

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDBAD BENCH**
ORIGINAL APPLICATION NO 344 OF 2018

Dated, this 31st day of January, 2019

**CORAM: HON'BLE MS ARCHANA NIGAM, MEMBER(A)
HON'BLE SHRI M C VERMA, MEMBER (J)**

Gunjan Kumar Sahay.

Aged : 55 years (DoB being 25.01.1963),
Assistant Director Grade II (Technical) in Regional Office of
The Textile Commissioner, (Ahmedabad
& presently residing at No.28/5, Bima Nagar Society,
Satellite Road, Ahmedabad – 380 015. ... Applicant

By Advocate Shri M S Rao

V/s

- 1 Union of India,
(Notice to be served through its
Secretary to the Govt. Of India,
Ministry of Textiles, "Udyog Bhavan",
New Delhi – 110 011).
- 2 Dr. Smt. Kavita Gupta, IAS,
Textile Commissioner, O/o. The Textile Commissioner,
Ministry of Textiles, Govt. Of India,
No.48, Vithaldas Thakarsey Marg,
Nishtha Bhavan (New CGO Bldg.),
Mumbai – 400 020.
- 3 The Deputy Director & Officer In-Charge,
Regional Office of the Textile Commissioner,
The Ahmedabad Peoples' Co-operative Bank Bldg,
Bhadra, Ahmedabad.
- 4 The Deputy Director & Officer-in-Charge,
Regional Officer of the Textile Commissioner,
Chintamani Co-operative Super Market Complex,
Mettupalayam Road,
R.S.Nagar (Post), Coimbatore-642 002.

5 Shri Mahesh Kumar,
Assistant Director Grade II (Economics),
O/o. The Textile Commissioner,
Headquarters Office, Mumbai,
Ministry of Textiles, Govt. of India,
No.48 , Vithaldas Thakarsey Marg,
Nishtha Bhavan, (New CGO Bldg.),
Mumbai – 400 020. ... Respondents

By Advocate Ms Roopal R Patel R 1, 3 & 4
Shri H D Shukla R-2

ORDER

HON'BLE MS ARCHANA NIGAM, ADMINISTRATIVE MEMBER

1. Being aggrieved by his transfer order, Office Order No.5(45)/2018/Est.I/13 dated 06.07.2018 (Annexure A/1), whereby he has been transferred from the Regional Office of the Textile Commissioner, Ahmedabad to Power loom Service Centre, Kannur by the respondents instant OA has been preferred by Applicant Gunjan Kumar. Consequent Relieving Order dated 06.07.2018, Annexure A/2 has also been challenged.
2. The case of the Applicant, as has been set out in the OA is that he joined the service of the Textile Commissionerate of Ministry of Textiles, as a direct recruit Enforcement Inspector (Technical), on 12.08.1987 and was posted at Ahmedabad Regional Office of the Textile Commissioner and in 1995 was transferred and posted as Enforcement Inspector (Technical) at Mumbai. That in year 2001, after merger of two cadres i.e. Enforcement Inspector (Technical) and Technical Investigator into one in year 2000, he was transferred to and posted as Technical Officer in Ahmedabad Regional Office of the Textile Commissioner, Ahmedabad and thereafter in August 2010, was transferred and posted as

Technical Officer to Noida in Noida Sub Regional Office of the Textile Commissioner and again transferred back to Ahmedabad Regional office, in August 2012.

1.1 That on 25.05.2016 he was granted promotion to the Post of Assistant Director, Grade II (Technical) and was posted in Ahmedabad Regional Office and he took charge on the same day. That on 02.07.2018 he, with prior approval of respondent no.3, left for official tour from Ahmedabad to various textile industries, falling under the territorial jurisdiction of Ahmedabad Regional office. During this tour on 06.07.2018 while he was at Surat he received on his email transfer order dated 06.07.2018 at 18.55 hrs and relieving order at 19.01 hrs (Annexure A/2). There were received without hard copy of the transfer order dated 06.07.2018, and with instruction to report for duty at Powerloom Service Centre, Kannur. Being shocked on receiving such an order by email, he cut short his visit and came to Ahmedabad and one of his colleagues, serving in Head Office of Textile Commissioner, Mumbai, provided copy of transfer order through Watsapp.

