

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP. AT NAGPUR**

ORIGINAL APPLICATION No.2089/2017

Date of Decision: 30th January, 2018

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

1. Smt.Jayshree Ramesh,
age 58 years, working in the post
of Senior Auditor, Accounts Office,
O.F. Ambqajhari, Nagpur, R/o,
Plot No.60, Falkey Layout, Kotal Road,
Nagpur-440013.
2. Shashikant Deorao Pathak,
Age about 59 years, working in the post,
Of Senior Auditor, Accounts Office,
O.F. Mabajhari, Nagpur, R/o,
Flat No.A/1, Suvarna Sankul Aptt.,
Hindustran Colony, Amaravati Road,
Nagpur-440033.
3. Subhash Krishaji Dambhare,
age about 58 years, working in the post,
of Senior Auditor, Accounts Office,
O.F. Amabajhari, R/o, Plot No.49,
Rameshwari Road, Kashinagar, P.O.,
Parbatinagar, Nagpur-440027.

...Applicants.

(By Applicant Advocate: Shri.B. Lahiri)

Versus.

1. The Controller Genera of Defence,
Accounts (CGDA),

Ulan Batar Road, Palam,
Delhi Cantt.110010.

2. Principal Controller of Accounts (Fys.),
10/A, Shaheed K. Bose Road,
Kolkata-700001.
3. Controller of Finance & Accounts (Fys),
Accounts Office, Ordnance Factory,
Ambajhari, Nagpur-440021.

... Respondents.

(Respondents by Advocate: Shri.R.G. Agrawal).

Reserved on : 19.01.2018.

Pronounced on : 30.06.2018.

ORDER

Per:- R. Vijaykumar, MEMBER (A)

These three applicants have contested the orders of relieve issued by Respondent No.3 in Reference No.CS/AN/127-101/Tr/Vol-XII dated 27.03.2017 implementing the transfer orders issued previously by the competent authority (Respondent No.1) in accordance with the transfer guidelines in Reference No.AN/X/10050/2013/10-2012/TR 102 to 147 dated 18.04.2013 at (Annexure-A-B) Sl.No.19 in respect of Applicant No.1 and in Reference No.AN/X/10050/2014/10-2013/TR-368 to

509 dated 16.05.2014 at (Annexure-A-3 'B') at Sl.No.39 & 43, in respect of Applicant Nos.2 and 3. Previous to this, the Applicant Nos.2 and 3 had been, in accordance with the transfer policy, asked to for their choices and the transfers have been made based on three choices that they had furnished and they have been accommodated in accordance with their three choices at Chanda, (choice no.3) and at Bhandara (choice no.1) while in the case of Applicant No.1 who was transferred in April, 2013 prior to issue of transfer guidelines in March, 2014, was transferred on administrative requirements. At the time of issue of those transfers orders all the three applicants with dates of birth of Applicant No.1 as 10.06.1959, Applicant No.2 date of birth 25.09.1958 and the Applicant No.3 date of birth as 18.05.1959 where all below 56 years of age. In the case of Applicant No.1 she had in letter dated 20.12.2012 learnt about the preparation of list of names at stationed senior at Nagpur and had therefore requested for deferment for her transfer from Nagpur up to October, 2014 on the

grounds that her husband was a railway employee at Nagpur and was superannuating on 31.10.2014 and that her mother-in-law had medical problems. Based on her request and by reference to the extant transfer policy (prior to the guidelines of 2014), she was accommodated by posting in the same region at Chanda. The three applicants were serving at Ambajhari, Nagpur since 26.06.2006 in the case of Applicant No.1 who was at Sl.No.6 in the seniority list in 2012, since 11.06.2007 in the case of Applicant No.2 who was at serial no.10 in the seniority list and since 14.06.2007 in the case of Applicant No.3 who was at Sl.No.16 in the seniority list. All the applicants had stayed at Nagpur for seven years and were due for transfers. Following the orders Applicant No.1 made representations on 07.05.2013, 19.08.2013 and 06.01.2014, to all of which replied rejecting her request were provided by the competent authority on 29.07.2013, 04.10.2013 and 07.03.2014. At the time of preparation of seniority list in 2012 Applicant Nos.2 and 3 had also sought extension on various grounds although

