

OA.No.170/00364/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00364/2017

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. DQA Group 'B' Technical Officers Association
represented by its General Secretary
M.Saravanan, S/o.R.Munirathnam
Aged about 50 years, No.29, Santrupthi
5th Cross, Giddappa Block, Ganga Nagar
Bangalore-560032.
2. M.G.Srihari
S/o Gururaja Rao
Aged about 57 years
4/9, Gunata Vihar
DGQA Residential Complex
JC Nagar, Bangalore-560006.
3. M.Parventhan
S/o.D.Muthu
Aged about 50 years
No.613, 7th Main
6th Cross HAL 3rd Stage
Bengaluru-560075.
4. S.Surya Prakash Raju
S/o.K.Shankara Raju
Aged about 52 years
93, 4th Cross, 3rd main, 1st Stage
BEML Layout, Basaveshwara Nagar
Bangalore-79.
5. Shashidhara Rao Jadav
S/o Late Appanna Rao Jadav
Aged about 57 years
6, 3rd Main Road, Ganesha Block
Sultanpalya, RT Nagar PO
Bangalore-560032.
6. D.Suparna
S/o.Late B.Doreswamy
Aged about 52 years
152, 8th Cross, CIL Layout
Cholanayakanahalli RT Nagar PO
Bangalore-560032.
7. N.Vidyakumari

W/o.PS Subramanya
Aged about 57 years
31, 1st Cross, Telecom Layout
SC Nagar Post, Bangalore-560064.

8. RK.Srikanth
S/o.RS Krishna Iyengar
Aged about 58 years
8, 3rd Main, Maruthi Extn., SR Puram
Bangalore-560021.

9. Mary Stella
W/o YNS Raj
Aged about 56 years
168, KBAR Road, Austin Town
Bangalore-560047.

10. S.Nagaraja
S/o A.Sundar Raj
Aged about 52 years
29, 1st Main, 3rd Cross, MSR Nagar
Mathikere
Bangalore-560054.

11. A.Ramachandra Murthy
S/o.late NV Anantharamaiah
Aged about 54 years
892/71, 1st Floor, 4th Main, 4th Cross
Vijayanagar, Bangalore-560040.

12. M.Narasimha Murty
S/o.Mallaiah
Aged about 42 years
6/5, Gunata Vihar
DGQA Residential Complex
JC Nagar, Bangalore-560006.

13. Ajay Singh
S/o.Late Chinna Babu
Aged about 42 years
6/5, Gunata Vihar
DGQA Residential Complex
JC Nagar, Bangalore-560006.

14. CR Navakiran
S/o.CV Ramachandra
Aged about 56 years
No.202,CQAL Layout
Sahakarnagar, Bangalore-560092.

15. V.Srinivas
S/o.Late M.N.Venkata Subba Rao

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Aged about 44 years
'Lakshmivenkateshwara Nilaya'
Opp.Municipal Park, Municipal Layout
Siddaganga Extension
Tumkur-572102.

16. A.Poovanandam
S/o.V.Arumugam
Aged about 36 years
12/01, Gunata Vihar
DGQA Residential Complex
JC Nagar, Bangalore-560006.

17. K.L.Gayathri
H.K.Nagamanjesh
Aged 37 years
No.442, 8th Main, 1st Block
HRBR Layout
Kalian Nagar
Bangalore-560043.

.....Applicants

(By Advocate Sri B.Sheik Mourthuja)

Vs.

1. Union of India
Rep by its Secretary
Ministry of Defence
Room No.101-A, South Block
New Delhi-110011.
2. The Secretary (Defence Production)
Room No.136, South Block
New Delhi-110 011.
3. Director General
DGQA, Room No.308-A, D-1 Wing
Sena Bhavan
New Delhi-110011.
4. Additional DGQA (L)
Room No.34, G Block
HQ DGQA, Nirman Bhavan PO
New Delhi-110011.
5. Additional DGQA (R&S)
HQ DQA (R&S)
DGQA Complex
Manovikasnagar
Secunderabad-500 009.
6. Controller
Controllerate of Quality Assurance Electronics

PO Box No.606
J.C.Nagar Post
Bangalore-560 006.