1.2 It has been alleged in OA that in the organisation of Textile Commissioner, Ministry of Textiles, Mumbai no Civil Service Boards (CSB) or the committee was constituted and no rotational transfer policy had been framed as has been directed in the DOP&T guidelines issued subsequent to Hon'ble

Supreme Court's order in decision in T S R Subramaniam's case as well by the Department of Personnel and Training, in OM dated 17.04.2015 (Annexure A/13) and OM dated 02.07.2015 (Annexure A/14) and the order of transfer, which is before completing the minimum prescribed tenure or stay beyond the maximum tenure could only be with the approval of such Committee.

1.3 That the transfer order is not in consonance with existing Transfer Policy (Annexure A/5) of Office of Textile Commissioner, Mumbai, published vide Office Memorandum, dated 02.07.2013. That as per said transfer policy he has been posted back to Ahmedabad Regional Office, from Noida (UP), in August 2012; on promotion as Assistant Director Grade II (Technical) on 25.05.2016. It is his contention that he should have been considered for rotation for normal transfer not earlier than August 2022 when he would have completed 10 years of continuous stay in Ahmedabad Regional Office.

1.4 Applicant also alleged that the transfer order is with a mala fide motive and intention on the part of the respondent no.2 and had been issued by the Office of Textile Commissioner, Mumbai to bring back Shri Mahesh Kumar, Assistant director Grade II (Economics) serving at Powerloom Service Centre, Kannur, Kerala to Mumbai Headquarters with a view to unduly oblige him and to facilitate him respondent no.2 and to disturb the applicant inspite of the facts there were other Assistant Directors Grade II (Technical) serving in the respondent department who otherwise have completed more than 10 years

continuous stay at a particular station. It is pleaded by the applicant that in the recent past, in month of October 2017 when a common office order dated 06.10.2017 (Annexure A/8) was issued under the approval of the very same respondent no.2 transferring as many as 21 staff members belonging to various cadres, there was no such clause in the said common transfer order that all of them stand relieved with immediate effect from their respective current posting. Similarly, in the past an Office Order dated 12.08.2016 (Annexure A/9) was issued under the approval of the very same respondent no.2 transferring as many as 18 officers belonging to various cadres, there was no such clause in the said common transfer order that all of them stand relieved with immediate effect from their respective current posting. This clearly demonstrates beyond any doubt that in the present case there is something more than what meets the eye. Both the transfer and relieving orders have been sent by email at 18.55 hrs and 19.01 hrs on 06.07.2018.

1.5 Even going by the station seniority in so far as Ahmedabad Regional Office is concerned, the applicant has been meted out discriminatory treatment at the hand of the respondent no.2 with mala fide motive and intention by not disturbing one Shri Dhanraj Meena who is a promotee Assistant Director Grade II (Technical), came to be transferred to Ahmedabad Regional Office way back in the year 2011 while serving as Technical Officer in Noida (UP) much earlier than the applicant.

1.6 The applicant also has pleaded that he has a son who is studying in XIIth standard and the respondent department is aware of the same as he has been

submitting the school fee receipts to the office for claiming refund. The applicant has also drawn attention of the Bench to the fact that he has to look after his aged parents who live with him. In support of his case he has also provided documents for the treatment of blindness of his 82 year old mother, father also being in need of care at 85 years of age.

2 On receipt of the notice, the respondents have filed a detailed reply opposing the admission of the application and granting of interim relief and it has been pleaded therein that the Office of the Textile Commissioner is a subordinate office under the Ministry of Textiles, Government of India with its Headquarter at Mumbai and Regional Offices, Powerloom Service Centres at various locations across the country. That out of the total 31 years of service, Applicant has rendered his service at Ahmedabad for 23 years and that the Applicant might have some ulterior motive for staying back in Ahmedabad. They further state that prior to his last posting at Regional Office of Textile Commissioner, Ahmedabad, the applicant was working at Regional Office of Textile Commissioner, Noida since August, 2010.

