

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.202/00481/2017

Jabalpur, this Tuesday, the 21st day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Atul Kumar Srivastava, S/o Santosh Kumar Srivastava, D.O.B.-30.04.1987, Present Post – Divisional Accounts Officer-Gr-II, Mob. No. – 8989109602, R/o Type – III, 113, A.G Colony, Bhadbhada Road, Bhopal – 462003 (M.P.) **-Applicant**

(By Advocate – Shri S.K. Nandy)

V e r s u s

1. Comptroller & Auditor General, Pocket – 9, Deen Dayal Upadhyay Marg, New Delhi – 110124.
2. The Principal Accountant General (A&E)-I, M.P Lekha Bhawan, Jhansi Road, Gwalior – 474002 (M.P) **-Respondents**

(By Advocate – Shri P. Shankaran Nair)

(Date of reserving order : 04.04.2018)

O R D E R

By Navin Tandon, AM.

The applicant, a disabled person, working as Divisional Accounts Officer-Gr-II in the respondent department, is aggrieved by order dated 05.06.2017 (Annexure A-1), so far as it relates to him, whereby he has been transferred from Bhopal to Hoshangabad. Hence, he has filed this Original Application.

2. The applicant has made following submissions:

2.1 He was initially appointed on Group B post w.e.f 16.11.2010 at Bhopal. He was posted in the office of PWD E/M DN No.II Bhopal from 31.07.2014, where he is working at present.

2.2 He has been appointed with the department under the physically handicapped quota.

2.3 Prior to affecting the rotational transfer 2017-18, the employees were asked for their choices. He replied on 21.05.2017 praying for posting at Bhopal itself.

2.4 The respondent department issued officer order dated 05.06.2017 (Annexure A-1) wherein 48 officers have been transferred from one place to another. The applicant's name is at sl. no.34 and he has been transferred from Bhopal to Hoshangabad.

2.5 He has represented against the transfer vide letter dated 13.06.2017 (Annexure A/4) and 22.06.2017 (Annexure A/5), which has not been considered by the respondent.

2.6 He submits that he should have been exempted from rotational transfer in terms of DoPT's O.M. dated 31.03.2014 (Annexure A/2).

3. The applicant, has therefore, sought for the following reliefs:

“8. Relief Sought:

“(i) Summon the entire relevant record including the rotational transfer file 2017-18 of Bhopal Division from the possession of respondents for its kind perusal:

(ii) Quash the transfer order 05.06.2017 (Annexure A/1) to the extent it relates to the applicant and he may be allowed to remain at the same place with all consequential benefits in alternatively. The applicant may be accommodated at the same division at Bhopal or any other Division lying vacant in Bhopal on the same status and post;

(iii) Any other order/orders. direction/directions may also be passed.

(iv) Award cost of the litigation to the applicant.”

4. This Tribunal while issuing notices in the OA, have stayed the transfer order so far as it relates to the applicant until further orders, vide order dated 13.07.2017.

5. The respondents have stated the following in the reply :-

5.1 In the appointment order dated 20.10.2010 (Annexure R/1) of the applicant, it was clearly mentioned in para 5 that he may be posted in any of the places and

Divisions of State Government of Madhya Pradesh, to which the applicant had agreed. The Annual Transfers for the year 2017 were made on the recommendations of the Committee on the basis of circular dated 20.03.2015 (Annexure R/2), which inter alia states that the tenure of posting of a Divisional Accountant shall normally be three years in a particular Division and six years at a particular Station. Since the applicant was posted in Bhopal for the last six years, he was due for transfer to a Station other than Bhopal.

5.2 The applicant was asked to submit his option for five stations of his choice. As per his option form (Annexure R-4), he opted only for Bhopal, whereas during the Annual Transfer, 2014, the applicant had given his option for choices of posting for Bhopal, Rajgarh, Sehore, Hoshangabad and Chindwara (Annexure R-5).

5.3 Besides the applicant, there are eight other Divisional Accountants/Divisional Accounts Officers appointed under Physically handicapped category. These officers have been transferred periodically (Annexure R/6) as per the guidelines and subject to administrative

exigencies. Therefore, applicant is not an exception, who deserves any special treatment.

5.4 The O.M. of DOPT dated 31.03.2014 (Annexure A/2) states that preference in place of posting at the time of transfer/promotion may be given to the persons with disability, subject to the administrative constraints.

5.5 The applicant's transfer to Hoshangabad was made taking into his one of the choice station of 2014 and nearest to Bhopal.

6. The applicant has submitted his rejoinder questioning the averment of the respondents that he has completed six years of posting at Bhopal. His contention is that he was under probation from 16.11.2010 to 21.07.2013 and after passing the Divisional Accounts Grade Examination test (which is the examination conducted for confirmation), the applicant then joined the working post at Bhopal on 22.07.2017. Thus he has been in working post only from 22.07.2013 to 05.06.2017 (date of transfer order) i.e. a little less than 4 years at Bhopal.

7. The respondents, in their additional reply, have refuted the argument of the applicant in the rejoinder. They submit that

as per Recruitment Rules for Divisional Accounts Officer Grade II (Annexure AR-2), promotion requires three years regular service in grade of Divisional Accountant. The applicant was promoted on the post of Divisional Accounts Grade II w.e.f. 01.01.2014 vide order dated 31.12.2013 (Annexure AR-1), considering his regular service to be from 19.11.2010, i.e. three years regular service as Divisional Accounts, which includes the period of probation also. Therefore, the applicant has completed more than six years at Bhopal.

