

OA.No.170/00322/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00322/2017

DATED THIS THE 17th DAY OF OCTOBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. All India DGQA Engineers Association
Bangalore Branch, represented by
General Secretary, Shri.A.Aswathnarayan
S/o.Shri.A.Krishna Rao
Aged about 58 years
Working as Assistant Engineer
Quality Assurance (Electronics)
J.C.Nagar Post
Bangalore-560 006.
2. Shri Shekhar
S/o.Shri.Ram Lal Mishra
Aged about 33 years
Working as Assistant Engineer
Quality Assurance(Electronics)
J.C.Nagar Post
Bangalore-560 006.
3. Shri M.Muruganantham
S/o.Shri.O.P.Mookaih
Aged about 51 years
Working as Assistant Engineer
Quality Assurance(Electronics)
J.C.Nagar Post
Bangalore-560 006.
4. Shri P.K.Roy
S/o.Late.SL Roy
Aged about 54 years
Working as Assistant Engineer
Quality Assurance(Vehicle) wing
J.C.Nagar Post
Bangalore-560 006.Applicants

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Union of India
Through the Secretary
Ministry of Defence

Department of Defence Production
Room No.136, South Block
New Delhi-110001.

2. Director General
Directorate General of Quality Assurance(DGQA)
Ministry of Defence
Department of Quality Assurance(L)
'G' wing, Nirman Bhawan
New Delhi-110 011.
3. Controller
Controllerate of Quality Assurance(Electronics)
Ministry of Defence(DGQA)
J.C.Nagar Post
Bangalore-560 006.
4. The Secretary
Department of Personnel & Training(DoP&T)
North Block
New Delhi-110 001.Respondents

(By Advocate Shri S.Prakash Shetty)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The present OA has been filed seeking the following relief:

- i. *Set aside the impugned Rotational Transfer Policy vide No.A/96995/RTP/DGQA/Admn-7B/D(QA)/2016 dated 24.11.2016 (Annexure-A5) applicable for two cadres i.e. Technical (AE & JE) and Scientific (JTO) without uniformity as illegal, without approval of the DoP&T and vide letter dated 30.4.2009(Annexure-A26).*
- ii. *Direct the respondent-01 to revise the Rotational Transfer Policy dated 24.11.2016(Annexure-A5) while preparing the lists of sensitive and non-sensitive posts of Group-B(gazetted and non-gazetted) officials in each department of DGQA in terms of the letter dated 30.4.2009(Annexure-A26) and vide letter dated 19.5.2017(Annexure-A20) while taking approval of the DoP&T vide letter dated 6.6.2017(Annexure-A22) in the interest of justice and equity.*

2. The applicants which includes the All India DGQA Engineers Association

OA.No.170/00322/2017/CAT/Bangalore Bench and some members of the said association who are working as Assistant Engineers Quality Assurance have challenged the Rotational Transfer Policy(RTP) issued by the respondents dtd.24.11.2016. According to the applicants, the Rotational Transfer Policy was earlier issued in 2011 which according to them was defective and without objectives. Since there was irregularity in the said RTP, it was decided to constitute a committee to review the Rotational Transfer Policy(Annexure-A2). The respondent No.1 has issued the revised Rotational Transfer Policy dated 24.11.2016(Annexure-A5) without classification of the group of sensitive and non-sensitive posts in terms of para-3 of the RTP-2016 which stipulate provisions relating to officials posted to sensitive posts. It is submitted that the respondents did not prepare the lists of sensitive and non-sensitive posts. The applicants' union has filed representation on 2.12.2016(Annexure-A6) to the respondents against the Rotational Transfer Policy 2016 but no decision was taken on the said representation. Though the guidelines include all Group-B officials of technical and non-technical cadres in the vehicle department of DGQA are under its purview, subsequently the Drawing Staff Cadre was deleted. The other non-technical cadres were also kept out of the rotational policy by subsequent orders. The applicants submit that the rotational policy should not be applied to only the Technical and Scientific DGQA Group-B but to all. The adoption of different yard sticks for different cadres cannot be said to be in the interest of organisation.

