

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.24/2016

Date of Decision: 26th September, 2017

**CORAM: Hon'ble Shri Arvind J. Rohee,
Member (J)**

Hon'ble Shri R. Vijaykumar, Member (A)

Shri Dnyaneshwar Keshav Salunke,
Age 56 years,
Working as Junior Engineer (QA),
Office of Senior Quality Assurance (Estt),
Khadki, Pune 411003.
Residing at Anusuya S. No.72/1B,
Samarth Nagar, Dange Hospital Road,
New Sangvi, Pune-411061.

...Applicant.

**(By Applicant Advocate: Shri.Vicky
Nagrani)**

Versus.

1. Union of India
Through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.

2. The Union of India
Through the Director General,
Directorate General of Quality Assurance,
(Armts)
Ministry of Defence,
South Block, Nirman Bahwan,

New Delhi-110001.

3. The Controller,
Controllerate of Quality Assurance (A),
Khandki Pune-411003.

4. The Senior Quality Assurance
Officer,
Ammunition Factory Permises,
Khandki, Punw-411003.

... Respondents

**(Respondents by Advocate Shri V.S.
Masurkar Alongwith Smt.H.P. Shah) .**

Reserved on : 04.09.2017.

Pronounced on : 26.09.2017.

ORDER

**Per:- Hon'ble Shri R. Vijaykumar, MEMBER
(A)**

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned transfer order dated 24.11.2015, qua the

Applicant as well as the order dated 07.01.2016 and the Applicant be permitted to work as AE (QA) at Kirkee with all consequential benefits.

(b). Costs of the application be provided for.

(c). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. This O.A.No.24/2016 filed by Dnyaneshwar Keshav Salunke Vs. Union of India through the Secretary, Ministry of Defence and three others on 15.01.2016 to which reply was filed on behalf of the respondents on 05.07.2016. Rejoinder has been filed on 16.08.2016 and to which, Sur-rejoinder was filed on 21.12.2016 and the matter stood over to this day, when final hearing has conducted. Applicant has noted an incorrect respondent in the proceedings namely, Respondent-1 through Secretary, Production and not Secretary, Defence but this mistake appears to have been

overlooked and is adopted in the corrected form for the purposes of this order.

2.1. In this case, interim relief has been granted staying the transfer from Kirkee, Pune to Khamaria, Jabalpur by this Tribunal's order dated 19.01.2016 and continues to this day.

2.2. The applicant was appointed on 08.03.1984, as Junior Engineer, was promoted as Examiner in the year 1999 and then as MCM after which, on 29.05.2006, he was promoted as Chargeman Grade-II, a post which was redesignated as Junior Engineer (QA). At this time, despite his previous postings at Kirkee, he was again retained at Kirkee. During this period, while serving as Junior Engineer, he was transferred from SQAE (A) Kirkee to CQA (A), Kirkee itself and then on 09.04.2010, he was shifted again from CQA (A) to SQAE (A), again at Kirkee. On 07.08.2014, following the

Select Panel drawn up on 24.07.2014, wherein he was empanelled for promotion as Assistant Engineer, he was issued promotion orders on 07.08.2014 and transferred to SQAE (A), Badmal, Bolangir (Orissa) a hard station. Opposing this transfer, he opted to forego his promotion in order to stay at Kirkee and his excuses were accepted by competent authority and he was retained in the junior position at Kirkee itself in orders of R-2 dated 26.11.2014 with the condition that the applicant was debarred for promotion for one year from that date. The applicant was duly considered in the Select Panel for 2015 and included in the list of 12.06.2015. Anticipating his transfer, the applicant again furnished personal excuses claiming the need for him to be in Kirkee to arrange the marriage of his 29 year old daughter and 26 year old son, in a representation dated 29.10.2014.

However, Respondent-2 passed orders on 24.11.2015, which were to take effect from date of completion of debarment period, transferring the applicant to Khamaria, Jabalpur (not a 'hard' station). The applicant submitted a representation on 25.11.2015 to R-2 but this was not considered whereupon he has filed this OA.

2.3. The applicant has objected to his transfer citing his seniority over four other juniors in the same Select Panel issued in 2015, all of whom were retained at Kirkee without leaving the station. He argues that seniors are to be preferred for retention in terms of the transfer policy. This transfer policy No.A/90600/POLICY/DGQA/Adm-7A dated 25.04.2013 reads as on "Transfer on Compassionate Grounds (Group 'B' and 'C' personnel)" and reads at para-16 as below:-

"16. All orders relating to transfers on promotion will

be issued only after effecting transfer on compassionate grounds. After that, if a vacancy is available at the station, the individuals on promotion are to be adjusted in-situ strictly as per the seniority in the promotion panel. Under no circumstances a senior individual will be posted out to accommodate retention of his junior in the same station.”