8. We have heard the learned counsel for the parties and gone through the pleadings and documents available on record.

9. Learned counsel for the applicant argued that the applicant has protection as provided in para 2.H of DoPT's OM dated 31.03.2014 (Annexure A/2), which reads as under:

“H. Preference in transfer/posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised.”

10. Learned counsel for the applicant further submitted that the applicant's disability is up to 80%, hence he should be provided protection as per Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as the Rights of Person with Disability Act, 2016.

10.1 He further places reliance on:

a) Judgment dated 30.01.2018 of Hon'ble Madurai Bench of Madras High Court in the matters of **V. Rajan vs. Tamil Nadu Electricity Board & Ors.** in WP (MD) No.7061 of 2010 and MP (MD) No. 1 of 2010.

b) Orders dated 19.10.2010 of coordinate Ernakulam Bench of this Tribunal in OA No.560/2010 in the matters of **K.K. Ambujakshy vs. Union of India & Anr.**

In both the cases, the transfer orders of physically handicapped persons have been quashed.

11. Learned counsel for the respondents argued that Hon'ble Apex Court has held that the Government is the best judge to decide as to how and where the services of its employees are to be utilized. There is no malafide action taken against the applicant in issuing the impugned transfer order.

12. In the matters of **U. Rajan** (supra), the Hon'ble High Court in para 2, 5 and 6 has stated as under:

“2. The learned counsel appearing on behalf of the petitioner states that the writ petitioner is a differently abled person and therefore, he cannot be transferred to the Hill Station, more specifically to Kundah and the mode of transport available to that particular place is only by way of winch. No transport facilities are available since Kundha Power Station is situated in a Hill place at Nilgris District. By virtue of an interim order granted in this writ petition, the writ petitioner is continuing in Tuticorin Thermal Power Station.

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5. Considering the arguments as advanced by the learned counsel for the petitioner and the respondents, this Court is of an opinion that the writ petition is filed more specifically challenging the transfer order, dated 19.05.2010 on the ground that the writ petitioner was transferred to Kundah Power Station, where there is no transport facilities are available. Thus, the impugned order of transfer is bad in law. This apart, the writ petitioner being differently abled person cannot be posted to a place, where there is no adequate facilities are available. This being the circumstances to be considered by the competent authorities, this Court is of an opinion that the impugned order is liable to be set aside.

6. However, it is made clear that the transfer is an incidental to service, more so, a condition of service. The writ petitioner is working in the cadre of Assistant Executive Engineer, which is a responsible position and the duties and responsibilities are to be performed with complete devotion. Further, it is a transferable post, thus, the writ petitioner cannot seek absolute exemption from the administrative transfers. It is further brought to the notice of this Court that the writ petitioner is continuing in the same post for about 10 years. Certainly, it is not preferable in the interest of administration. Thus, it is for the competent authority to review the situation and if necessary, transfer the writ petitioner to any other place other than Kundha where adequate transport facilities are available and more suitable for differently abled persons.”

12.1 In that case, the transfer order to Kundha Power House was set aside because no transport facilities were available. However, the Hon’ble High Court very clearly stated that the applicant cannot seek absolute exemption from administrative transfer.

12.2 However, in the instant case, the applicant has not brought out any such difficulty in carrying out his transfer to Hoshangabad.

13. In the matters of **K.K. Ambujakshy** (supra), the coordinate Bench at Ernakulam has given relief to the applicant as she was a handicapped person and was more than 58 years

old. In this instant case, the applicant is 30 years old young man who has just started his career.

13.1 Even in the case of **K.K. Ambujakshy** (supra), the Tribunal has stated that in Writ Petition (C) No.5989/2008 and 10006/2008, decided on 06.11.2008, Hon'ble High Court of Kerala held as under:-

“3. As per the notification issued by the Central Government under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995, 40% disability is the bench mark disability for treating a person as physically handicapped person. If that be so, the respondents herein are also entitled to be treated as physically handicapped persons and further considered for the benefits that are bestowed on them as per the norms in the matter of transfer. So, we find nothing wrong with the direction of the CAT to treat them also as physically handicapped persons and also to consider their claim for retention in the present station or at least in the State of Kerala. But, this does not mean that all physically handicapped persons should be retained at the place opted by them. All transfer norms are subject to the power of the competent authority to transfer any employee in exigencies of service. Therefore, it is clarified that, though the claim of the respondents in these Writ Petitions are also liable to be considered for retention in the present station or at least in the State of Kerala, the same will not affect the powers of the competent authority to transfer them in exigencies of service. No court has any power to interfere with a transfer, unless it is shown to be illegal or vitiated by mala fides. So, the direction of the CAT should be understood as directing the competent authority to consider the claim of the applicants, treating them as physically handicapped persons, but without affecting the

power of the authority to decide on the question of transfer, in exigencies of service.”

14. Both the above mentioned judgments of Hon’ble High Courts of Madras as well as Kerala have ruled out absolute exemption from administrative transfers in case of physically handicapped persons.

15. The applicant has failed to bring out any fact which would demonstrated that he has been discriminated on the grounds of disability to attract the provisions of the Rights of Persons with Disabilities Act, 2016.

16. The respondent department has also been able to demonstrate that the applicant has remained at Bhopal for more than 6 years. Even otherwise, so long as same yardstick is being applied to all similarly placed persons, there can be no ground of complaint from the applicant.

17. The Hon’ble Apex Court, in **National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr.** (2001) 8 SCC 574 has held that “no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one

place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

18. Considering all the facts and judicial pronouncement on the subject, we dismiss the O.A being devoid of merits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-