

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00599/2017

Jabalpur, this Tuesday, the 24th day of July, 2018

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

Smt. Seema Gour, W/o Shri Ramesh Kumar, DOB 04.09.1973,
Working as Jr. Technical Officer (Scientist), R/o Plot No. 52,
Raksha Karmachari Colony, Ranjhi-482005 (MP) **-Applicant**
(By Advocate –**Shri Vijay Tripathi**)

V e r s u s

1. Union of India, through its Secretary
Ministry of Defence, Department of Defence Production,
South Block, New Delhi-110001
2. Director General of Quality Assurance, Ministry of Defence,
G Block, Nirman Bhawan, New Delhi-110011
3. Add. Director General of quality assurance,
(M&E-5), Ministry of Defence, P.O., Ichhapur,
Nawabganj, District-24, Parganas (North),
West Begngal-743144
4. The Controller of Quality Assurance
(Ministry of Explosive)
Aundh Road, Pune- 411020 (Maharashtra)
5. Sr. General Manager,
Ordnance Factory Khamariya-482005 (MP)
6. The Quality Assurance Officer,
Quality Assurance Establishment
(Ministry of Explosive)
Khamariya, Jabalpur-482005 (MP.)

-Respondents

(By Advocate –**Shri S.P.Singh**)
(Date of reserving the order:- 06.07.2018)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved by her transfer from Khamaria to Pune. Hence she has filed this Original Application.

2. The following relief has been sought for by the applicant in this Original Application:-

“8. Relief Sought :

(8.1) Summon the entire relevant record from the possession of respondents for its kind perusal.

(8.2) Set aside the order dated 27.07.2017 (Annexure A/1) to the extent it transfer the applicant from QAE (ME) Khamariya to QAE (ME) HE Factory, Pune with all consequential benefits.

(8.3) The respondents also be directed to permit the applicant to work in Pilot Project Cell Khamariya, Jabalpur.

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

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

3. The applicant submits that she joined as Junior Scientific Assistant Grade II on 04.03.1998. After promotion as Scientific Assistant Grade II she was transferred to Itarsi on 08.04.2002 and then transferred to Khamaria in June 2005. She has submitted that the applicant has completed three years at Itarsi which is a hard tenure station.

3.1 She has cited her personal reasons as having twin daughters and old parents aged about 70 years residing in Jabalpur and her husband is an employee of State of Uttar Pradesh.

3.2 She has submitted that as per the recommendation of Raman Puri Committee, the Ministry of Defence has started Pilot Project Cell (in short PPC) in Six Ordinance Factories, one of them being Khamaria. She was posted in the Pilot Project Khamaria for a period of one year on 10.10.2016 (Annexure A-2).

3.3 She was not willing to go to the Pilot Project Cell and submitted an application to cancel the posting order on 10.10.2016. However, her request was not accepted vide order dated 21.10.2016 (Annexure A-3), and thereafter she joined the PPC.

3.4 The applicant alongwith four other employees were asked on 07.04.2017 (Annexure A-4) to give their choice for posting under Rotational Transfer Scheme 2017. However, the applicant in a representation dated 15.04.2017 (Annexure A-5) requested that she may not be disturbed from Jabalpur for personal reasons.

3.5 The applicant has made an averment that while she has been transferred Smt. Devaki Maravi Pradhan and Shri S.S.Thakur have been exempted from rotational transfer inspite of the fact that both are senior to the applicant. The name of these two persons are appearing in the letter dated 07.04.2017 (Annexure A-4).

3.6 She has also made out a case that her controlling officer has written on 31.07.2017 (Annexure A-7) to respondent No. 3 to exempt the applicant from rotational transfer as she is working in PPC.

3.7 It has also been submitted by the applicant that three employees namely Shri Bakul Sahu AE(QA), Seemanchal Choudhary, AE (QA) and Santosh Kumar Mishra AE(QA) were also subjected to rotational transfer. However, when this fact was brought to the notice of the competent authority that they are working in the Pilot Project Cell, they were exempted from rotational transfer policy. However, the applicant was not given same treatment and she has been discriminated.

3.8 After receipt of the transfer order the applicant had made a representation dated 02.08.2017 (Annexure A-8) for retention at the same station and exemption from RTS 2017, which has not been agreed to by the competent authority vide communication dated 23.08.2017 (Annexure A-10).

4. The respondents have submitted their reply. They have submitted that the applicant has worked in different capacity at QAE (ME) Khamaria, Jabalpur for a cumulative period of more than 16 years. As per Rotational Transfer Policy dated 24.11.2016

and order dated 10.02.2017 (Collly. Annexure R-2) the tenure of all Group B officials in a post will normally be limited to 05 years.

4.1 They have submitted that the applicant was transferred from Itarsi to Khamaria on 13.06.2005 on compassionate transfer and she joined at Khamaria, Jabalpur on 09.07.2005.

4.2 The respondents have brought out that the applicant did not submit any choice station which in other way implied that the individual was ready to move anywhere in India. Consequently AHSP CQA (ME) Pune marked the individual for transfer to QAE (ME), HE Factory, Pune on functional requirement.

4.3 The applicant has also submitted that the Ordnance Factory Khamaria, Pilot Project Cell was located at the same station and therefore it was not a transfer case, but a kind of attachment/detailment for a period of one year. During this period the applicant is administratively in the strength of QAE (ME), Khamaria and not under Ordnance Factory Board. All the service records for example Service Book, APAR, pay roll etc. is maintained in the office of respondent No. 6.

4.4 On account of the applicant's transfer to Pune, the establishment will detail any other JTO (s) of equivalent status to the OFK Pilot Project cell.

4.5 Regarding retention of Smt. Devaki Maravi Pradhan JTO (S) and Shri S.S.Thakur JTO (S) the respondents have submitted that Smt. Pradhan is in line of next promotion as she is at serial number 2 in seniority order. Therefore as per Para 10(b) of the RTP policy guidelines, officials likely to be promoted within one year can be temporarily exempted from the RTP. Further, her husband is working at Ordnance Factory Khamaria with effect from 29.09.2016 and therefore the competent authority has given consideration. Regarding Shri S.S.Thakur, JTO (S) it has been stated that the individual is superannuating on 30.09.2017. As per Para 10 (a) of the RTP Guidelines officials having two years or less for superannuation will be exempted from rotational transfer.

4.6 The respondents have submitted that there are 21 JTO (S) under transfer under RTP 2017, out of which 7 are women employees. Health related issues as well as domestic issues are very common and hence on this contention the applicant is not entitled for any relief on the aforesaid ground. No malafide intention is there behind transferring the applicant as per rotational transfer policy.

4.7 The respondents have also mentioned that as far as the three other employees, namely Shri Bakul Sahu AE(QA), Seemanchal Choudhary, AE (QA) and Santosh Kumar Mishra AE(QA) who

have been exempted from rotational transfer due to working in Pilot Project Cell is concerned they are working in different discipline under administrative control of other establishment.

5. The applicant has filed rejoinder in which she has stated that the applicant has completed seven years station tenure whereas other employees who have completed more than 20 years at Jabalpur namely Smt. Devaki Maravi Pradhan and Champa Topo and they have not been transferred out. Further Pilot Project Cell is still continuing in Ordnance Factory Board, Khamaria and there is no justification to transfer the applicant elsewhere.

5.1 The applicant has again questioned the logic about retention of Smt. Devak Maravi Pradhan.

5.2 The applicant have also questioned the reply of the respondents regarding three employees working in different discipline under administrative control of other establishment and they have said that respondents Nos. 2 & 3 are also party in this Original Application and therefore the stand of the respondents that the three employees are working under different administrative control is not valid.

6. Heard the learned counsels for both the parties and perused the pleadings available on record.

7. Learned counsel for the applicant has put forward the following three reasons for which the applicant should not be considered for rotational transfer namely:

- (1). Strong personal reasons.
- (2). Discrimination against the applicant namely
 - (a) continuation of Mrs. Devaki Maravi Pradhan and Mrs. Champa Topo in Jabalpur.
 - (b) Other officials being exempted from rotational transfer as working in Pilot Project Cell.
- (3) Ministry of Defence guidelines for continuation of Pilot Project Cell, meaning thereby that the applicant should continue at the same place.

7.1 Learned counsel for the applicant argued that Para 13 of the RTP Reads as under:-

“(13.) Relaxation

Any relaxation of the provisions or contingencies not covered in the above mentioned policy guidelines will be considered on its merit with the approval of the authority empowered to approve posting/transfer.”

7.2 The case of the applicant is very strong for relaxation under Para 13 as she has to take care of twin daughters who are studying in class 9th and 10th.

8. Learned counsel for the respondents vehemently opposed granting of any relief to the applicant. He submitted that right from 1998 till date she has remained at Khamaria Jabalpur except for three years period of 2002-2005 when she was at Itarsi. When she was asked for choice of posting, she has not submitted any choice.

He places reliance on a recent order passed by the Hon'ble High Court of Madhya Pradesh in Writ appeal No. 50/2018 on 23.02.2018 where the Hon'ble High Court has observed as under:

“We find that humanitarian considerations for posting of employees cannot outweigh the administrative exigency in posting of an officer. Every employee has some problem or the other in the family. Some employees have ailing parents or some other employees have school going children. But if such consideration are taken into consideration, probably the functioning of the State Government will be seriously prejudiced. If the son of the petitioner is not well, the petitioner is at liberty to take leave and take care of his ailing child. But that will not entitle him to choose his place of posting.”

8.1 Learned counsel for the respondents also refuted the charges of discrimination against the applicant. Regarding retention of Smt. Devaki Maravi Pradhan and Smt. Champa Topo, he submitted that in Rotational Transfer of 2018 both of these officers have been transferred out of Jabalpur. Regarding retention of three AE(s) at the same place as they were working in Pilot Project Cell, those three officers are Engineers whereas the applicant is not.

8.2 The requirement of Engineers in Pilot Project Cell may be different as compared to JTOs. Also the Cadre Controlling Officers of the applicant and those AE(s) is different and therefore the two cases cannot be related.

8.3 Learned counsel for the respondents submitted that continuation or otherwise of the applicant in Pilot Project Cell is to

be decided by the competent authority and accordingly the decision has been taken to transfer her to Pune under Rotational Transfer.

9. We have considered the matter.

10. It is undisputed fact that the applicant is having All India Transfer Liability. The respondents in all fairness asked for choice place of posting in rotational transfer. This opportunity was allowed to pass by the applicant. Therefore, the competent authority in the respondent department had no option but to transfer her at whatever place they deemed fit. The personal reason of individual has to be subservient to the administrative interest.

11. The respondents have published a rotational transfer guideline and we find that no violation of the same has been done. It is a fact that there were two officers who were senior to the applicant as far as the length of stay at Jabalpur is concerned, who were not transferred in 2017. However, those two officials have also been transferred in the Rotational Transfer Scheme of 2018.

12. The working of Pilot Project Cell is an administrative requirement which has to be adjudged by the competent authority. Whether the pilot project cell is to be continued or not, whether the same person is to be continued or not are some of the issues which can be decided only by the administration. Therefore, just on this account, rotational transfer cannot be challenged.

13. In the matters of **Union of India Vs. S.L. Abbas**, (1993) 4 SCC 357 the Hon'ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of **State of M.P. Vs. S.S.Kourav**, (1995) 3 SCC 270 the Hon'ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation.

14. In the matters of **National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan**, (2001) 8 SCC 574, the Hon'ble Supreme Court has held that 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 are 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”.

15. Hon'ble Supreme Court in **N.K.Singh vs. Union of India**, (1994) 6 SCC 98 have observed that, “Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at

times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by malafides or infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated.”

16. Thus, it is a settled law that transfer of a government servant in a transferable service is a necessary incident of the service career.

17. In view of the settled legal position, we find no merit in the case. Accordingly, the same is dismissed. No order on costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member