2.4. The applicant has alleged that four other employees, junior to him have been retained at Kirkee on promotion whereas they have always been stationed at Kirkee since their appointment as in his case. The applicant has also argued that as on November, 2015 he had only 4 $\frac{1}{2}$ years left for his retirement in the year 2020 and in terms of transfer policy No.A/96995/RTP/DGQA/Admn-7B dated 20.05.2011 at para-8, which states “Persons having less than five years service for superannuation as at 1st January of the year are exempted from rotational transfer.” and that this

policy was reiterated in DGQA
clarification No.A/96995/RTP/DGQA/Adm-7B
dated 07.11.2012.

2.5. Further, he refers to the response to a direction of this Tribunal on the previous application filed by the same applicant in OA No.679/2015 in orders dated 15.12.2015. The DGQA has, in order No. S/ 163/ CC/ 0679 /DJKS /DGQA/Arm-1 dated 07.01.2016, has complied by giving a reasoned and speaking order. The applicant objects to the mention in these orders that the applicant was working in Kirkee for about 32 years from 08.03.1984 to date. He contends that he attained a transferable position only in 2006, when he was promoted as Junior Engineer and reference to his 32 years experience at Kirkee was not correct. He argues that the four juniors who were retained in Kirkee have the same experience and are also junior to him but were retained at Kirkee itself,

which gravely affects his case in violation of Respondents' own policies. This order of the DGQA also states that the DGQA had accepted his earlier request for retention at the station in the year 2014-15; that transfer had been made at his request between offices in Kirkee in the year 2009-10; and further that, by virtue of his past experience for ASHSP and shop floor activities at SQAE (A), he had been considered appropriate for posting at SQAE (A) & LPR Khamaria, Jabalpur, which is a proof establishment. The order also states that the policy requirement is that a person should be posted compulsorily in a hard station after appointment which had not been done in his case and he had been accommodated on compassionate grounds on previous occasions by retention in the same station.

3. In their reply, the Respondent No.4, on behalf of all the respondents has resisted the

contentions of the applicant made in this OA. It is stated that the applicant is an officer of the Govt. of India and is liable to serve anywhere in the Country and transfer is an incident of service. He stated that applicant has been promoted as Junior Engineer (QA) and posted to AE (QA) and not on Rotation Transfer to which the Rotational Transfer Policy document dated 20.05.2011 would apply. The transfer on promotion and Rotational Transfer are different and are distinct administrative actions which cannot be read out of context. When the applicant was empanelled in 2014, he was proposed for transfer to SQAE (A), Badmal, Bolangir, Orissa, which is one of the 'hard' stations to which all officers are compulsorily to be posted for a minimum of three years as per policy. In this applicant's case, he had been transferred at his request within Kirkee in 2009-2010 despite the policy requirement of transfer to a hard station.

3.1. Respondents state that in the present case of transfer in 2015, the Applicant's floor experience had been taken into account in

transferring him to a proof establishment, Khamaria, Jabalpur which was not a hard station. There were no violations of policy or mala fides in his promotional transfer but administrative needs alone subsist. They have invited this Court's attention to the decision of Hon'ble Apex Court in the case of **State Bank of India vs. Anjan Sanyal & Others reported in 2001 (3) SC 436**

in which it was held that an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law unless the Court finds that there are malafide; The Hon'ble Apex Court held in the case of **State of Madhya Pradesh and Others vs. S.S. Kourav and Others reported in JT 1995 (2) SC 498** that Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative matters retaining to transfer of officers. They also referred to the judgment of the Hon'ble Supreme Court in the case of **N.K. Singh vs. Union of India reported in (1994) 28 ATC 246** that

interference was warranted only in cases of mala

fides or infraction of any professed norm or principle but where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed. Further, that the procedure for determining mala fides should be based on record and not on roving enquiry. Further, as decided by the Hon'ble Supreme Court in the case of ***S/o UP vs. Gobardhan Lal reported in 2004 (2) SCSLJ 42***, mere allegations of mala fides or considerations borne out of conjecture or surmises without any strong and convincing reasons cannot be a ground to interfere with the order of transfer. They have also cited a few other judgments to support the need for obedience required to transfer orders and the administrative exigencies that might govern and underline such transfer orders which are all essential conditions of service. The reply of respondents encloses an advisory from the DGQA to SQAE (A) dealing with this case affirming that three compassionate adjustments had been made for the applicant: first in May, 2006, when he was promoted as Junior Engineer (QA); second in-situ

change of posting in 2010; and third, when he was permitted to forego the first promotion in 2014 as Assistant Engineer (QA) and retained at Kirkee.