3. According to the applicants, the Ministry of Defence sent a communication on 18.4.2017(Annexure-A14) with a direction to identify the sensitive posts and to prepare a list of sensitive posts as per the guidelines of the CVC. This would only mean that there was no list of sensitive and non-sensitive

posts at the time of formation of Rotational Transfer Policy. The applicants' union has filed OA.No.150/2017 before this Tribunal challenging the Rotational Transfer Policy dated 24.11.2016 and this Tribunal vide order dated 27.4.2017(Annexure-A17) directed the respondents to differentiate between sensitive and non-sensitive posts considering the Ministry's letters dated 30.4.2009, 21.4.2017 and 18.4.2017. The respondents vide letter dated 19.5.2017(Annexure-A20) referring to para-3 of RTP-2016 listed 9 cadres for sensitive posts. However, a further communication dtd.6.6.2017 to all Electronics Department with directions to declare posts as sensitive posts and list any person occupying sensitive post beyond 3 years. According to the applicants, the Rotational Transfer Policy is without any uniformity and without approval of the DoP&T. Therefore, the transfer order dated 21.4.2017 should not be implemented in absence of a uniform transfer policy.

4. The applicants further submit that they filed representation dated 15.6.2017 to the respondents stating that the letter dtd.13.6.2017 directing for implementation of earlier rotational/compassionate transfer 2017 order by due date is irregular since the respondents have not listed the sensitive and non-sensitive posts and the same has no approval of the DoP&T. Earlier the respondents have issued guidelines dated 30.4.2009 considering the procedure prescribed by the DoP&T and CVC classifying the group of sensitive and non-sensitive posts. Hence the respondents ought to have prepared the list of sensitive posts and non-sensitive posts in terms of para-3 of the RTP-2016. Further keeping non-technical Group-B staff out of the rotational transfer policy is irregular and therefore the RTP 2016 cannot be sustained. Therefore, they prayed for granting relief as sought for.

5. The respondents have filed a reply statement in which they have submitted that the Rotational Transfer Policy has been existing in DGQA Organisation since long and Technical/Scientific staff of the organisation are routinely transferred under this policy. The aim of the policy is to avoid development of nexus of the officers concerned with unscrupulous elements in the environment and also to expose them to multifarious aspects of working in the organisation. Some changes are required to be incorporated in the rotational transfer policy from time to time as would be necessary in the interest of the organisation. The earlier rotational transfer policy issued in May 2011 was further revised by the Ministry of Defence vide order dtd.24.11.2016. In the revised policy, in addition to the Technical/Scientific Group-B officials, non-technical Group B staff were also included by the authorities concerned. However, on receipt of representation from various Service Associations of the DGQA, Ministry of Defence, in consultation with DGQA HQ, carried out certain amendments to the revised rotational transfer policy which includes deleting the non-technical staff from the purview of rotational transfer policy. The Ministry of Defence and DGQA had considered all cogent and reasonable requests made by the Staff Associations and brought out changes in the transfer policy in the interest of the organisation. The revised rotational transfer policy is now applicable only to Group B Technical/Scientific staff of DGWA. The said policy is also in consistent with the CVC directives on posting/transfer of officials working in sensitive posts. While in the RTP-2011 prescribed tenure of a person as 10 years, in the RTP-2016, it was revised to 7 years.
6. The respondents submitted that the classification of posts viz. sensitive

and non-sensitive has no bearing on the RTP. Officials who have completed the prescribed tenure in any particular station were ordered to be transferred under the policy. The respondent authority has also published a List of sensitive posts on 19.5.2017 pursuant to the order passed by this Tribunal on 27.4.2017 in OA.No.150/2017. They also submits that all the persons under order of transfer under RTP 2016 have completed the prescribed tenure of 7 years or more in a station. Accordingly, their having worked in a sensitive or non-sensitive post is immaterial in the scheme of things. They have also submitted that the revised transfer policy is legally and administratively sound and has the prior approval of the competent authority of Government of India. It is also consistent with the CVC directives on posting/transfer of officials working in sensitive posts.

7. The respondents further submit that though promotional channels of Drawing Office Staff and Technical Staff converge at Senior Scientific Officer Grade-II, the respective cadres are not comparable at all when one takes into account job content/job specification, level of induction in the entry grade and time taken to reach the feeder grade of SSO-II namely Junior Technical Officer(Drawing) and Assistant Engineer(Quality Assurance), as the case may be, not to speak of SSO-II itself. Accordingly, respondent authorities were constrained to remove them from the purview of RTP thereby exhibiting exemplary sagacity and farsightedness in operating the policy.
8. The respondents further submitted that the guidelines of DOPT OM as referred to by the applicant as well as the directives of CVC quoted therein are being followed in letter and spirit by the respondent authorities.