their tenure for transfer and related transfers orders were issued only in 2014 subsequent to the transfer guidelines. Despite the refusal to consider any modification in transfer orders, applicants were not relieved by their Head of Office. Based on CSP (SYS) Ambajhari Reference No.CFA(Fys.) Ambajhari DO No.CS/AN/127-101/TRANSFER/IX dated 07.10.2014 requesting amendments of the transfer orders, Respondent No.1 declined to approve any amendment for the seven persons involved including the three applicants and only agree to a deferment of one SA namely Sh.S.C. Shewale, who is not a applicant up to 31.03.2015 and the CFA (Fys.), Ambajhari was directed to relieve them immediately for a new place of posting. The applicants were not relieved following these orders probably because of additional correspondence. Finally, a letter was sent by the CFA, Ambajhari in Reference No.CS/AN/127-101/TR/Vol-XII dated 23.01.2017 to the office of the Principal Controller of Accounts, Kolkata requesting orders in respect of various transfers orders ordered from 2013 to

2017 which include the above three applicants and specifically referred various issues on the fact that the orders were pending for implementation from long time and that some individuals had crossed 58/56 years of age. Some other issues on the need to accommodate Senior Auditors who had completed prescribed hard station and tenure stations were also mentioned. It was in response to this letter that the impugned orders directing the relieving of six Senior Auditors including the three applicants were issued on 27.03.2017. By this time Applicant No.1 was 57 years old, Applicant No.2 was 58 years old and Applicant No.3 was 57 years old. Although, the Applicant No.1 was transferred under the earlier transfer policy, all three applicants filed this application on 17.04.2017 challenging the relieving orders on the basis of transfer guidelines issued on 28.3.2014. The reliefs claimed by the applicants are as under:-

“(a). Direct respondents to cancel the transfer order of applicants named in the letter dated 27.03.2017 issued by respondent No.3 (Ann.A1) and thereby delete the name of applicant no.1 appeared in transfer order dated 18.04.2013 (Annx.A2) and applicant no.2 & 3 appeared in transfer

order dated 16.05.2014 (Ann.A3), in compliance with para 8.5 of the transfer policy notified by respondent No.1 vide their letter dated 28.03.2014 (Annx.A4).

(b). Declare that the applicant having crossed the age of 58 years are entitled for exemption from transfer from their present station in tune with the transfer policy of respondents.

(c). Grant any other relief deemed fit and proper in the facts and circumstances of the case including costs."

2. Prior to filing this application applicants had filed their objections seeking exemption from transfers on 31.03.2017 in separate applications to the Respondent No.1. Applicant No.1 had cited her completion of 56 years of age which made her eligible for exemption from transfer out of home station. Applicant No.2 cited his upcoming retirement in September 2017 and that he had completed 58 years of age. Applicant No.3 was also supported his request for exemption since he was over 56 years of age. Applicants cited their age for their inability to move of Nagpur. In detailed Applicant Nos.2 and 3 cited their family responsibilities in support. In Reference No.G/127-1004/II dated 03.04.2017 each of three requests were rejected by Respondent No.3 by reference to the instructions from Headquarters

insisting their relieve

3. The chief objections of the applicants are that para 8.5 of the transfer guidelines requires that "individuals over fifty six years of age who wish to continue at their present stations, will normally be exempted from transfer". Further, applicants also argue that the reply received on 03.04.2017 was not issued by the competent authority but by the local officer in Ambajhari and showed that their requests had not been properly considered. Apart from general legal objections applicants also questioned the delayed implementation by respondents of the orders issued more than three years previously which according to them suggested that the decision was arbitrary take without considering their representations and their present circumstances.

