

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH  
CHANDIGARH**

**OA. No. 060/01289/2017**

This 28<sup>th</sup> day of May, 2018

**CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER (J)  
HON'BLE MRS.P. GOPINATH, MEMBER (A)**

...

Ravi Prakash Gupta, IAS (HY.2007), aged 45 years, S/o Sh. K.L. Gupta, presently posted as Chief Vigilance Officer, HUDA and Special Secretary to Govt. of Haryana, Home Department, Sector 6, Panchkula.

.....Applicant

BY ADVOCATE: Sh. R.K. Sharma

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, North Block, New Delhi.
2. The State of Haryana through Chief Secretary to Govt. of Haryana, Haryana Civil Secretariat, Sector 1, Chandigarh.

.....Respondents

BY ADVOCATE: Sh. R.L. Gupta for respdt. No. 1  
Sh. Samarvir Singh for respdt. No. 2

**ORDER**

**HON'BLE MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant is a Junior Administrative Grade IAS Officer of Haryana Cadre 2007 Batch. Applicant was allotted to Chattisgarh State. On the basis of the policy of Government of India relating to persons with disabilities, the applicant was transferred to Haryana Cadre on 21.10.2015 and posted as Additional Secretary (Finance).

2. Applicant argues that despite his willingness for a field posting, he is not being given a field posting. Applicant is a hearing impaired person and compares himself with one Sh. Mani Ram Sharma who is a similarly disabled and who was given posting of Deputy Commissioner. Applicant cites the Apex Court decision in T.S.R. Subramanian & Ors. Vs. UOI & Ors., 2014(1) SCT 255 which has directed that Civil Service Board be constituted for effecting transfers in the civil services. The tenure of an IAS Officer is two years and applicant's contention is that he has not been allowed to complete this two year period. Applicant was transferred, 6-1/2 months post his posting as Deputy Commissioner and posted as Director (Food and Supplies), Haryana, and M.D., CONFED. Applicant is aggrieved by this transfer which has been made before completion of two year tenure as Deputy Commissioner.

3. Applicant seeks the following relief(s):-

- (i) Quashing of order transferring him from the post of DC Kaithal to the post of Director (Food and Supplies) Haryana
- (ii) Quashing of order which transfers him from the post of Director (Food & Civil Supplies) Haryana after 1-1/2 months.
- (iii) Quashing of order transferring him as Chief Vigilance Officer, HUDA and Special Secretary to Government, Haryana Home II Department and Commissioner Gurudwara Elections.
- (iv) Applicant also seeks that he should be allowed to work for two years as Deputy Commissioner.

4. The respondents submit that the posting of IAS officers are governed by Rule 7 of the Indian Administrative Service (Cadre) Rules, 1954 which has fixed a tenure of two years on the cadre posts of IAS. As per Schedule to Rule 7, every State Government is

required to constitute a Civil Service Board for making recommendations for appointments of cadre officers. Rule 7 reads as follows:-

"7. Postings.—(1) All appointments of cadre officers shall be made on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rule:-

(2) All appointments to cadre posts referred to in sub-rule (1) shall be made-

- (a) in the case of a State Cadre, by the State Government; and
- (b) in the case of a Joint Cadre, by the State Government concerned.

(3) A cadre officer, appointed to any cadre post shall hold the office for at least two years unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(4) A cadre officer, appointed to any ex-cadre post shall hold office for such period as may be specified by the State Government for that post, unless in the meantime he or she has been promoted, retired or sent on deputation outside the State or training exceeding two months.

(5) The Central Government or the State Government as the case may be, may transfer a cadre officer before the minimum specified period on the recommendation of the Civil Services Board as specified in the Schedule annexed to these rules:

Provided that the Competent Authority may reject the recommendation of the Civil Services Board by recording the reasons therefor.

5. In pursuance to the above mentioned notification dated 28.01.2014 (Annexure A-6), the State Government i.e. answering respondent constituted Civil Services Board vide Notification dated 31.03.2014 (Annexure A-7A) consisting of the following officers:-

- (i) Chief Secretary to Government, Haryana Chairman
- (ii) Senior most Additional Chief Secretary to Government, Haryana Member

(iii) Secretary/Special Secretary to Government Member  
Haryana, Personnel Department Secretary

The State Government also prescribed two years' minimum tenure on the ex-cadre posts for the IAS officers. The functions of the Civil Services Board, as per Notification dated 28<sup>th</sup> January, 2014, issued by the Department of Personnel & Training, Government of India, mentioned under Rule 7(2) are as under:-

- (a) The Civil Services Board shall make recommendation for all appointments of cadre officers.
- (b) The Civil Services Board shall examine the cases of officers who are proposed to be transferred before completion of minimum period of service as specified under sub-rules (3) and (4) of rule 7 of the Indian Administrative Service (Cadre) Rules, 1954.
- (c) The Civil Services Board may consider for transfer before the tenure fixed under sub-rules (3) and (4) of rule 7 of the Indian Administrative Service (Cadre) Rules, 1954 based on such circumstances as it thinks fit.
- (d) The Civil Services Board may recommend the Competent Authority the names of officers for transfer before completion of minimum tenure with reasons to be recorded in writing.