3.2. The advisory goes on to say that the department is in the process of establishing a new establishment/Unit i.e. Predictive Technology Laboratory at CQA (A), Pune by investing crores of rupees and one of his juniors had been retained in-situ as he is already undergoing training for the said laboratory since June, 2015. Further, that the CQA and DQA, Pune is the only establishment which is having an important printing press where all the Technical Documents are printed for all the units. Some of his juniors have been in this printing press since their appointment and are having vast experience in the field and due to exigencies of service, they have been retained in CQA (A), Pune to utilize their services in CQA (A) as very few individual show their interest in such jobs and also that training a new individual is quite time consuming.

4. In his rejoinder, the applicant has reiterated his dependence on the rotational transfer policy and promotional transfer policy documents for transferring on compassionate grounds and claims that para-16 of the letter policy document applies to both technical and non-technical staff as set out in para-2 of the said policy document. He also claims that no special consideration was given to him in 2014 when he was transferred to a hard station at Badmal, Orissa since the same policy gives right to the applicant to refuse his first promotion. The applicant does not, however, specify where this conferment of rights are made. He argues that while he was not transferred out in the year 2006 upon promotion as Chargeman/Junior Engineer, he was not liable to any transfer until 2006. He has also reiterated his objections that he was a senior who was being posted out whereas four of his juniors were retained which was against announced policy.

5. In their reply to the rejoinder, respondents have stated that the condition of five years

residual service mentioned in the policy dated 20.05.2011 is not applicable for promotion and the same cannot be applied also as the promotion of any employee is based on the vacancy available in the year and organizational requirements. They reiterated the requirement of compulsory tenure of three years at hard station. They also denied the applicant's contention that he had right to refuse first promotion and referred to policy letter No.A/93415/Def/DGQA/ADM-7A dated 14.05.2003 extracted as under:-

“First refusal of promotion involving transfer outstation can be accepted provided the situation and the reason submitted by the individual warrant such an acceptance. In case, the competent authority does not consider the reason adduced by the individual to refuse promotion as sufficient, the individual will be relieved by the unit to move on promotion and struck off its strength under intimation to all concerned including the unit to which the employees has been posted. For non reporting to the unit of the posting in time, disciplinary action would be initiated by the unit to which the employee has been posted.”

5.1. The respondents also enclose a clarification in promotion postings issued by DGQA in letter No.A/90600/Policy/DGQA/Adm-7A dated 02.08.2013, which orders that the Policy Guidelines dated 25.04.2013 only covers transfer on compassionate grounds and that in the matters of transfer on promotion, Hard Station posting and Rotational Transfers, the letters issued separately for them will hold good.

5.2. They, thereafter, objected to the claims made in reference to the Rotational Transfer order on his juniors being retained. The respondents reiterate the administrative exigencies that has compelled the retention of these officers despite the argument about comparable circumstances.

6. We have gone through the O.A. alongwith Annexures A-1 to A-11. We have also gone through the Reply, its Annexure-R-1, Rejoinder and Sur-Rejoinder filed and have carefully examined the official policy documents

annexed in the case.

7. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

8. At the outset, we note that the law is settled on the point that transfer is an incident of service and it is the department's prerogative to manage their staff in the best manner possible. In the present case, the applicant has not seriously contended that there have been mala files in this case and he also does not specifically indicate the persons who could have borne such mala fide nor are they cited as respondents.

9. The applicant's main grievance appears to be that the transfer orders were biased against him to the benefit of his four other juniors, who have been retained at Kirkee despite their similarity of circumstances with him in that they have retained in the same station ever

since they joined service.

10. The applicant has developed a case by referring to two transfer policy documents namely, transfer on compassionate grounds issued on 25.04.2013 and policy for rotational transfer issued on 20.05.2011. In relation to these, respondents have enclosed a clarification of promotional policy on 07.11.2011 with reference to rotational transfer policy and have also later issued a clarification on the policy for transfer on compassionate grounds on 02.08.2013 to the effect that in matters of transfers on promotion, hard station posting and rotational transfer letter issued separately for them will hold good. It is a general principle that a policy document can only be read within its context and has to be read as a whole and parts of it cannot be taken out to suit some individual person.

