

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

No. O.A.1723 of 2017

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Shri Ashoke Saha,
Son of late Amulya Bhusan Saha,
Aged about 58 years,
Working as Senior Scientific Officer,
Grade-II, Office of the Controller of
Quality Assurance (Metals), Ichapur,
North 24 Parganas, West Bengal,
Residing at 7/H/13, Kundu Lane,
P.O. – Belgachia,
Kolkata – 700 037.

..... Applicant.

Versus

1. Union of India
Through the Secretary to the Govt. of India,
Ministry of Defence,
Department of Defence Production,
South Block,
New Delhi – 110 001.
2. The Director General,
Directorate General of Quality Assurance,
Department of Defence Production,
Government of India,
Ministry of Defence, Nirman Bhawan,
Delhi – 110 011.
3. The Additional Director General Quality Assurance,
Directorate of Quality Assurance
(Metals & Explosives),
P.O. – Ichapur - Nawabganj,
Dist. – North 24 Parganas,
West Bengal, Pin : 743 144.
4. The Controller of Quality Assurance (Metals),
Ichapur,
P.O. Ichapur – Nawabganj,
Dist. North 24 Parganas,
West Bengal – 743 144.

..... Respondents.

For the applicant : Mr. S.K. Datta, Counsel
Ms. A. Roy, Counsel

For the respondents : Mr. A.K. Chattopadhyay, Counsel

Reserved on : 09.08.2018

Date of Order : 09.10.2018

ORDER

Per : Bidisha Banerjee, Judicial Member

Aggrieved with his transfer from Ichapore to New Delhi at the fag is end of service, with less than three years to retire, the applicant a Senior Scientific Officer II in DGQA has filed this O.A. to seek the following reliefs:

"8.(a) An order quashing and/or setting aside the order dated 31.8.2017 so far as the applicant and the Respondent No. 4 are concerned.

(b) An order quashing and/or setting aside the purported rejection of the prayer of the applicant for retention at Ichapore as well as made against the transfer of the applicant as referred to in the communication dated 7.12.2017 and also quashing the said communication dated 7.12.2017.

(c) An order directing the Official Respondents to allow the applicant to continue at Ichapore in view of the prayer (a) and (b) above.

(d) An order directing the respondents to produce/ cause production of all relevant records.

(e) Any other order or further order/ orders as to this Hon'ble Tribunal may seem fit and proper."

2. The transfer order was stayed by this Tribunal with the following order:

"Mr. S.K. Datta, Id. counsel appearing on behalf of the applicant submits that at present the applicant is working as Senior Scientific Officer (S.S.O.) Gr.II at Ichhapore and vide order dated 31.08.2017 the applicant has been transferred from Ichhapore to Delhi. Mr. Datta further submits that in pursuance of the cadre review in respect of Group 'B' and 'C' , DGQA Organisation, the applicant was redesignated as SSO II in the pay scale of Rs. 15600-39100 (Grade Pay Rs. 5400/-) in PB-3. However, the applicant was intimated by the respondent authorities that the financial benefits could not be granted to him till now as the matter has not yet been finalized or concurred by the DOPT/Ministry of Finance. Mr. Datta

B

submits that although the applicant is being treated as SSO-II, the facilities in terms of the Group 'A' post have not been given to him, but the transfer order has been issued as per the policy for Group 'A' employees. As per Mr. Datta, if the financial benefits are counted, the applicant does not fall under the Group 'A' category and if the applicant is considered as Group 'A' then the provisions of Clause 10 (a) and (d) of "POSTING/TRANSFER POLICY IN RESPECT OF GROUP 'A' (DQAS & PSSO CADRE) OFFICERS OF DGQA" dated 24.11.2016 (Annexure A-3) should have been followed while issuing the order of transfer which was not done in case of the applicant, therefore, the transfer order dated 31.08.2017 (so far as the present applicant is concerned) has been issued violating the provisions of the Posting and Transfer Policy for Group 'A' officers of DGQA., therefore, the transfer order 31.08.2017 (in case of the applicant only) is bad in law and is liable to be set aside. Mr. Datta further submits that being aggrieved by the transfer order dated 31.08.2017 the applicant made a representation to the authorities concerned on 17.02.2017 (Annexure A-4) praying for reconsideration of his case for his retention at Ichhapur for one year on the ground of his son's education and wife's illness, but his prayer has been rejected. Finding no other alternative the applicant has come to this Tribunal seeking appropriate relief.

Issue notice to the respondents returnable within 4 weeks. The respondents are granted 4 weeks time to file reply. The applicant may file rejoinder, if any, within 2 weeks thereafter.