2.1 However, Applicant vide his representation dated 11.07.2012 had requested for his transfer from Regional Office, Noida to Regional Office of Textile Commissioner, Ahmedabad on the grounds of responsibility towards his parents, illness of wife and future of his son's education who was in Class XII at Ahmedabad at least for a period of one year. Considering his request, he was transferred from Noida to Ahmedabad vide order dated 14.08.2012 (one after two years at Noida) for a period of one year. Again, the applicant vide representation dated 12.08.2013 requested for his retention at Regional Office of Textile

Commissioner, Ahmedabad on similar grounds and the same was also considered and retained him in Ahmedabad for a further period of 4 years i.e. up to completion of his tenure of five years vide order dated 25.09.2013. Thereafter while working in Regional Office Ahmedabad of the Textile Commissioner, applicant was promoted to the Gazetted post of Assistant Director Grade II (Technical) Group B vide office order dated 25.05.2016 and the present transfer of the Applicant from Regional Office Ahmedabad of the Textile Commissioner to Powerloom Service Centre Kannur vide order dated 06.07.2018 is after completion of 5 years and 11 months and is in accordance with the transfer policy in force and that the applicant does not have any legitimate right of claim to continue at Regional Office, Ahmedabad.

2.2 It has also been pleaded by the Respondents that as per Transfer policy dated 02.07.2013 tenure of Officers at the level of Director and Deputy Directors is 4 years in a particular station and office at the level of Assistant Directors and Technical Officers is 5 years. ***That the Applicant in this OA is holding the post of Assistant Director Grade II (Technical) which fall under Group B category for which tenure at a particular station is 5 years.*** That previously, on 31.08.2001 Applicant was transferred from Regional Office, Mumbai to Regional Office, Ahmedabad on his own request and that the applicant was placed under suspension vide order dated 06.06.2001 and on conclusion of disciplinary proceedings, the Applicant was imposed penalty of “reduction to lower stage by three increments in the time scale pay for a period of not exceeding three year without cumulative effect and not adversely affecting his

pension under Rule 11 (iii) (a) of CCS (CCA) Rules, 1965 vide order dated 05.07.2004 (Annexure R/5).

2.3 The Respondents having pleaded that it is false that the Applicant was not aware about the transfer order dated 06.07.2018, applicant himself has posted a copy of the said order in Watsapp group created and administered by him on 06.07.2018. That a copy of the transfer order was sent to Applicant by email on 09.07.2018 at 10.48 am from Regional Office, when he denied receipt of the same, a hard copy of the said transfer order was sent to Regional Office at Ahmedabad and also submitted that an order of transfer is an incidence of Government service. Who should be transferred where, is a matter for the appropriate authority to decide and unless the order of transfer is vitiated by mala fide or is made in violation of statutory provisions, the court cannot interfere with it and that a government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other pray that the OA may be dismissed.

3 Heard Shri M S Rao Adv., learned counsel who appeared for Applicant, Ms R R Patel Adv., learned counsel who appeared for Respondents and Shri H D Shukla Adv., learned counsel who appeared for Respondent no.2.

3.1 Shri M S Rao Adv., learned counsel who appeared for Applicant while urging to quash the transfer order and relieving order, Annexure A-1 & Annexure A-2 contended that same are violative of DoP&T guidelines, issued in compliance of judgment of Hon'ble Supreme Court in TSR Subramaniam case, that no placement committee was constituted, the Transfer has been approved

by an authority incompetent to do so, fair procedure has not been followed and principles of natural justice & existing Transfer policy have been violated and in an exercise of discrimination malafidely transfer order and relieving order has been passed. He also informed that after filing of this OA only respondent have constituted placement committee and he placed on record copy OM No.5/45/(T.P.)/2018/Est I/54 dated 09.08.2018.