7. Controller
Controllerate of Quality Assurance Radars
PO Box No.606
J.C.Nagar Post
Bangalore-560 006.

8. SQAQ
Senior Quality Assurance Establishment(L)
DGQA Complex, SK Garden
Benson Town
Bangalore-560046.

....Respondents

(By Advocate Shri M.Vasudeva Rao, Sr.CGSC)

O R D E R

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

The present OA has been filed by the DGQA Group-B Technical Officers' Association represented by the General Secretary and 16 others seeking the following relief:

"Issue a Writ, Order or directions in the nature of Writ of Mandamus, directing the respondents to keep the New Rotational Transfer Policy dated 24.11.2016 in abeyance(Annexure-A1), since the respondents have violated Articles of Constitution by excluding Non-Technical Group 'B' officers, Junior Technical Officers(Drawing), Senior Draughtsman from the purview New RTP and also the respondents failed to conduct DPC. Review DPC, and non- compliance of DoP&T/CVC guidelines."

2. The applicants have challenged the new Rotational Transfer Policy(RTP) issued by the respondents dtd.24.11.2016 in the present application. They stated that new policy was applicable to Group-B Technical and non-technical officers in different cadres such as Technical Cadre, Scientific Cadre, Drawing Officer Cadre, Clerical/Administrative Cadre, Store Keeping Staff, Stenographic Cadre, Telephone Staffs and Photographic Cadre. However, after the introduction of new RTP, several amendments

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3. According to the applicants, the respondents are not in firm mind while implementing the New Rotational Transfer Policy which was resulted in exclusion of non-technical Group-B officers, some of whom were working in the sensitive posts. Therefore, selective implementation of the transfer policy of the respondents especially in the context of the technical and scientific officers amounts to not only in violation of DoP&T/CVC guidelines but also Article 14, 16 and 38 of the Constitution of India. Further the respondents have not conducted the DPC for promotion of Group B officers since 2014. As per para 10(b) of RTP, officials due for promotion may be exempted from rotation transfer for the year. The respondents have not conducted DPC in a time bound manner as per the directions of the Tribunal. The respondents have also not identified the sensitive and non-sensitive posts before implementing the new RTP as mandated by the DoP&T and CVC guidelines(Annexure-A7). They also submitted that the new transfer policy has brought amendments to the earlier rotational transfer policy 2011. Though sub-committee report was submitted to the respondents they did not take the suggestions made by the sub-committee and brought into effect the New RTP. Therefore, on account of not acting

in accordance with the DoP&T guidelines and not conducting the DPC in time and exclusion of non-technical officials from the purview of the New RTP, the new policy formulated in Nov, 2016 is improper and cannot be sustained. They also submitted that by transferring large number of officials from one station to another station the department has to incur huge expenditure which can be avoided. Therefore, they prayed for granting the relief as sought by them.

4. The applicant had earlier prayed for interim order for keeping the transfer order dtd.21.4.2017 in abeyance pending disposal of the present OA. Though the interim order was initially allowed subsequently vide order dated 21.9.2017, the interim order was vacated. The applicants have filed an MA.419/2017 for keeping abeyance the movement orders in terms of the new RTP till disposal of the case. Since the matter was taken up for final hearing, it was submitted during the hearing that the MA is no longer relevant at this juncture and hence was not pressed.
5. The respondents have filed a reply statement in which they 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 earlier rotational transfer policy also 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. This was done after considering all cogent and reasonable requests made by the Staff Associations and changes were brought out 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 DGQA irrespective of whether they are holding the sensitive or non-sensitive posts. However, in pursuance to the order passed by this Tribunal dated 27.4.2017 in OA.No.150/2017, order identifying the sensitive posts was done by the respondent authority and notified accordingly.

