which the applicant made a complaint to the police. The respondents have also issued a notice to the applicant against his behavior. On the same issue also,

disciplinary proceedings were initiated against the applicant. It appears that the applicant has been working at Karwar since his joining which indicates that he has completed nearly 06 years. It is also informed during the hearing that pursuant to vacation of the interim order by this Tribunal, the applicant has joined at the new place of posting and has been working there.

8. The learned counsel for the applicant has referred to a judgement of Hon'ble High court of Karnataka in Writ Petition No. 25903 of 2005, *Dr. M. Sumithra vs. The Bangalore University JnanaBharati and Another*, wherein the applicant who was a Senior Grade Lecturer, was transferred out based on a complaint made by her against another person and based on the resolution of the Syndicate recommending her transfer for the alleged misconduct. The Hon'ble High Court has held that before the order of transfer on the ground of misconduct is to be passed, the employer was under a duty to issue a charge sheet setting out the charges/misconduct. Therefore, the order of transfer imposed without holding an enquiry and by way of punishment is unjust.

9. The respondents have referred to the judgement of Hon'ble Apex Court in *Union of India vs. JanardhanDebanath and Another* in Civil Appeal Nos. 1010-11 of 2004 (2004 SCC (L&S) 631) wherein the Hon'ble Apex Court in para 12 held as follows:

“That brings us to the other question as to whether the use of the expression 'undesirable' warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in [JagdishMitter v. The Union of India](#) (AIR 1964 SC 449, para 21, p.456) to contend that whenever there is a use of the word 'undesirable' it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression 'undesirable' in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially and same yardstick, norms or standards cannot be applied to all category of cases. Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.”

A reference was also made by the respondents by quoting the judgement of Hon'ble Apex Court in *Registrar General, High court of Judicature of Madras vs. R. Perachi and Others* in Civil Appeal No. 7936 of 2011 ((2011) 2 SCC (L&S)643). Hon'ble Apex court vide para 31 of the said judgement has observed as follows:

“As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted.”

10. It is a fact that in public service, transfer is an incidence of service and a Government servant is liable to be transferred from one place to another in public interest. The issue of transfer and posting are prerogative of the authorities who is required to decide the matter in accordance with exigencies of service. The Court normally should not interfere with such order unless it is shown to be an outcome of malafide exercise. In the present case, on the ground of indiscipline, after giving several opportunities to the applicant by way of notices, counselling and advice etc., the respondents have decided to initiate disciplinary proceedings against the applicant. Simultaneously, they have decided to transfer out the applicant keeping in view his misconduct. In any case, the applicant has completed more than five years of service in the same place, i.e. at Karwar. We do not find anything malafide in the said transfer order of the applicant. It is also noted that the applicant has already joined the new place of posting.

11. In the light of the above judgements of the Hon'ble Apex Court and keeping in view the entire facts borne out from the records, we are not inclined in favour of any interference in the impugned transfer order. Therefore, we hold that the O.A is devoid of any merit and hence the same is dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
ADMINISTRATIVE MEMBER

(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

Cvr.

Enclosures referred to by the applicant in O.A :

Annexure A-1 :Copy of the appointment order of the applicant dated 15.06.2011

Annexure A-2 :Copy of the Movement order dated 17.11.2016

Annexure A-3 :Copy of Detention Certificate dated 19.01.2017

Annexure A-4 :Copy of the request letter by applicant dated 22.11.2016 to respdts.

Annexure A-5 :Copy of representation by applicant to stop harassment dt.09.01.17

Annexure A-6 :Copy of impugned transfer order dt.15.02.17 by 3rd respondent.

Annexure A-7 :Copy of request letter by applicant to cancel impugned transfer order

Annexure A-8 : Copy of transfer order dated 27.02.2017 by 3rd respondent with medical papers relating to treatment of his mother.

Annexure A-9 : Copy of the memorandum of articles of charge proposing to initiate Inquiry against the applicant dated 16.02.2017.

