

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00425 /2017

DATED THIS THE 28TH DAY OF FEBRUARY, 2018

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

HON'BLE SHRI PK.PRADHAN MEMBER(A)

Sri. K. Shankar Rao,
S/o Late Sri D. Krishnamurthy Rao
Aged 59 years
Residing at #1365, 4th Main,
II Phase, VBHC, Girinagara,
Bengaluru # 560085.
Currently working as Deputy Director,
National Cooperative Development
Corporation (NCDC),
Bengaluru # 560047. Applicant

(By Advocate M/s. Bangalore Law Associates)

Vs.

1. Union of India
Ministry of Agriculture and Farmers Welfare,
Krishi Bhavan,
New Delhi # 110 001
Represented by its Secretary.

2. National Cooperative Development Corporation,
#4, Siri Institutional Area, Hauz Khas,
New Delhi # 110 016.
Represented by its Managing Director

3. National Cooperative Development Corporation,
3rd Floor, KHB Shopping Complex, NGV,
Koramangala, Bengaluru-560047
Represented by its Regional Director. ...Respondents

(By Advocate M/s. VS Associates)

O R D E R (ORAL)

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

1. We had taken up the matter today. We had issued notice on 7.8.2017 and asked for the respondents to respond. Thereafter, the matter was taken up on 4.10.2017 and the only ground which is raised is even though the applicant has only 6 more months to retire at that point of time, was that the applicant will be given full opportunity for joining at Calcutta the transferred place . Apparently, the applicant has 2 daughters and one of his daughter was studying Pre-University class which is just after 10th standard and therefore, coming under the ambit of on'ble Apex Court order relating to mid academic session transfer. Therefore, we had granted an interim order on that day and the matter was posted to 6.11.2017.

2. On that day an affidavit in reply seems to be filed and on that day the counsel for the respondents had submitted that he will file an application for vacating the interim order. In the mean while a chance for the applicant was given to file rejoinder and posted the case to 28.11.2017.

3. On 28.11.2017 we entered a finding that the applicant could

not have been transferred for multiple reasons. One is that, the applicant will be superannuating shortly and the 2nd reason alleged is that the applicant's progeny are studying in School and therefore, under the guidelines of the Hon'ble Apex Court ruling, he could be not be transferred. The only ground raised by the respondents seems to be that, at that point of time, anticipating the applicant vacating the chair which he now occupies they have already brought in somebody from Calcutta to this post. That cannot be, obviously, the ground for transferring somebody by transferring some person for administrative exigencies. Therefore, there will be multiple claim for this chair. This extraordinary anticipation on the part of the respondents seems to be very extraordinary. Therefore, the question of administrative exigencies do not arise in creating for multiple claim for the same chair. Therefore, after hearing both sides the interim order already issued to him was made absolute. At that point of time since the respondents made a stipulation that some clarification may be made as to adjusting the person from Calcutta as it was pointed out that there was one Assistant Director who had already completed 15 years of service at Bangalore. We had permitted the respondents to state in the reply why he had not been transferred.

4. Thereafter, the matter was taken up on 2.1.2018, when the learned counsel for the respondents sought an accommodation as he wanted to get further instructions whether he needs to file further reply

also in compliance with what he has stated in paragraph 2 of the original reply. He sought for 2 weeks' time which was also allowed.

5. Thereafter, the matter was taken up on 18.1.2018 and then on 24.1.2018. On that day the respondents submitted that they do not want to file any additional reply. Therefore, the ground raised by them is not supported by any other corroborative factor other than in anticipation of the applicant's removal from the post they already brought in a person from Calcutta to the applicant's post. But, at this point of time the applicant wanted to file a rejoinder. The matter was posted to 9.2.2018.

6. On this day the applicant files an objection to MA.466/2017 and 2 more weeks' time granted for rejoinder and the matter was posted today for hearing.

7. Today the applicant's counsel would say that he is ready for hearing. But, the proxy counsel for the respondents' Shri Venkatesh submits that his senior is held up in the High Court and therefore, he wants some other date for hearing. But at this point of time the learned counsel for the applicant submits that the applicant will be retiring in one month's time and therefore, no useful purpose will be gained by anybody here in the matter further. Therefore, we had queried Shri Venkatesh as to whether they have anything more to add to which he submits that he

does not have any more submissions.