4 Contention of Ms. R R Patel, learned counsel for Respondent centered around the plea that Transfer is not violative of the transfer guidelines, that Applicant is trying to avoid all transfers, is in the habit of filing OA and seeks legal recourse at each transfer, she quoted OA 67/2010 preferred by him when he was transferred to Amritsar, and argued that Applicant wants to retain his posting at Ahmedabad at any cost, has also had violated CCS Conduct rule by bringing political interference. She emphasised that Applicant has had long inning of postings in Ahmedabad. Transfer is a condition of service and Courts and Tribunals do not ordinarily interfere. That transfer of Applicant is as per prevailing Transfer policy, the policy has been approved by the concerned Ministry and was promulgated in July 2013.

5 ***Learned Counsel also urged that Respondents, Ministry of Textiles & Textile Commissionerate, are not Cadre Controlling Authority and thus are not covered by TSR Subramaniam's case and is not required to set up Placement Committees.***

She drew our attention to DoP&T order dated 13th June, 2014 and reiterated that the DoP&T guidelines consequent to the Hon'ble Supreme Court Judgment in TSR Subramaniam case do not apply mutatis mutandis to Office of Textile Commissioner, as it is not Cadre Controlling authority. ***On query about constitution of placement***

committee vide OM No.5/45/(T.P.)/2018/Est I/54 dated 09.08.2018, copy of which has been placed on record recently by counsel for Applicant, she replied that though it is issued by Ministry of Textiles but it was an error and in fact Ministry of Textile was not required to constitute Placement Committee, pursuant to TSR judgment.

6 Shri H D Shukla Advocate, learned counsel for Respondent no.2 supported submissions of Ms. R.R. Patel and he as well Ms. R.R. Patel both filed their written arguments too. Shri M S Rao, in rebuttal did oppose allegations of bringing political interference and misconduct, vehemently, drew our attention to Order dated 3.12.2007.

7 Considered the submissions and perused the record. In decision in case of T S R Subramaniam v/s Union of India & Ors AIR 2014 SC 263 Hon'ble Supreme Court was pleased to direct the Central Government and also the State government to constitute Civil Service Boards (CSB) for inter alia securing to provide minimum tenure of service to various civil servants. The observation and directions of Hon'ble Supreme Court, mutatis mutandis are: -

- “1 *There should be a body akin to the CSB in each cadre to consider the posting and transfer of officers.*
- 2 *There can be more than one such committee depending on the hierarchy of the Service/Organisation.*
- 3 *Only service officers can be nominated as member of Committee.*
- 4 *The number of members can be flexible depending on the requirement.*
- 5 *The committee would be recommendatory body. Final decision would rest with competent authority as per rules.*
- 6 *There should be a minimum tenure prescribed for different posts.*
- 7 *Transfer of any officer before completing the minimum tenure may be done in public interest but the reasons for the same should be recorded.*

8 *The composition of the committee and the transfer policy should be formally notified. They may also be placed in public domain."*

8 It is amply obvious from aforesaid decision in T S R Subramaniam's case (cited supra) that Hon'ble Supreme Court's directions were for all the Ministries and department of the Central Government and also the State government that there should be a body akin to the CSB in each cadre to consider the posting and transfer of officers of that Ministries and department and no distinction has been made therein in between Cadre Controlling Authority and other authorities.

9 Further the Department of Personnel and Training pursuant to decision in T S R Subramaniam's case (cited supra) had called upon all the Ministries/Departments of the Government of India, vide its OM dated 17.04.2015 and subsequent OM dated 02.07.2015 to: (i) prescribe minimum tenure, (ii) set up a mechanism akin to Civil Service Board for recommending transfer and (iii) place in public domain the rotational transfer policy which should inter alia provide for both a minimum as well as maximum tenure and that (iv) any transfer before completing the minimum prescribed tenure or stay beyond the maximum tenure should be with the approval of the Committee constituted for the purpose, for reasons to be recorded in writing.

10 Even though the DoP&T in its aforesaid OMs had sought for action taken report latest by 10.07.2015, yet in the organisation of Textile Commissioner, Ministry of Textiles, Mumbai no such rotational transfer policy had been framed nor any action taken in pursuance of the DoP&T orders.

