

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**Order reserved on: 25.09.2018**

**ORIGINAL APPLICATION NO. 060/00166/2018**

**Chandigarh, this the 28<sup>th</sup> day of September , 2018**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Ramesh Kumar son of Shri Kapoor Singh, aged 51 years resident of  
VPO Gasho Khurd Tehsil Uchana Distt Jind Haryana (Group-A).

....APPLICANT

( By Advocate: Shri S.S. Sahu, Advocate)

VERSUS

1. Union of India through Secretary, Department of Electronics & Information Technology, Electronics Niketan, 6 CGO Complex, Lodhi Road, New Delhi-110003.
2. Director General of National Informatics Centre, Ministry of Electronics & Information Technology GOI, A-Block, CGO Complex Lodhi Road, New Delhi 110003.
3. Jt. Director ( Pers), National Informatics Centre, Ministry of Electronics & Information Technology GOI, A-Block, CGO Complex Lodhi Road, New Delhi 110003.
4. State Information Officer, Haryana Mini Secretariat Sector 17, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Ram Lal Gupta)

**ORDER**

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

The applicant in the present Original Application was promoted on 19.5.2017, to the post of Scientific-‘D’. Three months

after joining the said post he was transferred. The Apex Court in the case of T.S.R. Subramanian and Others vs. Union of India and Ors. reported in AIR 2014 SC 263 had directed the constitution of the Committee for recommending the posting and transfer of officers of the Government of India. The respondent department also issued transfer policy on 19.3.2014, according to which the officers will be liable for transfer to a hard station for a period of two years. The applicant challenges his transfer order and impugns the order dated 17.8.2017 wherein the applicant's representation has been rejected. The applicant also buttresses his case by stating that the Transfer Committee has not been constituted as per directions of the Apex Court and the transfer has also been made by an incompetent authority. The applicant also argues that by his transfer he would be replacing officers who was a permanent resident of Tripura State and in view of that hard area policy is not applicable to them.

2. The respondents in the written statement submit that the Transfer Posting Committee for officers of NIC Head Quarters and officials of the attached offices are different and have been circulated for the information of all under the respondent department and also forwarded to DoPT on 14.3.2014 in compliance of the judgment of the Hon'ble Supreme Court in Writ Petition No. 82/2011- T.S.R. Subramanian (supra). Under Rule 13(2) of Delegation of Financial Powers, Rules, 1978 the Director General, NIC has been declared as Head of Department. Further, as per delegation made under FR-6 the powers to transfer government

servant from one post to another under FR 15 lies with the Director General, NIC. Under Rule 13(3) of Delegation of Financial Powers, Rules, 1978, the Head of Department may by an order in writing authorize the Gazetted Officer serving under him to exercise all or any of the powers conferred on the Head of Department. Reading of the above noted rules indicates that the Director General (NIC) in the capacity of Head of Department is fully competent to transfer any NIC official in accordance with the transfer/posting policy.

3. The applicant is posted at NIC Tripura on being relieved on 28.3.2017 by NIC office in Chandigarh. The respondents challenge the O.A. on the ground of jurisdiction and submit that the applicant should have filed this O.A. in Guwahati Bench of this Tribunal.

4. Outlining the procedure, the respondents submit that officers working in the state unit of NIC are to be identified and relieved by an officer identified as replacement in terms of transfer guidelines by the duly constituted Transfer Committee of the concerned NIC State centre and as such names will be recommended by this Committee to the NIC Head Quarters as per established procedure as laid down in para-(vi) of the transfer circular dated 11.1.2017 produced as Annexure R-8.

5. The applicant has the longest stay in the State of Haryana, amongst all the Scientists-D in the NIC State Centre Haryana. Therefore, the applicant was liable to be transferred out of the state on the ground of long stay. Further, one tenure in hard area is mandatory under the transfer policy. Shri Satpal Sharma, whom

the applicant cites, has lesser period of stay than the applicant in the State of Haryana.

6. We have heard the learned counsel for the parties, perused the pleadings available on record, and given our thoughtful consideration to the matter.

7. The applicant's argument that the NIC is an attached office of Ministry of Information and Technology and Direction General (NIC) is not entrusted to deal with the transfer policy matter related to NIC is negated in view of the delegation of powers by the Department of Electronics and Information Technology to DG(NIC). The respondents bring to notice that the Department of Electronics and Information Technology has vide their letter No. M-11011/1/99-MS (O&M) dated 20.7.2011 conveyed the sanction of the President to Director General, (NIC) to be Head of Department for the purpose of Fundamental Rules and Supplementary Rules under the Delegation of Financial Power Rules, 1978. Thus the competency of Director General (NIC) to transfer any NIC personnel in accordance with the transfer policy is clearly established and the claim of the applicant that the Director General has tried to exercise a power which was never vested in him is set aside. The respondents deny that the hard area policy is issued on 19.3.2014 (Annexure A-4) as claimed by the applicant. They submit that the hard area policy circular no. 17(3)2015-Pers(i) is dated 11.1.2017. The Department of Electronics and Information Technology has its own transfer/posting policy which is different from the transfer posting policy of the National Informatics Center (NIC) which is an

attached office of DEIT. Hence, the confusion that both the Ministries and the NIC have the same policy or are covered by the same policy is also not established. Both have their own policy and one cannot be made applicable to the other.

8. In compliance of the directions of the High Court of Punjab and Haryana, representation dated 2.8.2017 submitted by the applicant regarding his transfer to Tripura State has already been considered by the respondents. While doing so the respondents have brought to the notice of the applicant that he has served in the State of Haryana for 27 years and his transfer to a hard area is as per the policy of the respondent department. As per terms and conditions of appointment of applicant in NIC, the applicant was liable for all India transfer. The applicant was also informed that Agartala where he was posted is a state capital of the Tripura and has adequate medical facilities. This was done to assuage the concern of the applicant that place of posting may not have adequate medical facilities.

9. 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 the authority of 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. 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.

10. Transfer is an administrative decision and the Tribunal cannot sit in judgment 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.

11. 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.

12. 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.

13. 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.

14. The applicant is person who has an all India transfer liability and has been transferred as per transfer policy formulated by the NIC. The applicant being an employee of NIC will be covered by the policy of NIC and not the policy of Department of Electronics and Information Technology

as the NIC has its own transfer policy. The applicant has already spent 27 years in State of Haryana and hence transfer to another state in furtherance of the hard area posting policy would not be a cause of grievance. The applicant has been recommended for transfer by a Committee chaired by the DDG (Pers.) with two other DDG as Members which is a duly constituted Committee for Scientist-F and below and upto Scientist -D. The recommendations of the Committee have been accepted by the DG (NIC). The transfer having been made in accordance with law and in the light of administrative instructions covering the subject, the O.A. is found to be devoid of merit.

15. The O.A, being devoid of merit is dismissed. Pending M.A, if any, stands disposed of. No costs.

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

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 28.09.2018**  
**`SK'**