6. The respondents further submitted that all the amendments made under RTP 2016 were in furtherance of the interest of the organisation of the employees. Deletion of Group B non-technical staff, who are not similarly situated with their technical/scientific counterparts in terms of job content/specifications and career prospects/progression, does not violate any of the DoP&T/CVC guidelines, let alone constitutional provisions. The rotational policy also makes it very clear vide para-2 that the tenure of an official concerned in a station is 7 years irrespective of whether he/she holds a sensitive or non-sensitive post.
7. In regard to the point raised by the applicants regarding holding of DPC, the respondents submit that this has no bearing on the rotational transfer as the policy merely envisages temporary retention of officials whose promotions are imminent to avoid replication of posting/transfer orders. Due to some insurmountable difficulties the model calendar of DPC could not be followed by the respondent authorities. Similarly cadre review of staff is entirely different issue which has no bearing on the rotational transfer.

8. The respondents further submit that the RTP 2016 was formulated by the respondent authority and subsequently modified also in consultation with all the stake holders which includes JCM III level Council and Service Associations and hence the question of ignoring them does not arise. Further the mutual transfers are considered by the authorities concerned as a compassionate measure. Separate policy for the transfer on compassionate ground in DGQA which cannot be equated to rotational transfer. On the point raised by the applicant regarding payment of Travelling Allowances etc. the respondents submitted that it is an attendant cost to be borne by the department in public interest. However, further no guidelines prevent the authorities concerned from transferring their employees in public interest. Moreover having accepted the All India Service liability at the time of appointment, the employees concerned cannot renege on their commitment and decline transfer after the prescribed period in a station.
9. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submission made in the OA primarily harped on the fact that the exclusion of non-technical officials from the purview of the New Rotational Transfer Policy is improper and is discriminatory. The transfer policy should not be applied only to the technical scientific persons but applied to all. The transfer policy meant for only few categories of employees are grossly biased and cannot be sustained. Therefore, he submits that the new rotational transfer policy should be set aside and consequent transfer orders transferring the present applicants is also irregular and cannot be acted upon.
10. The Learned Counsel for the respondents while highlighting the different

OA.No.170/00364/2017/CAT/Bangalore Bench points made in the reply statement submitted that the Technical/Scientific personnel were all along under the purview of the rotational transfer policy. While formulating the new transfer policy, it was decided to bring non-technical officers also under its ambit. But after representations made by different staff associations, the matter was further examined in detail and on considering all aspects it was decided to exclude the non-technical officers from the purview of the rotational transfer. This cannot vitiate the rotational transfer policy since the earlier transfer policy was applicable to scientific and technical personnel only. He also mentioned that the General Secretary of All India DGQA had moved the Principal Bench of the CAT in OA.No.1339/2017 for quashing the transfer order dated 24.3.2017. But the same was dismissed with a cost of Rs.10,000/-. He also referred to another OA filed by an applicant against the transfer order dated 24.3.2017 and the same is also dismissed with cost. He also referred an order passed by the Allahabad Bench against the transfer order in respect of his contention.

11. We have carefully considered the facts of the case and submissions made by either side. The issue primarily pertains to the validity of the rotational transfer policy issued on 24.11.2016. The applicants have primarily agitated against the exclusion of non-technical cadre from the purview of transfer policy saying that excluding them and making the transfer policy applicable only to two cadres i.e. technical and scientific is discriminatory. Hence the new policy should not be made applicable to the scientific and technical officers also. However, we note from the records and submissions that the earlier rotational transfer policy 2011 was applicable only to the technical/scientific staff. No doubt the authority wanted to bring non-technical staff under the purview of the rotational transfer policy and