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Sensitive posts in the organisation have been identified and incumbents of such posts rotated as per laid down periodicity. They further submit that the DOPT OM does not stipulate obtaining proper approval from the Nodal Agency for formulation of Rotational Transfer Policy by any departments. Conformity with the guidelines and approval of the Administrative Ministry suffice the need of the policy makers. As such, the respondents have done nothing wrong or illegal in this regard. The respondents therefore submit that there is nothing irregular in the rotational transfer policy-2016 and transfer order issued in terms of the rotational transfer policy and hence the contention made by the applicant does not merit any consideration.

9. Heard the Learned Counsel for both sides. Learned Counsel for the applicants while reiterating the submission made in the OA mainly highlighted the three aspects namely the exclusion of the non-technical cadres from the purview of the Rotational Transfer Policy, non-preparation of the list of sensitive and non-sensitive posts and the persons working therein by respondents and not obtaining approval of the DOPT to the list of sensitive posts. The Learned Counsel also made reference to the various communications asking for information from different offices regarding sensitive posts to highlight the fact that as of now the persons working in the sensitive posts are still not available. Therefore he submits that the rotational transfer policy and the transfer orders pursuant to the transfer policy is therefore irregular and cannot be sustained.

10. The Learned Counsel for the respondents, on the other hand, highlighted different aspects mentioned in the reply statement and submitted that pursuant to the order of the Tribunal, the respondents have issued orders specifying 9 categories which were identified as sensitive in the DGQA. He

mentioned that persons posted in sensitive posts are required to be transferred after three years from the said posts. However, all the officers under the present transfer order have the tenure of more than 7 years and hence the issue highlighted by the applicants regarding sensitive and non-sensitive posts does not have any bearing on the transfer policy or the transfer order. He further mentioned that earlier the rotational transfer policy pertained only to the Group-B Technical/Scientific Officers. In the revised policy of RTP-2016, non-technical Group B staff were initially included by the authority. But after subsequent representations from different staff units, the matter was reconsidered and it was decided to exclude them from the rotational transfer policy. This was in the interest of the organisation and has no bearing on the transfer of the technical/scientific officials who have been under the purview of transfer policy all along. He also mentioned that the reference of the applicants to various internal communications has absolutely no relevance and they tend to confuse the issue. The rotational transfer policy was issued by the Ministry of Defence is in order and does not call for any interference.

11. We have carefully considered the facts of the case and submissions made by either side. It is evident from the records that the respondents have initially issued Rotational Transfer Policy 2011 and constituting a committee and taking their recommendation in to consideration, the revised transfer policy was issued on 24.11.2016. The applicants have primarily challenged the rotational transfer policy citing non-classification of sensitive and non-sensitive posts and exclusion of non-technical personnel from the purview of the rotational transfer policy. Regarding the tenure in particular sensitive and non-sensitive posts, para-2&3 of the rotational transfer policy mentioned as follows:

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2. The tenure of all Group B officials in a post will normally be limited to 03 years. However, the tenure of an official in a station will be 07 years, inclusive of the period of service rendered in lower grade, if any, in the same station.

3. Officials posted to sensitive posts, so declared by the Department in accordance with CVC circular, will be limited to three years. After completion of the tenure of sensitive posting, concerned official may be allowed to complete the normal tenure prescribed for the station, if another post in the same grade is available at that station. In case of non-availability of post in the same grade, such official will be posted out of the station as per the RTP.

12. Regarding sensitive posts, reference was made to the order issued by the Ministry of Defence on 30.4.2009 in terms of instructions issued by the DoP&T and CVC. The said order states as follows:

No.967/16/RSP/PGQA(coord)

Dated 30.04.2009.