4. Respondents have pointed to the fact that the defence accounts department has more than 950 offices at about 250 locations all over the Country and due to a greater attrition caused by retirements and promotions to higher grades and eligible staff exploring other avenues outside

the department the out flow of more than the inflow and there is acute shortage of staff in the department. While some of the stations were very popular nearly 86 categorized as hard and tenure stations and as per the transfer policy guidelines staff posted as these stations had to be repatriated and other staff working at "other" normal stations were to be posted in their place despite their unwillingness to them so transferred. They also mentioned that Nagpur (Ambajhari) is a popular station while Chanda and Varangaon are hard stations with two were tenure and Bhandara is tenure station with three years tenure. As against this applicants were serving at Ambajhari, Nagpur w.e.f. 26.06.2006 and Applicant No.1 from 11.06.2007, Applicant No.2 from 14.06.2007 for Applicant No.3 and were senior at station were required them to be transferred. Respondents also pointed out that there was only seven persons shortage with 77 officers posted in Ambajhari against a strength of 86. As against this Chanda with an authorization 74 had deficiency of 34% and in the

case of Applicant No.1 who was posted in 2013, this posting of single person was being made against the repartition of two voluntaries from Chanda factory. In the case of Applicant No.2 and 3 who had for opted nearby hard and tenure stations of their choices have been duly considered. Their transfers are therefore made out of serving employees and to distribute staff to enable minimum operation and less popular stations like Chanda and Bhandara. The respondents also cited catena of judgments on the scope for Courts interfering with the orders of transfer of a public servant unless the Court found mala fide or violation of rules or that the authorities who issued the orders were not competent to do so and these accepts were not applicable in the present situation since the orders were issued on administrative exigencies.

5. Respondents also point out that all the applicants were only 53 and 54 years old when their transfer orders were issued. Further, Applicant No.1 had given reasons that her husband was a railway employee was retiring in October,

2014, that they have no child, and that her mother-in-law had variety of old aged problem. They had considered her case against para-374 of the Office Manual Part-I (Annexure-3) in trying keep both husband and wife together at the same station since the others reasons given on her mother-in-law aliment are not covered by the transfer guidelines. Based on this aspect, and her tenure at Nagpur, she was posted at Chanda. With reference to the guidelines, they refer to para-14 of the transfer policy which says that "The above indicative guidelines are meant to guide the exercise of transfer of staff to the extent administrative feasible. These guidelines are not intended to create any entitlement of any kind". They states that when the transfer orders were issued the applicants were well below the age of 56 years of age. Further, they submit that whenever Respondent No.1 gave directions to relive the individuals immediately including the applicant they objected to and the matter again brought before Respondent No.1 which was replied but the objections and hurdles on implementation

of the transfer orders by the applicant is alleged to have continued. In particular they argued that because of these three applicants and other applicants were the seniors especially Applicant No.1 in the wake of her seniority at Nagpur in operation to the transfer order, all the other applicants cited her example to refer their objections to transfer. Respondents also stated that 28 individuals who had served at Chanda, Bhandara and Varangaon filed two O.A.Nos.444 and 445/2016 for their repartition to Nagpur, Ambajhari, Kamptee. This Bench there upon ordered on 21.12.2016 and gave a direction to the respondents to accommodate the applicants in Ambajhari as per their seniority. Although, some of these individuals could be so accommodated and remaining are compel to retain at hard/tenure stations in conflict with the direction given by this Tribunal and which is solely because of the objections raised by the employees such as the applicants. With reference to the arguments of the applicants that their exemption letters dated 31.03.2017 were not considered by the competent

authority, respondents referred to their letter dated 23.01.2017 mentioned (supra) following which a decision was taken by the competent authority by ordering their relieve in reference dated 10.03.2107 (supra). The grievance had been communicated in the letter of Respondent No.3 and had been considered and orders of relieve issued by Respondent No.1.