8. Therefore, the question is very simple. Can an authority anticipate an exigence and in order to accommodate somebody transfer out somebody who may not be transferred going by the guidelines issued by the Hon'ble Apex Court and he is also to be retired from service in another 6 months time. They were unable to give any specific reason as to why a man from Calcutta must be accommodated at Bangalore, for any specific purpose. They would say that the respondents is a statutory corporation created by the Act of Parliament and promoting wide range of economic activities in the rural areas and the method of appointment of the service conditions of officers and other employees is as regulated by the same set of service regulations noted by the central government in the gazette in exercise of the powers conferred by section 23 of the Act of 1962. In other words, they follow the very set of government regulations in the method of appointment and terms and conditions of zonal employees. They would say in paragraph 5 of the application the applicant had preferred a representation dated 23.3.2017 requested to reconsider his transfer and retain him at RO, NCDC, Bangalore. But, they would say that they had not agreed to it. They would say that in the earlier OA.No.220/2017 vide order dated 28.4.2017 the Tribunal had disposed of the OA at the admission stage itself directing the respondents to consider the representation of the applicant . It was so

considered, but, it was not agreed to.

9. The respondents would say that the appointment in NCDC carries an All India liability of transfer. They would say that the order dated 21.3.2017 indicating a transfer to join the new place is just prior to the commencement of the academic session of 2017-2018 and therefore, the transfer order will not fall in the category of mid academic session. Therefore, the question that would arise is that what is meant by the word mid academic session. As by the end of March one academic session would end and further session would begin. Naturally within 9 days time no further arrangement can be expected to be made regarding the education of children of the applicant. Therefore, the technical expecting may not be of any assistance to the respondents. They would further say that the applicant misrepresented the Tribunal as the applicant's daughter was studying in 12th standard based on the tuition fee reimbursement certificate. They would say that even before this transfer of the applicant, on 16.10.2017 itself one Shri Rakesh Verma, Dy. Director had come to Bangalore to join the same position occupied by the applicant. The respondents there upon quote from certain Hon'ble Apex Court judgement which may not have any bearing on the issue as they have not answered at all as to why the applicant has to be transferred out at the fag end of his career. The rule stipulates that within 2 years such an employee need not be transferred out. We had

carefully gone through the annexure R-2 at the instance of the respondents but could not find any element to justify this transfer at the fag end of his career. Even though it also mentions 3 transfers already made by NCDC to Delhi, Pune & Hyderabad. Therefore, we find that this transfer is possibly made to accommodate another person who may have, according to the applicant more influence with the powers that been. Therefore, we hold that there is no reason to disturb our earlier order given as we had held that this transfer order is not been issued under proper circumstances. Transfer order issued is quashed. OA is allowed. No order as costs.

(PK.PRADHAN)
MEMBER(A)
bk.

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

Annexures referred to by the applicant in OA No.170/00425/2017

Annexure A1: True copy of the Seniority order of appointment of the applicant dated 9.9.2015

Annexure A2: True copy of the office order dated 16.3.2017 by the respondent

Annexure A3: A copy of the representation of the applicant dated 20.3.2017

Annexure A4: A copy of the representation of Shri Rakesh Verma requesting for reconsideration of transfer order to Bengaluru

Annexure A5: A copy of office order dated 21.3.2017 relieving applicant by the Regional office, NCDC,Bengaluru.

Annexure A6: A copy of diagnostic report of the applicant.

Annexure A7: A copy of order dated 19.5.2017 passed by the Respondent Corporation

Annexure A8: A copy of DOPT letter dated 22.7.2016 on resolving service matters.

Annexures referred in the reply

Annexure R1: True copy of the order dated 28.4.2017 passed by CAT, Bangalore

Annexure R2: True copy of the order dated 22.7.2017 passed by the competent authority

Annexures referred in the MA .466/17

Annexure A: True copies of claims submitted by the applicant towards reimbursement of tuition fee of his 2nd daughter for 10th standard

Annexure B: True copies of claims submitted by the applicant towards reimbursement of tuition fee of his 2nd daughter for 12th standard

.....

bk.