Ministry of Defence
(DGQA/ADM)

**ROTATION OF OFFICERS AND STAFF HOLDING SENSITIVE POSTS
IN DGQA HQS**

1. As per instructions by DoP&T and CVC every organisation has to identify sensitive posts and the officers and staff working in sensitive posts are to be rotated periodically to have transparency. The following type of posts will be treated as sensitive:-
 - a) Officer and staff dealing with local purchase of computers stationary etc and having direct contact with trade.
 - b) Officer and staff dealing with posting/transfer.
 - c) Technical officers/staff having direct dealing with the traders.

Category(a) above will be rotated after a tenure of 03 years and category (b) and (c) will be rotated after a tenure of 05 years.

2. All technical directors are requested to identify the service appointments their Dtes rotate personnel holding sensitive posts as per the tenure prescribed above. In case they are not able to rotate them within the dte their name should be reported to the concerned section in DGQA/Adm for rotating them to other Dtes/Estts.
3. The list of appointments identified as sensitive in each Dte will be forwarded to DGQA (Coor) by 10th May, 2009. The note should clearly state that the appointments have been identified with the approval of Technical Director himself.

Individuals holding such sensitive posts will be rotated before 15th January 2009 and completion report given to DGQA (Coor) by 30th Jun-2009.

4. This has been approval of DGQA.

(K.P.Thomas)
DDG(Pers)

13. It would be apparent that the tenure prescribed for the officials in the sensitive posts for rotational transfer as 3 years is consistent with the said OM dated 30.4.2009. The applicants had earlier raised the issue that the respondents had not specified the sensitive and non-sensitive posts and approached this Tribunal in OA.No.170/2017. The Tribunal in its order dated 27.4.2017 referred to the order dated 30.4.2009 and directed the respondents to differentiate between the sensitive and non-sensitive cadres in accordance with the Ministry's instructions and also their own transfer policy. The respondents thereafter issued an order dated 19.5.2017 identifying the sensitive posts in DGQA organisation. The said order which identifies the sensitive posts in DGQA organisation as follows:

Tele :23013348

IMMEDIATE

A/96995/RTP/DGQA/Adm-7B/1

19 May 2017

MINISTRY OF DEFENCE
DGQA/Adm-7B
IDENTIFICATION OF SENSITIVE POSTS IN DGQA ORGANISATION

1. Reference Para-3 of Govt. of India, Ministry of Defence order NO.A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 24 Nov 2016 issuing the revised posting/transfer policy in respect of Group 'B' officials of DGQA.
2. Details of posts involved in the following activities are identified as sensitive by DGQA:-

Procurement of stores through local purchase directly from trade
Handling of Posting/Transfer of officers and staff
Inspection of Defence Stores manufactured by trade firms
Proof of Shot Guns manufactured by trade firms
Recruitment and Appointment

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Capacity verification and registration of trade firms
Running of Unit Run Canteen in any capacity
Running of Wet Canteen (except the canteen staff posted for the purpose)
Running of Community halls/Guest Houses

3. All technical Directorates are advised to ensure that rotational transfer of officials are posted out in above mentioned sensitive posts, in accordance with MoD order dated 24 Nov 2016.
4. This has the approval of DGQA.

-sd-
(A Rajan Babu)
DDG(HR)

14. It is evident that the sensitive posts have already been identified by the DGQA organisation. Therefore, the issue raised by the applicants in regard to identification of sensitive and non-sensitive posts is no longer relevant. Moreover it was submitted by the respondents and not contradicted by the applicants that all the persons who have put in more than 7 years have been transferred pursuant to the rotational transfer policy. Thus whether a person is working in a sensitive post or non-sensitive post, he is liable for transfer after 7 years in any place. Only if a person having less than 7 years of service in a particular place is transferred he can raise the issue that too if he claims to be working in a non-technical post. Therefore, as far the transfer order dtd.21.4.2017 is concerned, the issue raised by the applicants regarding classification of sensitive and non-sensitive posts has no relevance more so when the sensitive posts have already been identified and all persons have completed more than 7 years in a station.