6. In the Rejoinder applicants have emphasise the fact that they were not relieved from the present posting even the transfer order was issued in 2013 and 2014. It is therefore clear according to the applicants that the reasons have not relieving them due to exigencies of service. In this connection they also referred to the letter of Respondent No.3 dated 23.01.2017 (supra) which conveys the same information. However, they argued that as on date of proposed relieve Applicant Nos.1 and 3 had completed 57 years and Applicant No.2 completed 58 years of age and interpreted the transfer policy as laying down that 56 years should be exempted from transfers. They opposed the arguments of

administrative feasibility proposed by the respondents since the transfer policy has now stabilized over the last several years.

7. In the Sur-rejoinder respondents reiterate many of the issues raised through their reply. They urged that applicants especially Applicant No.1 created hindrances to implementing the transfer orders and following her head, Applicant Nos.2 and 3 follows merely to gain time and to say that remain in Ambajhari, Nagpur. They also urged the importance of having required staff to ensure functioning at Chanda and Bhandara stations. In particular they state that if their earlier transfer orders such these are not implemented it is not possible to repatriate more employees who have completed their hard/tenure stations which was the primarily directions issued by this Tribunal. Therefore, many persons, who had completed more than five to six years at hard stations whereas the term was only 2/3 years had to put in great difficult and therefore the respondents objected any indulgence of the applicants by this Tribunal. During arguments

learned counsel for the applicants took this Tribunal through the various facts and circumstances of the matter. He pointed out that Applicant No.2 was retiring in just eight months from the date of final hearing and that the other two applicants had 1½ years left for superannuation. He questioned the delay in relief as entire responsibility of the respondents and that respondents cannot attempt to now blame to the applicants for not carrying out their own transfer orders. Further, learned counsel also argued that whereas the transfer orders may have been issued in 2013, 2014, actual order of relieve was only issued in March, 2017 by Respondent No.1, and therefore, the relevant dates for consideration to give the fact and circumstances of the applicants was that date. At that point of time, they attracted the features of transfer policy by which the Applicant No.2 was above 58 years of age and Applicant No.1 and 3 were above 56 years of age and therefore, Applicant Nos.1 and 3 should have been exempted by virtue of Section 8.5 of the transfer policy

guidelines and Applicant No.2 would even have the option under Section 6 (ii) of being repatriated to their choice stations if not then serving at their choice stations. In this regard he also urged reference to the letter of Respondent No.3 to Respondent No.1 in which these facts were brought to notice and reconsideration was urged. He mentioned in this regard that in respect of these applicants superannuation papers had already been processed and in case of Applicant No.2 they had also sent for relevant sanction.

8. Learned counsel for the respondents argued that there was no violation of the guidelines. The choices are obtained in accordance with extant guidelines and when the applicants given option, they were duly accommodated. With regard to the guidelines set out in the transfer policy, learned counsel for the respondents cited the need to consider that all these guidelines were subject to administrative exigencies that prevailed and especially the difficulties faced by the administration because of large numbers of vacancies. In this connection, he also pointed

out that the applicants had never raised these objections by approaching the Tribunal after their transfer orders were issued in 2013 and 2014.

8. We have gone through the O.A. alongwith Annexures A-1 to A-7 and Reply filed on behalf of respondents along with its Annexure-R-1 to Annexure R-9, Rejoinder and Sur-Rejoinder filed and have carefully examined the various documents annexed in the case.

9. 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.

Findings

10. Transfer order of Applicant No.1 was issued in 2013 and Applicant Nos.2 and 3 were issued in 2014 when they were well the age of 56 and there is no dispute that as on date of transfer orders these were issued in strict observations of police guidelines. The applicants individually raised their objections and in the case of

