

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00526/2018

Date of CAV: 27.07.2018

Date of Order:09.08.2018

Between:

B. Indra Reddy, S/o. B. Thirupathi Reddy,
Aged about: 53 years, Gr. 'C',
Occ: Junior Works Manager (JWM),
Ordinance Factory, Yeddumailaram, Sangareddy District,
R/o. Flat No. G1, Narayana Reddy Colony,
Ameenpur Village, Patancheru Mandal, Sangareddy District.

... Applicant.

And

1. Union of India, Rep. by its Secretary,
Ministry of Defence, New Delhi.
2. The Chairman & DGOF,
Ordinance Factory Board,
10-A, SK Bose Road, Kolkata, West Bengal.
3. The General Manager,
Ordinance Factory, Yeddumailaram,
Sangareddy District.
4. The Sr. General Manager,
The Heavy Vehicle Factory, Avadi,
Chennai, Tamilnadu State.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar, Advocate for
Mr. N. Ramesh, Advocate

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao ... *Member (Judl.)*
Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*

ORDER

{ As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This OA is filed challenging the order passed by the 2nd respondent No.JTR-60/SC (Jan-18) Per/NG/2016-17 dated 09.03.2018 and the order No. 02/04/GB/Estt

dated 04.06.2018 of the 3rd respondent rejecting the claim of the applicant for retention in the present place of working and the consequential transfer order No. 217 dated 05.06.2018 issued by the respondents transferring the applicant from Ordnance Factory, Medak to Heavy Vehicles Factory, Avadi, Chennai.

2. Facts of the case, in brief, are that the applicant was appointed in the 3rd respondent factory in the year 1989 as Supervisor and further promoted as Charge Men in the year 1993 and thereafter as Assistant Foreman in the year 2007. The post of Assistant Foreman was re-designated as Junior Works Manager (JWM). The applicant has completed 29 years of service in the 3rd respondent factory. The 2nd respondent vide OFB order No 20/17-18 (No- JTR-60/PER/NG/2017-18) dt 27.11.2017 has transferred the applicant to Heavy Vehicles Factory, Avadi, Chennai. In response to this transfer, the applicant represented vide his representations dated 5.12.17 and 23.3.18 seeking retention at OFMK on grounds of ill health of father, aged mother, marriageable daughters and wife, who is working in Bharat Dynamics Limited Hospital (Medak) as a nurse, which is a permanent and non-transferable job. The 3rd respondent has informed the applicant, that the representations were duly considered and regretted by the competent authority vide letters No-2/04/GO-B/Estt dt. 21.3.18 and Lr. no 02/04/GB/Estt dt 4.6.18. Aggrieved by the transfer and rejection of the representations the OA in question has emerged.

3. The respondents have contested the OA by filing a reply affidavit.

4. Heard Dr A. Raghu Kumar, learned counsel appearing for Mr. N. Ramesh, learned counsel for the applicant and Mrs K. Rajitha, learned Senior Central Government Standing Counsel for the Respondents.

5. The main thrust of the learned counsel for the applicant arguing for retention has been on the following grounds:

- (i) Clause (vi) of Memo No 28034/9/2009-Estt. (A) dt 30.9.2009 of DOP&T, which speaks of accommodating one spouse belonging to a central service and the other belonging to a PSU.
- (ii) Respondents have not given any reasons while rejecting the applicant's request in their letters stated above as per the DOP&T memo stated.
- (iii) Officials junior to the applicant as per the seniority list circulated by 1st respondent vide Lr. No. DISI/2014/TECH (Revised)/PER/GB dt 18.11.2014 were continued at the same station.

6. The learned counsel for the Respondents has relied on the following to defend the transfer of the applicant:

- (i) The applicant has completed 29 years of service at the same station and that as per the applicable transfer guidelines, the transfer was effected in organizational interest.
- (ii) Transfers are done to improve domain knowledge and cause exposure while accommodating genuine requests of the officers involved.
- (iii) To serve in any part of the country, as per functional requirements, is one of the terms of conditions of appointment, in respect of all India based posts under which the JWM post falls.
- (iv) Learned counsel for the respondents has categorically submitted that the Ordnance Factory at Medak has excess strength, whereas there is shortage of staff at Heavy Vehicles Factory, Avadi, Chennai, to which station, the applicant was transferred.

7. Having heard the learned counsel for parties and perused the records in detail, the Tribunal is of the view that, DOP&T Memo referred to, does speak of accommodating the spouse in the same station if posts are available and in case if they are not, at least at the nearest station where posts are available. As per the reply statement filed, there are no vacant posts and on the contrary there are 93 Junior Works Managers, who are working beyond the sanctioned strength at the 3rd respondent Factory. Nevertheless, complying with the DOP&T memo, the applicant was accommodated in the nearest station i.e. Heavy Vehicles Factory, Avadi, Chennai. Thus, the relief sought for by the applicant to be retained at Ordnance Factory, Medak as per the DOPT Memo cannot be provided since there are no vacancies at the station where the applicant is presently working. Further, had the couple been working in the same department, the DOP&T Memo provides for accommodating the employees at the same station subject to availability of vacancies, especially when they have children below the age of 18 years. Even this clause is not applicable to the applicant since he is from Central Service and the spouse is working in a PSU, with children above the age of 18 years.

8. Moreover, the applicant has completed 29 years of service at the same station and is due for transfer vide para 2.2 of the memo no JTR-60/Per/NG/ 2017-18 dt 5.6.17 of the 2nd respondent. It is thus seen that the applicant has been working at the same station from his date of appointment and has not worked in any other station till date. This would deny the applicant an opportunity to improve his domain knowledge and exposure to various areas of functioning as are required at his level.

9. The JWMs posts being all India based posts, there will be all India transfer liability, as was brought out in the reply statement. Transfer is an incident of service. The applicant having accepted the promotion, needs to be prepared for the associated transfer too, as per extant rules on the subject.

10. The authority competent has issued the transfer order and representations made against the transfer by the applicant have been duly considered and rejected as adduced at para 2 above, implying that the grounds stated in the representations are not tenable to consider retention based on transfer guidelines in vogue.

11. Administrative exigencies like rational use of manpower, does call for transferring staff as per functional requirements in terms of experience, skill, performance, length of stay at a station, etc. In organizational interests, such transfers are inevitable in order to ensure that the functioning of the Factories/ Organizations do not suffer, particularly in the context of the Factories which are involved in the defence production having national security implications.

12. The law is well settled on the subject of transfer of Government servants wherein it has been observed by various courts that the transfer is an incident of service and the Courts/ Tribunals should not generally intervene unless the orders issued are malafide or violative of applicable guidelines. The Hon'ble Apex Court's observation in *SBI vs Anjan Sanyal and Ors (AIR 2001 SC 1748)* advising courts not to intervene in transfers unless the transfer order is malafide, violative of rules or ordered by an incompetent authority, is pertinent and relevant to the case in question.

13. Therefore, in view of the foregoing, the Tribunal does not find justifiable reasons to intervene and hence, the OA is dismissed. No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 9th day of August, 2018

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