11 However it is seen that a Committee was constituted in the Office of the Textile Commissioner, Mumbai, vide Office Order No.5/45(T.P.)/2018/Est.I/54 dated 09.08.2018 for

transfer of employees before completing the minimum prescribed tenure or stay beyond the maximum tenure, as per DoP&T's OM 11013/10/2013-Estt.A dated 02.07.2015,

12 Having given considerable thought to the legal/rule position as in enunciated in the aforesaid OM of DOP&T in compliance of TSR Subramanian case, it would appear that the respondent department realising their error has constituted the placement committee; the repeated averment of the respondent counsel that there was no necessity to constitute such a committee in the Commissioner of Textiles office therefore does not seem tenable. Needless to say in the absence of a duly constituted placement committee, the applicant's transfer has not been reviewed/recommended by the committee as required in terms of the Rules/legal position. The impugned transfer order therefore suffers from legal infirmity.

13 To justify the impugned order, it has been submitted by Learned Counsel for Respondents that the transfer of Applicant is as per provisions of the prevailing transfer policy of the Department (Annexure A/ 5). As noted above the said transfer policy is of 02.07.2013 and thereafter, after decision in T.S.R Subramanian's case Government/DOP&T, vide No.11013/10/2013-Estt.A dated 09.01.2014 had issued an Office Memorandum. It was required that Respondents ought to have modified the transfer policy in view of the suggestions/directions given. ***According to the policy of the Respondent Department, the tenure of Officers at the level of Assistant Directors and Technical Directors will be 5 (five) years in a particular station. T S R Subramaniam's case provides minimum tenure of service to various civil servants relating to post and not to station.***

14 Similarly, OM of DOP&T also speaks about post and not about station. The policy (Annexure A/ 5) of the Department thus could not be said to be in consonance with either the direction of Hon'ble Supreme Court or with direction of DOP&T. Applicant

was promoted to Assistant Director Grade II (Technical) on 25.05.2016 and if one computes the tenure of five year on the post being manned by him, it would have to start on 24.05.2016 and his turn for transfer would come after 24.05. 2021 but impugned order of transfer is of 06.07.2018 i.e. of period prior to expiry of five years.

15 The Applicant has also alleged mala fide. It is the contention of the Applicant that to oblige one Shri Mahesh Kumar, the transfer order was given effect to by Respondent No.2, without going into the merit of this allegation that, that to oblige one Shri Mahesh Kumar, the transfer order was given effect to. Suffice it to say that the impugned order of transfer also appears to suffer from other infirmities. It has been pleaded in the OA and has been argued by counsel for Applicant that mother of the Applicant is 82 years old and is blind and that the Applicant, prior to issue of impugned order requested the Respondent authority, giving details of his blind mother and other exigencies faced by him, not to transfer him from Ahmedabad. Said facts have not been disputed by respondents. OM F.No.42011/3/2014-Estt. (Res) dated 08.10.2018, issued by DOP&T on the subject of Exemption from the routine exercise of transfer/rotational transfer provides that in cases where the government employee who is the main care-giver of the family— particularly daughter/ parents/ spouse/ brother/ sister with Specified Disability may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. Though OM had been issued only in October, 2018 i.e. after the impugned transfer order but as transfer order is under stay and has not been implemented so there was no legal impediment for respondents to re-consider transfer case of Applicant and to extend benefit of this OM to the Applicant, if he was entitled to.

16 In view of the legal/rule position discussed above and also the non compliance with principles of natural justice, the impugned transfer order, being Office Order No.5(45)/2018/Est.I/13 dated 06.07.2018 (Annexure A/1) of the OA and consequent Relieving Order dated 06.07.2018 (Annexure A/2) are not legally sustainable and accordingly are quashed and set aside.

17 With aforesaid observations and directions OA stand allowed. MAs if any stand disposed of. No order as to costs.

(M C Verma)
Member(J)

abp

(Archana Nigam)
Member(A)