15. The other issue relates to exclusion of non-technical cadre from the purview of the rotational transfer policy. As submitted by the applicants, the Technical/Scientific staff have been included in the rotational transfer policy all along and in the RTP 2011. The authority decided in favour of bringing non-technical cadre also under the purview of the rotational

transfer policy in the RTP-2016. However, the other non-technical staff association represented to the DGQA and after several rounds of discussions, the Ministry of Defence decided to exclude the non-technical cadres from the purview of the rotational transfer policy. Whether a particular category of person shall be included or excluded from the purview of a transfer policy is best left to the Ministry to decide the matter after considering all the aspects and in the interest of the organisation and Courts do not have to interfere in the same. If both the technical and non-technical officers were being covered under rotational policy earlier, then the point raised by the applicant would have some relevance. The fact remains that the non-technical officials were earlier not covered under the rotational transfer policy. They were sought to be included afresh but again it was decided to exclude them. Therefore, non-inclusion of non-technical staff would not vitiate the rotational transfer policy meant for the scientific and technical staff.

16. On detailed consideration of the facts and circumstances of the case, we are of the view that the contentions raised by the applicants against the Rotational Transfer Policy-2016 do not merit any consideration. There is also no ground to interfere in the transfer order dtd.21.4.2017 which was issued pursuant to the policy and which was agitated against by the applicants though not specifically mentioned in the relief sought. We therefore hold that the OA is without any merit and is liable to be dismissed.

17. Accordingly, the OA is dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in the OA.170/00322/2017

- Annexure-A1: A Copy of Transfer Policy dated 20.5.2011
- Annexure-A2: A Copy of office order dated 21.2.2013
- Annexure-A3: A Copy of transfer order dated 24.11.2015
- Annexure-A4: A Copy of transfer order dated 18.3.2016
- Annexure-A5: A Copy of rotational transfer dated 24.11.2016
- Annexure-A6: A Copy of representation dated 2.12.2016
- Annexure-A7: A Copy of letter dated 6.12.2016
- Annexure-A8: A Copy of letter dated 28.12.2016
- Annexure-A9: A Copy of letter dated 17.5.2016
- Annexure-A10: A Copy of representation dated 2.1.2017
- Annexure-A11: A Copy of minutes dated 16.1.2017
- Annexure-A12: A Copy of letter dated 10.2.2017
- Annexure-A13: A Copy of letter dated 29.3.2017
- Annexure-A14: A Copy of letter dated 18.4.2017

Annexure-A15: A Copy of letter dated 21.4.2017
Annexure-A16: A Copy of letter dated 24.4.2017
Annexure-A17: A Copy of order in OA-150/17 dated 27.4.2017
Annexure-A18: A Copy of letter dated 27.4.2017
Annexure-A19: A Copy of letter dated 3.5.2017
Annexure-A20: A Copy of letter dated 19.5.2017
Annexure-A21: A Copy of letter dated 19.5.2017
Annexure-A22: A Copy of letter dated 6.6.2017
Annexure-A23: A Copy of letter dated 13.6.2017
Annexure-A24: A Copy of letter dated 21.4.2017
Annexure-A25: A Copy of representation dated 15.6.2017
Annexure-A26: A Copy of guidelines dated 30.4.2009
Annexure-A27: A Copy of guidelines dated 7.3.1988
Annexure-A28: A Copy of guidelines dated 18.5.1990
Annexure-A29: A Copy of circular of CVC dated 11.9.2013
Annexure-A30: A Copy of OM of DoP&T dated 2.7.2015
Annexure-A31: A Copy of OM of DoP&T dated 16.7.2015
Annexure-A32: A Copy of OM dated 15.12.2015
Annexure-A33: A Copy of OM dated 6.4.2016
Annexure-A34: A Copy of DoP&T OM dated 7.10.2016
Annexure-A35: A Copy of letter dated 30.3.2016

Annexures with MA.274/2017 for single application:

Annexure-M1: A Copy of resolution dated 19.6.2017

Annexures with reply:

-NIL-

Annexures with rejoinder to MA.334/2017 for vacation of stay:

Annexure-Re36: A true copy of order dated 5.7.2017 in OA.322/17
Annexure-Re37: A true copy of order dated 28.7.2017 in OA.322/17
Annexure-Re38: A true copy of letter dated 6.7.2017
Annexure-Re39: A true copy of letter dated 6.6.2017
Annexure-Re40: A true copy of order dated 24.7.2017 in OA.364/17
Annexure-Re41: A true copy of order dated 6.7.2017 in WP-17114/17
Annexure-Re42: A true copy of order dated 15.5.2017 in OA.305/17
Annexure-Re43: A true copy of application under RTI dated 30.7.2017