Applicant No.1 her previous objection were also rejected. None of them have approached this Tribunal for relieve and it is to be considered that these transfer orders were final and in good order. However, they were not implemented by Respondent No.3 in defiance of orders of Respondent No.1 which were issued in accordance with the transfer policy guidelines. By January-March, 2017, Respondent No.3 evidently presented the fait accompli to Respondent No.1 making observations and suggesting that there need to review the transfer already ordered. These have to be taken into consideration with the background of order of this Tribunal by which juniors were completed long tenures much above the prescribed tenure at hard/tenure stations were ordered to be repatriated to normal stations and the department was unable to do so. It is also clear from the fact present that the department has surfeit of staff available at normal stations like Nagpur and wanting to be retained them whereas few are willing to go the hard stations. The entire order of relieve have

therefore to be seen in the prospective in which the Respondent No.1 was bound. However, it is also true that by the time Respondent No.1 passed orders Applicant No.2 had crossed 58 years of age. The transfer policy in respect of such persons goes to the extent of giving them the option as in Section 6 (ii) which reads as under:-

“6(ii). Persons above 58 years of age, if not serving at their choice stations, will be repatriated to those stations (if so desired by them) to the extent administratively feasible. In making a selection from amongst such individuals, preference will be given to those who have not at all served earlier at the station or whose service at the desired station has been the least.”

11. In respect of other two applicants who are above 56 years of age the relevant provision 8.5 which reads as the “individuals over fifty six years of age who wish to continue at their present stations, will normally be exempted from transfer”. Since, the orders of relieve were issued only in March, 2013. Although, the orders of relieve were issued only in March, 2017 it is not be considered on the transfer order of 2013 and 2014 have become stale. However, they were

revived essentially by these administrative actions of Respondent Nos.3 and 1. Therefore, it would be necessary to have a consideration of the transfer policy guidelines while reviewing this particular action in respect of the three applicants.

12. In respect of Applicant Nos.1 and 3 the clause only stated that they were normally be exempted from transfer if they wish to continue at their present stations. The circumstances of these two persons is that even after stating in their present stations for seven years by the time the transfer order were issued, they never wish to move on and they were doing so at the expense of many others, who were disparate to come to a normal station. It is not possible for any administration to function when some individuals manage through pressure, blackmail or political interference to sub ward the regular operation and administrative action of the responsible authority. Therefore, it cannot be said that normal condition prevailed to enable to gain exemptions. In the case of Applicant No.1

the relevant clause hedges the provision by administrative feasibilities and also by reference to the issue of preference among to those who have not served in the earlier station to move to that desired stations. In the case of Applicant No.2 he had already served ten years at station this clause is not entirely applicable to them.

13. The applicants urged that their letter dated 31.03.2017 was not considered by the competent authority. However, all their grievances especially with regard to the age has already been raised by Respondent No.3 in his letter dated 23.01.2017 to which strict orders have been issued by Respondent No.1 after due consideration on 27.03.2017. Therefore, it cannot be said that their request has not been properly considered by the competent authority. In fact this was only one of the trains of request that the applicants had made to protest the long pending transfer orders and the arguments now proposed is plainly improper. As mentioned before the respondents were cut in a voice by their own grievances and

administrative incapacity between the actions of persons like the applicants and the genuine need supported by the order of this Tribunal to those persons who are languishing the hard/tenure and wanted to repatriated at the normal stations.

14. Although, there is clearly no case for intervening in the order of transfer issued to Applicant Nos.1 & 3, the case of Applicant No.2 has become slightly different not only by virtue of the interim stay granted by this Tribunal in its initial hearing on 19.04.2017 but due to the fact that as on today, this applicant has only eight months left to superannuate. With regard to argument that the Applicant Nos.1 and 3 have only 1½ years left from the date of final hearing to superannuation and Applicant No.2 has only eight months left for superannuation, it is observed that the papers for superannuation have to be forwarded six months prior to superannuation. In these cases, therefore, there is no bar in processing papers on time to enable the applicants to get benefits at the time of superannuation whatever they become due.

Therefore, this argument is also not supported by the facts and circumstances of the matter. In fact the applicants have cooperated they have gone much before and able to make superannuated in good order. But that was provide by their action and not only last years but ever since their transfers orders are issued in 2013 and 2014.

15. In the circumstances, the OA lacks merit whatsoever and is accordingly dismissed. Interim order passed earlier stands vacated. No costs.

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

(Arvind J.
Member

Amit/-

Order in OA 2089/2017