include them in the RTP 2016. However, various staff associations represented to the DGQA and Ministry of Defence and after several rounds of discussion, the Ministry of Defence decided to exclude the non-technical staff from the purview of the RTP. Whether a particular category of employees shall be excluded from the purview of transfer or not is best left to the Ministry to decide the matter after considering all the aspects and discussions with various employees associations. The applicability of new transfer policy 2016 to scientific and technical staff only cannot be termed as discriminatory on account of the exclusion of non-technical cadres from its purview keeping in view the fact that the previous rotational transfer policy was also applicable to these two categories only. Had the non-technical cadres were included earlier in the transfer policy 2011 and now excluded the contention of the applicants would have some validity but this is not the case. Hence, we are not inclined to accept the contention made by the applicants that due to the exclusion of non-technical officers from the new transfer policy, the latter should not be applied to the technical/scientific staff also.

12. The other issues highlighted by the applicant relating to non-holding of DPC, cadre review etc. have no bearing on the transfer policy as well as the transfer order issued by the respondents pursuant to the new transfer policy. While the respondents should take measures to hold DPC and cadre review etc. on a regular basis and timely and the applicants can agitate over the matter separately, non-holding of DPC or cadre review in time cannot be a determining factor for applicability of the new transfer policy or issue of transfer order pursuant to the same.

13. The Learned counsel for the respondents referred to some orders passed

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by different Benches of the Tribunal on this issue. We note that the order passed by the Allahabad Bench and one of the orders passed by the Principal Bench relate to cases where an individual sought for quashing of his transfer order on specific ground and will have no bearing on this case which challenges the rotational transfer policy 2016. One of the OAs filed by the association was against quashing the entire transfer order dated 24.3.2017 and the Principal Bench has dismissed the OA imposing the cost of 10,000/-. It is however not clear as to whether the new transfer policy was challenged in the said OA or not.

14. On detailed consideration of the facts and circumstances of the case and in the light of the discussions made in the preceding paras, we are of the view that the new Rotational Transfer Policy 2016 which was issued by the respondents in November, 2016 cannot be questioned only because the non-technical cadres were taken out of the purview of the said transfer policy. The earlier transfer policy of 2011 was applicable only to scientific and technical persons only and hence the new transfer policy continues to be applicable to those categories only. Simply because the non-technical cadre was excluded will not vitiate the Rotational Transfer Policy. On going through the new Rotational Transfer Policy-2016, we also did not find anything which would necessitate interference of this Tribunal in the matter. Therefore, we hold that the contention made by the applicants in

the present OA does not merit any consideration and hence the OA lacks merit and is liable to be dismissed. 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.170/00364/2017

Annexure-A1: New Rotational Transfer Policy dated 24.11.2016

Annexure-A2: Amendments to New RTP, dated 28.12.2016, 29.3.2017, 24.4.2017, 26.4.2017, 2.5.2017, 17.5.2017

Annexure-A3: Clarification for New RTP dated 6.12.2016

Annexure-A4: Transfer order of the applicants dated 21.4.2017

Annexure-A5: Representation of the applicants dated 25.1.2017

Annexure-A6: Order on Review DPC dated 22.12.2016

Annexure-A7: DoP&T/CVC Guidelines dated 2.7.2015, 11.9.2013 series

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Annexure-A8: Minutes of JCM Sub Committee dated 12.8.2014, 25.7.2014,
9.9.2015, 2.3.2016

Annexure-A9: Suggestion of Officers Association for review of New RTP dated
23.5.2017

Annexure-A10: Mutual & Compassionate Transfer dated 21.5.2014, 21.4.2014

Annexure-A11: Cadre Review dated 9.3.2016

Annexure-A12: Board Proceedings of DQGA/Armaments dated 15.12.2016

Annexures with reply:

-NIL-

Documents with MA.419/2017 for stay of RTP:

Document No.1: Vacating the interim order

Document No.2 to 4 series: Movement Order

Document No.5 series: Some Certificates related to applicants