6. Rule 7(3) of the Indian Administrative Service (Cadre) Rules, 1954 was amended by DoPT vide Notification dated 13.04.2016 with the following editions:-

**Procedure -(1)(a):** The Civil Services Board may obtain the information from the Administrative Department of the State concerned or any other relevant sources while considering the transfer of an officer before completion of specified tenure.

7. The respondents argue that due to administrative exigency and public interest, the applicant was transferred from the post of Deputy Commissioner, Kaithal to Directorate, Food & Supplies, Haryana by the Civil Service Board vide

recommendation of 07.11.2016. This was permissible as per Rule 7(2) (c) function assigned to the Civil Service Board. Applicant is further transferred as Director, Medical Education and Research, Haryana vide Civil Service Board recommendation of 03.01.2017. Applicant was further transferred vide proceedings of the Civil Services Board dated 22.08.2017 as CVO HUDA and Special Secretary Home II Haryana. Both the above transfers were also made as per Rule 7(2) (c) function assigned to the Civil Service Board.

8. Applicant joined the Haryana Cadre on 29.10.2015 as per Government of India's Physically Handicapped Policy, 2014 on an inter-cadre transfer from Jharkhand Cadre. In order to orient the officers towards functioning of the State Government, he was appointed as Additional Secretary, Finance Department of the Government of Haryana. Applicant requested that he should be posted as Deputy Commissioner and consequently he was posted as Deputy Commissioner, Kaithal from 26.04.2016 to 15.11.2016. This and all other subsequent postings of the officers were made by the Civil Service Board constituted as a consequence of Apex Court judgement in T.S. SubramaniaN case (supra). Hence, the contention of the applicant that his posting was made without consultation/recommendation of the Civil Service Board is set aside.

9. The various transfers were made on the ground of administrative exigencies and public interest and there has been no violation of Rule 7(3) of Indian Administrative Service (Cadre) Rules, 1954. Respondents have produced proceedings of the meetings of the Civil Service Board of 07.11.2016, 03.01.2017 and 22.08.2017 wherein the applicant's transfer was considered and recommended by the Civil Service Board.

10. The applicant has two years and six months experience of field posting as he had worked as SDO from 01.04.2012 to 31.03.2013, Additional Collector from 01.04.2013 to 31.03.2014 and Additional Collector from 01.04.2014 to 04.10.2014 in Chhattisgarh State. Applicant has also been posted for six months as Deputy Commissioner from 26.04.2016 to 15.11.2016 in Haryana State, bringing the total experience to three years. Therefore, the argument of the applicant that if he is not posted as Deputy Commissioner, he would fall short of the experience requirement for Central deputation does not hold. The transfer of the applicant has been made on the recommendation of the Civil Service Board as required under the rules on the ground of the administrative exigencies and in public interest. Whereas the administrative exigency and public interest could have been detailed, we hold the view that detailing the same would have adverse career consequences for the applicant. The handicap of the applicant being of a nature which may come in the way of performance of duties and public

interest, recording as such is best avoided by the Civil Service Board.. It would not be possible to believe that such exigency is not feasible. A record so created would be a permanent record in applicant's service record. Hence, this reticence of the Civil Service Board is appreciable.

11. It is a settled question of law that an order of transfer can be interfered by the Tribunal only if the order of the transfer is vitiated by malafide or was passed on extraneous and irrelevant considerations or was passed without any authority or law. None of these grounds exists in this case as to compel the Tribunal to interfere with the transfer order. Transfers, unless they involve any adverse impact or visit the concerned person with 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. It is for the Head of the Civil Service Board in a State to maintain quality of public service, address administrative exigencies and ensure smooth functioning of the State administration. This is not a case where applicant was not posted in a IAS Cadre post. This is a case where the applicant is making a specific demand to be posted to a particular post. The respondents have to keep in mind both organizational interest as well as profile and capability of all officers before issuing a posting order.

12. Transfer or posting is not a matter which the applicant can claim as a matter of right. It is neither legal nor

proper for the Tribunal to issue directions or advisory summons to the executive as to which post should be occupied by which officer in the Cadre. This is administrative decision and the Tribunal cannot sit in judgement as to who would best fit in a particular post. Unless an order of transfer is shown to be an outcome of malafide exercise of power or in violation of statutory provision prohibiting any such transfer, it would not be proper for the Tribunal to interfere with such transfer orders as a matter of routine. The competent authority is vested with the right to distribute available man power in exigencies of administration. The appellate jurisdiction of the Tribunal in the matter of transfer is extremely limited. Who should be transferred, where and when, is a matter for the appropriate authority to decide and the Tribunal cannot take on this responsibility.

13. The Apex Court in **Rajendra Singh Vs. State of UP, (2009) 15 SCC 178**, has correctly opined in Para 5 that a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No government can function if the government servant insists that once appointed or posted in a particular place or position, he

should continue in such place or position as long as he desires.

In **Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532)**, the Apex Court has held that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order; instead the affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

14. In **N.K. Singh Vs. UOI, 1994 SCC(6) 98**, the Apex Court has held that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision. We find that both are not attracted in this case.

15. For the foregoing discussion and the Supreme Court law prevailing on the point of limited interference in transfer matters, we feel ourselves constrained to offer any relief to the applicant. OA, being devoid of merit is dismissed. No costs.

**(P. GOPINATH)  
MEMBER(A)**

**(JUSTICE M.S. SULLAR)**

**MEMBER(J)****Dated :28.05.2018****ND\***