11. On the same basis the applicant claims that the compassionate grounds policy of 25.03.2013 requires that senior should be given preference in-situ after compassionate transfers have been effected, becomes invalid. The policy

itself is aimed at creating scope for Govt to show generosity towards the condition of persons requiring compassionate treatment, which is necessarily at the cost of staff who are otherwise able but are posted at the particular station. After doing so for 'able' persons the rule of seniority has to be followed but this cannot be made to apply to promotional issues.

12. The applicant then refers to the rotational transfer policy document of 20.05.2011 to argue that the residual period of service should be considered before disturbing a person for transfer. In this case, extracting a portion of these orders by the applicant is not correct, because even in 2014 when he was placed in Select Panel, he had 6 $\frac{1}{2}$ years left and when he was again placed in Select Panel of 2015 and posted in November, 2015, he had 5 $\frac{1}{2}$ service left as at 01.01.2015, the requirement specified in those orders, which would be counted from his superannuation date of June, 2020. It is also noted in these orders and clearly a carry over from promotional policy, that there is a

compulsion on posting to a hard station on first promotion and that these requirements had to be complied within the service period if not done initially. These requirements of promotion policy that limit the benefits provided in the rotational transfer policy have clearly not been met by the applicant in his entire carrier. The applicant has claimed that four of his juniors promoted in the same two panels have been accommodated at Kirkee itself. It is clear from the record that these four juniors were included in the Select Panel of 2014, refused a promotion with the approval of competent authority and were debarred in the same manner as the applicant. They were again placed in the Select Panel in 2015 but in the transfer orders of November, 2015 they were all retained at Kirkee. Respondents have replied that in three of these four cases they were accommodated at Kirkee at the printing press for which they had considerable experience and given it's importance in the National context, they have been retained. A fourth person junior to the applicant has been trained for a

new Laboratory for quality assurance in June, 2015 and hence, was retained. The applicant might at most urge that he could have been given training in the Laboratory instead but he has not done so and merely claimed, superficially, that all the technical hands can be posted interchangeably without reference to their experience and training. These are unacceptable arguments and this is entirely a matter of administrative judgment and discretion which cannot be entered into by this Court.

13. On the issue of bias, there are several decisions including the case of **Union of India vs. Sanjay Jethi and Another reported in (2013)**

16 SCC-116 which held in para 51 after discussion of previous judgment "that the question of bias would arise depending the facts and circumstances of the case. It cannot be an imaginary one or come into existence by an individual's perception based on figment of imagination Tribunal is require to adopt a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters what is relevant is

actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias a Tribunal or a Court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition." In the present instance this applicant was not transferred in 2006 to a hard station and he was again retained at Kirkee in 2010 and was once again permitted to forego his promotion and retained at Kirkee in 2014, which suggests that considerable indulgence had been shown to him. The transfer in 2014 was specifically to a hard station namely, Badmal, Bolangir, (Orissa) while the transfer in November, 2015, which is the issue in question is to a prestigious establishment at Khamaria, Jabalpur, a proof establishment which is not a hard station as classified. The respondents have also clearly pointed to specific expertise in

shop floor that the applicant possesses in distinction to the four juniors pointed out by him and which made it necessary to post him to Khamaria, Jabalpur, a decision that falls squarely within administrative discretion and exigencies of service. The charge of the applicant that his four juniors have similarly manipulated to stay at Kirkee all through their career does not imply that there is any kind or possibility of bias, let alone reasonable suspicion of bias on the part of the administrative authorities. It appears from the contents of various documents and the speaking order passed by respondents as directed by this Tribunal in O.A.No.679/2015 dated 08.012.2015 that full consideration has been given to his situation. It has also to be borne in mind that the individual has cited as excuse, his family needs to arrange a marriage for his daughter aged 29 years and son aged 26 years, which is not even one of the considerations noted in the policy document on compassionate grounds and would appear a rather frivolous submission for

consideration, and which the authorities have rightly rejected. Having manipulated throughout his career, it is only right and proper that the seniormost, the applicant, is transferred first in good order.

14. In the circumstances, this Tribunal finds no grounds whatsoever for interference in the administrative orders issued by the respondents.

15. The OA is accordingly, dismissed and the interim order is hereby withdrawn with immediate effect. No order as to costs.

**(R. Vijaykumar)
Rohee)**
Member (A)
(J)

(Arvind J.
Member

Amit/-