Mr. S.K. Datta, Id. Counsel for the applicant fervently prays for an interim protection and stay of the transfer order dated 31.08.2017 (in case of the present applicant). He submits that the applicant has not yet been released from the present place of posting. Mr. Datta has drawn my attention to Clause 10 (a) and (d) of the "POSTING/TRANSFER POLICY IN RESPECT OF GROUP 'A' (DQAS & PSSO CADRE) OFFICERS OF DGQA" dated 24.11.2016 (Annexure A-3) which read as follows:

"10. Exemption from transfer under RTP

- Officers (other than SAG and above) having 02 years or less service for superannuation will be exempted from rotational transfer;
- Request of an officer for retention at a station maximum by 01 year may be considered on grounds of education of his/her children once in entire service career."

According to Mr. Datta, the respondents have not taken into consideration the aforesaid clause while issuing the transfer order against the applicant, therefore, the transfer order dated 31.08.2017 (in respect of the applicant) should be quashed. He further submits that if the transfer order is not stayed, the applicant will face irreparable loss and injury which cannot be compensated.

On the other hand, Mr. A.K. Chattopadhyay, Id. Counsel for the respondents argued that there was no question of malafide against the applicant and the transfer order has been issued to him by following the

relevant rules and guidelines in force, therefore, no interim protection should be given to the applicant. In support of his statement he relied upon a decision of the Central Administrative Tribunal, Kolkata Bench dated 08.09.2017 passed in O.A. 350/675/2017 and submits that the applicant's case is not sustainable in the eye of law in view of the said decision. He further relied on Clause 6 of "POSTING/TRANSFER POLICY IN RESPECT OF GROUP 'A' (DQAS & PSSO CADRE) OFFICERS OF DGQA" dated 24.11.2016 (Annexure A-3) which read as follows:-

"6. The total cumulative tenure of any officer in the same station shall not exceed 12 years in entire service career. Further, no officer should be posted back to the same station within next 03 years of his transfer."

On perusal of the "POSTING/TRANSFER POLICY IN RESPECT OF GROUP 'A' (DQAS & PSSO CADRE) OFFICERS OF DGQA" dated 24.11.2016 (Annexure A-3) I find that while issuing the transfer order dated 31.08.2017 against the applicant, the respondents did not consider the Clause 10 (a) and (d) and stressed only on Clause 6 of the same.

Considering the facts and circumstances of the case, I find that fair play on the part of the respondents has not been exposed while issuing the transfer order dated 31.08.2017 against the applicant. I find that the applicant has prayed for his retention at Ichhapur on the ground of his son's education and wife's illness. Moreover, he is on the verge of retirement. In my view it is a prima facie fit case to entertain by granting interim protection, otherwise, the applicant will face irreparable loss and injury which cannot be compensated. The balance of convenience is in favour of the applicant.

Accordingly the impugned transfer order dated 31.08.2017 (Annexure A/7) so far as the applicant is concerned and the impugned communication dated 07.12.2017 (Annexure A/10) shall be kept in abeyance till the next date. The respondents are given liberty to pray for vacation/modification/variation/cancellation of the interim order, if they so desire. List the matter on 27.03.2018."

3. The applicant has claimed that he is not enjoying the status of a Groups 'A' officer or SSO II and therefore Rotational Transfer Policy (RTI in short) shall not apply to him.

4. Per contra the respondents have submitted in their reply as under:

"(i) Rotational Transfer Policy has been existing in DGQA Organization since long and DQAS officers of the organization are routinely transferred under this policy. The aim of the policy is to avoid development of nexus of the officers concerned with unscrupulous elements in the environment

and, simultaneously, expose them to multifarious aspects of working in the organization. In the best interest of the organization some small changes have to be incorporated in the Rotational Transfer Policy from time to time. Erstwhile Rotational Transfer Policy in respect of Group – 'A' Officers alongwith JSO of DGQA was issued vide DGQA HQ Letter No. 6(5)/99/D(QA) dated 29th October, 1999 which was revised by Ministry of Defence vide its Order No.43(1)/D(QA)/DGQA/ Adm-7B/ 2016 dated 24th Nov., 2016. In the revised Policy, there was no mention about JSOs since on cadre review, the post of JSOs were already merged with SSO-II, the entry grade for Group – 'A' (The letter dated 29.10.99 and 24.11.2016 are annexed hereto and marked with letter R-I) collectively.