Documents enclosed by the applicant along with the rejoinder :

Annexure A-10: Copy of the Discharge Card issued by District Hospital, Karwar

Annexure A-11: Copy of the Medical Certificate for grant of leave and Fitness Certificate for resuming duty.

Annexure A-12: Copy of the NCR No. 66/2016 registered by Karwar Rural Police Station.

Annexure A-13: Copy of the Exemption Order passed by respondents dt. 26.05.2014 for wearing service uniform.

Annexure A-14: Copy of the Medical Certificate with regard to leave from 17.02.2017 to 03.03.2017& fitness certificate.

Annexure A-15: Copy of the Medical Prescription dated 06.03.17 and the Medical Certificate for 3 days from 7.3.17 to 9.3.17 and Fitness Certificate dated 09.03.2017 in respect of the applicant.

Enclosures referred to by the respondents :

Annexure R-1: Fitness Certificate dated 21.03.2017 issued by the District Surgeon, And Medical Supdt., District Hospital, Karwar.

Annexure R-2 : Letter dated 24.03.2017 issued by the Assistant Commandant to the Commander informing not reporting duty by the applicant.

Annexure R-3: Letter dated 17.11.2016 issued by the Assistant Commandant to the Commanding Officer forwarding complaint against the applicant.

Annexure R-4 : Letter dated 18.11.2016 issued by the Assistant Commandant to the Commanding Officer forwarding complaint against the applicant.

Annexure R-5: Statement dated 17.11.2016 given by Mr. M.S. Rajan, P/Adh, explaining the incident took place on 17.11.2016 between the applicant and the Executive Officer.

Annexure R-6: Statement dated 17.11.2016 given by Mr. B.P. Mohanty, Adh, explaining the incident took place on 17.11.201 between the applicant and the Executive Officer.

Annexure R-7: Letter dated 25.03.2014 issued by the Commandant to the Commander recommending transfer of the applicant.

Annexure R-8: Letter of advice dated 19.03.2014 issued to the applicant by the Assistant Commandant.

Annexure R-9: Letter of advice dated 20.03.2014 issued to the applicant by the Assistant Commandant.

Annexure R-10: Statement of the Duty Officer, Mr.Ghosh, dated 09.05.2014 intimating that the applicant expressed his inability to drive Service truck.

Annexure R-11: Statement of the Duty Officer, Mr.Jhahid Ali, dated 13.08.2016 intimating about the denial by the applicant for duty.

Annexure R-12: Show Cause Notice dated 16.08.2016 issued to the applicant by The Assistant Commandant for neglect of duty and absence from duty.

Annexure R-13: Show Cause Notice dated 19.08.2016 issued to the applicant by The Assistant Commandant for compliance to duty.

Annexure R-14: Letter dated 18.08.2016 issued to the applicant by Commandant for frequent absenteeism, neglect to duty etc.

Annexure R-15: Movement order dated 6.3.2017 issued to the applicant by the Dy. Commandant.

Annexure R-16: Letter dated 30.03.2017 received from the Regional Transport Officer, Karwar giving details about Vaibhav Lakshmi Driving School.

Documents enclosed by the respdts. alongwith the additional reply statement :

Annexure R-17: Certificate issued by Dr.Prakash dated 28.04.2014 advising to wear Khaki dress also.

Annexure R-18: Letter dated 28.07.2014 issued to the applicant by Assistant Commandant cancelling the exemption granted earlier from wearing the uniform.

Annexure R-19: Letter dated 2.3.2017 issued by the Dy. Commandant giving leave details of the applicant.

Annexure R-20 : Copy of leave applications from 17.2.2017 to 25.2.2017 and 25.2.2017 to 5.3.2017 submitted by the applicant.

Annexure R-21: Letter dated 20.02.2017 addressed by the applicant to the Commanding Officer for extension of leave upto 25.02.2017.

Annexure R-22: Letter dated 26.02.2017 addressed by the applicant to the Commanding Officer for extension of leave upto 25.02.2017.

Annexure R-23: 04 speed post receipts of various dates of having sent letters to the applicant.