(ii) On merger of the posts of JSO and SSO-II, the authorization of the post of SSO-II has been increased whereas the authorization for JSO have become NIL. Resultantly, the revised posting/transfer policy is now applicable only to Group A officers including SSO-II who were earlier JSOs of DGQA. The revised transfer policy is legally and administratively sound and has the prior approval of the competent authority of Government of India. Accordingly, the Rotational Transfer Policy is applicable to all Group – 'A' officers, irrespective of whether they were recruited at the entry of SSO-II or upgraded from JSO to SSO-II. The policy is reasonable and cogent within the frame work of maintaining organizational interest).

Mere delay in pay fixation could not be considered as a sustainable ground for establishing that the applicant does not come under Group – 'A'. Since the date of placed as SSO-II, the applicant beside getting reverence as a Gp-A officer is discharging higher responsibility of SSO-II"

5. That apart, the respondents have emphatically admitted as under:

"The pay proposal in respect of the applicant as per PB-3+GP 5400/- was forwarded. However the pay has not been accorded by the audit authority to the applicant, as yet, and applicant is being paid as per PB-2 with 5400/- as granted earlier under MACP. It is a time consuming process as it is a case of merger and therefore a special one."

Nevertheless, they have also averred that-

"On the ground of delay in fixation the conferment of benefits of Gp-A service can not be denied by the applicant as officer is enjoying all the benefits of Gp-A cadre since the merger such as medical facilities, CGEGIS etc. Hence the averments made by the applicant are irrational not tenable."

6. Further, as far as applicability of exemption under educational ground of daughter of the applicant is concerned respondents have pointed out that-

B

"At the time of considering the cases of RTS with relevant facts and figures the empowered Committee noticed that as per his claim his son would appear in the Class X Exam 2017 (CBSE), therefore by the time posting/transfer orders are issued he would have even cleared the board exam. Under such circumstances the education ground of son did not have enough merit to postpone the RTS. "

7. The respondents have further averred that-

"Para-5 of the posting order dated 31st August, 2017 makes it amply clear that no change in posting order on any ground would be entertained. Further the movement of the officers were required to be completed within one month. However after confirming the availability of vacancy the officer has asked about the date of SOS, but he furnished no reply. Instead he rushed to this Hon'ble Tribunal."

In regard to the applicant's claim that because of non fixation of appropriate pay he does not come under the purview of Group 'A', the respondents have averred that-

"Such contention was not tenable in the eyes of law since even if it was assumed that he was not placed a Gp- 'A' officer in the post of SSO-II then surely would have been a JSO (under Gp- 'B') as he was before merger, resultantly he still would have been governed by the policy of Gp- 'A' officers that was in vogue under the earlier RTS policy of 1999."

The respondents have alleged that the applicant has made an "irrational attempt to mislead the Hon'ble Tribunal",

Since "upon cadre review the posts of JSO have merged with SSO-II increasing the number of posts of SSO-KK while bearing no post of JSOs, and thereafter is no scope to consider the applicant as a Group 'A' officer. Either way he is well within the ambit of RTS".

Further that-

"As per existing Rotational Transfer Policy in respect of Group- 'A' officers along with JSO's of DGQA, the maximum period of service rendered in the same station is 12 years, while the applicant is stationed more than 25

years in support at the same place. Copy of service details (R-3) has been used."

9. Lastly they have banked upon the decision of Hon'ble third Member in O.A.

675/17 as extracted hereunder:

"3. The terms of reference including difference of opinion between Hon'ble Members of Division Bench comprising of Hon'ble Mr. A.K. Patniak, Judicial Member and Hon'ble Ms. Jaya Das Gupta, Administrative Member on which Hon'ble Members of the aforesaid Bench expressed their difference of opinion is quoted herein below:

- (i) Whether any interim order on a transfer should be passed when it is not extremely urgent without getting the instructions from the respondent authorities as per section 24 of Administrative Tribunal Act, 1985?
- (ii) Whether the tribunal should interfere in an executive order of transfer when the Hon'ble Apex Court has repeatedly laid down that in the limited power of judicial review no interference in the transfer order is to be made unless – (I) it is passed by an appropriate authority (II) it smacks of malafide and (III) it is against any statute?"

10. Having considered the rival contention in the aforesaid backdrop we are of the considered opinion that the applicant who has already stayed at the same station for 25 years does not deserve any further benediction impelled by extraneous considerations. O.A. is therefore dismissed. No costs.

11. However, before we part we would add in haste that the applicant may immediately join his place of transfer and with less than two years to retire he may seek his transfer back to facilitate early clearance of his retiral benefits and to settle down peacefully on his retirement.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh