

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH
O.A. No. 758 of 2016
Ahmedabad, this the 18th day of December, 2018**

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Shri M.C. Verma, Member (J)

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Date of Reserve : 27/11/2018

Date of Order : .12.2018

Naresh Kumar Sharma
S/o Shri Jaisingh, aged 55 years
working as Deputy Director General,
NSSO(DPC), Ministry of Statistics & PI,
7th Floor, Lilamani Corporate Heights,
Opp. BRTS Bhus Stop, Vadaj,
Ahmedabad – 380 013 [permanent resident of D-703,
Swagatam Appt. C-58/7, Sector-62,
Noida-201301].

.....Applicant

(By Advocate : In Person)

VERSUS

- 1 Union of India (through the
Chief Statistician of India and Secretary),
Ministry of Statistics & PI, 4th Floor,
S.P. Bhawan, Sansad Marg,
New Delhi – 110 001.
- 2 Dr. T.C.A. Anant,
working as Chief Statistician of India
and Secretary, Ministry of Statistics & PI,
4th Floor, S.P. Bhawan, Sansad Marg,
New Delhi – 110 001.
- 3 Additional Director General,
NSSO (FOD Hq), Ministry of Statistics & PI,
East Block-6, Level 4-7, R.K.Puram,
New Delhi – 110 066.
- 4 Dr. S. Durai Raju, Deputy Director General,
NSSO (FOD), Ministry of Statistics & PI,
2nd Floor, B Wing, IIIrd Block,
26, Haddows Road,
Nungambakkam, Chennai-600 006.

...Respondents

(By Advocate Ms. F.D.Patel)

O R D E R

Per Ms. Archana Nigam, Member (A)

1 Applicant Shri Naresh Kumar Sharma while working as Deputy Director General, NSSO (FOD), in December 2016, preferred instant OA challenging his transfer Order No.12015/01/2014-ISS (Vol.II) dated 15th November, 2018, issued by Ministry of Statistics & Programme Implementation. Applicant alleged that he unnecessarily was harassed in past and to harass him further and to accommodate respondent No.4 he was transferred from Chennai to Ahmedabad. Applicant giving details of alleged actions/ non-actions of respondents particularly of respondent No.2, and stated that the same were because of malice and were challenged by him before the Principal Bench of the Tribunal (Central Administrative Tribunal) and the Hon'ble Tribunal coming heavily upon respondents passed order in favour of the applicant.

2 The brief facts of the case, as has been set out in the OA by applicant are that he was inducted into Government service on the basis of the ISS exam conducted by UPSC in 1984, joined the service on 16.12.1985 and presently is a Senior Administrative Grade (SAG) officer of the Indian Statistical Service (ISS), a group 'A' service under Government of India. Applicant alleged that he unnecessarily was harassed in past. Regarding past harassment, applicant quoted details in paras 4.43 to 4.48 of OA. Applicant pleaded that vide order dated 21.07.2014 (Annexure A15) he was transferred from Department of Chemicals & Petrochemicals, Delhi to FOD, Chennai, when his position was 95th in the seniority for outstation transfers and that this transfer was done by Respondent no.2 (holding the charge of post of Respondent no.1 as well). That before he could join the said post, another order dated 16.10.2014 (Annexure A

17) keeping in abeyance the earlier order dated 21.07.2014 & attaching the applicant with ADG (FOD) (Hq), New Delhi till further order was issued .That thereafter on 12.01.2015, Respondent no.2 revoked order dated 16.10.2014, by which the transfer of the applicant to Chennai had been kept in abeyance, and got relieved the applicant from FOD(Hq) w.e.f. 12.01.2015 itself. That on that day applicant was on casual leave and without giving any opportunity to him to apply for transfer TA and other advances, Respondent no.2 had also not permitted payment of salary to the applicant for more than three months and therefore, applicant was constrained to approach the Principal Bench of CAT, he, for redressal of his grievances regarding non-payment of salary as well of transfer TA filed OA 294/2015 and the Hon'ble Tribunal disposed of the OA by judgment dated 12.02.2015 commenting adversely on the victimisation and harassment of the applicant by the Authorities.

3 As far transfer order, No.12015/01/2014-ISS (Vol.II) dated 15th November, 2018, the impugned order of OA, issued by Ministry of Statistics & Programme Implementation relates, applicant pleaded that pursuant thereto he has joined his posting at Ahmedabad. Impugning this Transfer Order, No.12015/01/2014-ISS (Vol.II) dated 15th November, 2018 applicant has pleaded that it was not done on account of any administrative exigencies, public interest or efficiency in public administration but was done for extraneous consideration felicitate the adjustment of Respondent No. 4 & to harass the applicant, who has not completed his minimum stipulated tenure at Chennai. That transfer order also suffers from other infirmities and is in violation of Ministry's own operative guide lines evolved in terms of judgment of Hon'ble Supreme Court in **TSR Subraminan case**.

4 The respondents have contested the matter by filing a comprehensive reply on 21.7.2017 stating that service of the applicant shows:

- (i) That after joining the ISS, 1985, applicant has not worked outside Delhi for even one day,
- (ii) That a DDG working on an upgraded post of Director is normally transferred out Delhi on his first posting as regular DDG.
- (iii) That ISS Association is not a recognized Association.
- (iv) That the transfer of applicant from Chennai to Ahmedabad was made on Administrative grounds and transfer of respondent no.4 was carried out on his own request on health grounds.
- (v) That allegations about the reason of transfer for the extraneous consideration and oblique purposes is only an attempt to mislead the Tribunal.

5 Rejoinder, rebutting the stand taken by respondents in their reply, has also been filed by applicant on 10.08.2017.

6 When the matter was at the stage of final hearing, on 28th November, 2018, an MA was filed by respondents stating therein that vide order dated 16.10.2018 of the Ministry applicant has been transferred to Delhi. It is also stated that pursuant to Order of Transfer, from Ahmadabad to Delhi, applicant has on 24.10.2018 joined the post of DDG, NAD, CSO Mos&PI at Delhi and hence in view of his transfer from Ahmedabad to Delhi, the grievance of the applicant no longer survives and the OA has become infructuous and deserve dismissal as such.

7 In aforesaid backdrops the matter was heard for final disposal. Applicant, who have appeared in person has urged that to accommodate respondent No.4 he was transferred from Chennai to Ahmedabad and any

order of transfer issued to accommodate someone can't be said to be on account of any administrative exigencies, public interest or efficiency in public administration. He urged further that for extraneous consideration to victimise him, though he has not completed his minimum stipulated tenure at Chennai, he was transferred to Ahmedabad though his request was for Delhi. He contended that transfer order also suffers from other infirmities and is in violation of Ministry's operative guide lines, (annexure of the OA) and also that he was unnecessarily harassed in past as well and to harass him further this transfer order was actuated. Giving details of alleged actions/ non-actions of respondents, particularly of respondent No.2, and stated that the same were because of malice and were challenged by him in OA No. 294/2014, before the Principal Bench of the Tribunal (Central Administrative Tribunal). Applicant urged that the Hon'ble Tribunal coming heavily upon respondents passed order in favour of the applicant. Applicant to fortify his submission regarding past harassment invited our attention to his pleading made in instant OA, the annexed documents of instant OA as well to Order dated 12.02.2015 passed in OA No. 294/2014, preferred previously by him before the Principal Bench.

8 Regarding order dated 16.10.2018 of the Ministry, whereby applicant has been transferred to Delhi, it is the submission of the applicant that in view of said Order he has joined the post of DDG, NAD, CSO MoS&PI at Delhi and therefore he does not want to press his prayer but he insisted his prayer for imposition of exemplary costs on Respondent no.2 for misusing his position for extraneous consideration to victimise and harass him. He requested to dispose of the OA imposing costs for harassment and agony suffered by him.

9 Learned Counsel, Ms. F.D. Patel at the outset contended that in view of Order dated 16.10.2018 of the Ministry whereby applicant has been transferred to Delhi and that consequent joining of applicant at Delhi, the OA has become infructuous and deserves dismissal. She also urged that respondent No.4 was transferred on medical grounds and that the transfer of applicant was made after approval of Ministry and there was no malice or ill will and the order was in administrative exigency.

10 We have considered the submissions and have minutely perused the record. In instant OA applicant made four-fold prayer, which is as follows: -

- i) *Quash and set aside the impugned order Annexure A1 in respect of the Applicant, with all attendant consequences;*
- ii) *In view of the fact that the Chennai post held by the applicant is now filled, direct the Respondent-1 to post the Applicant at Delhi and to modify the Annexure A2 accordingly;*
- iii) *Impose exemplary costs on the Respondent-2 (holding the post of Respondent-1) for his mala fide motives and intentions and misusing his position as well as the public resources to victimise the Applicant;*
- iv) *Refrain the Respondent-2 (holding the post of Respondent-1) from further harassment of the Applicant; and*
- v) *Any other order deemed fit and proper in the circumstances of the case.*

11 Obviously, taking note of Order dated 16.10.2018, passed by the Ministry whereby applicant has been transferred to Delhi and further development of joining of the post by applicant at Delhi, it can be said, without any hesitation that prayer made at clause (ii) in para 8 of the OA

“--- direct the Respondent-1 to post the Applicant at Delhi and to modify the Annexure A2 accordingly ”

has become infructuous. Applicant did not opt to press prayer of quashing and setting aside of the impugned order Annexure A-1, made at clause (i) in para 8 of

the OA. *Thus, presently what needs adjudication is whether upon disposal of OA, some costs needs or not to be imposed?*

12 This is not the first instance when the applicant, for alleged nefarious act of respondent, had to knock at the door of the Tribunal. Applicant has pleaded that unnecessarily he was being harassed. Regarding past harassment, applicant illustrated order dated 21.07.2014 (Annexure A15) whereby he was transferred from Department of Chemicals & Petrochemicals, Delhi to FOD, Chennai, when his position was 95th in the seniority for outstation transfers and that before he could join the said post, another order dated 16.10.2014 (Annexure A 17) keeping in abeyance the earlier order dated 21.07.2014 & attaching the applicant with ADG (FOD) (Hq), New Delhi till further order was issued and suddenly on 12.01.2015 Respondent no.2 revoked order dated 16.10.2014 and got relieved the applicant from FOD(Hq) w.e.f. 12.01.2015 itself, without giving any opportunity to him to apply for transfer TA and other advances. Allegedly applicant was also not permitted payment of salary for more than three months and applicant had to approach the Principal Bench of CAT for redressal of his grievances. Hon'ble Principal Bench of the Tribunal having seen the suppression of documents and misrepresentation of facts in the Government file in the context of transfer effected on extraneous consideration. The Hon'ble Tribunal, Principal bench had commented quite adversely on the victimisation and harassment of the Applicant by the authorities. While disposing of OA 294/2014 by order dated 12.02.2015, Hon'ble Tribunal had specifically pointed that these acts were fully within the knowledge of the respondents, particularly, Respondent no.2

(Respondent No.2 in the instant OA as well). Some of the observations of the Hon'ble Tribunal, Principal Bench, as has been made in judgment dated 12.02.2015 passed in OA No. 294/2014, preferred previously by applicant before the Principle Bench are extracted below: -

"15 We find

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..... This leaves us with no doubt that the leave was duly sanctioned under delegated authority of the ADG, FOD. From the perusal of the file, it appears that this was within the knowledge of the respondents, particularly, respondent no.2. We have also found that it has been treated not covered by FR 17-A for which explanation is to be obtained from him. The fact that the leave sanctioned to the applicant by ADG, FOD is per se irregular appears to be in utter disregard of their own authorisation made vide OM dated 19.10.2012 (Annexure RJ-3 of the rejoinder).....

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It appears that the respondents are going out of their way to treat this period as unauthorised absence.

16 Now we come to the point as regards marking attendance by the applicant in the biometric system.....

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From the above, it appears that the system was not fully operational. In any case, when a person joins new, the department take steps to capture his iris and finger print impressions and it may take some time to be operationalized. It is not that they will be operationalized from day one. Therefore, we find that there is a forced attempt to deny the payment to the applicant.

17.....

18In so far as the period from 17.11.2014 to 19.12.2014 is concerned, admittedly, the applicant had been on training at AMP Training under due authorisation. A person cannot proceed on training sponsored by the State without due authorisation from the government and is entitled to full pay and allowances admissible during the training period. Therefore, the question of withholding pay and salary for that period does not arise at all....."

20 In caseHowever, under the present circumstances, no notice was issued, and yet no salary was paid to the applicant for more than three months.

21 Before parting with the issue, we would like to conclude that in the files we find that a good deal of efforts are being made to prove why salary should be denied to the applicant. For instance on file No.A-19011/34/2014-E-1, the authorities have gone into micro detail looking for one excuse or the other presumably looking for one pretext or the other to deny salary. However, we find no deliberate explanation as to

why leave sanctioned under due authorisation by a competent authority is said to be treated as no leave.

22 *We would have been inclined to find it out whether it is negligence or lack of knowledge which was responsible for denial of salary to the applicant. However, from the perusal of the files we find that it was fully within the knowledge of the respondent authorities. We also find that implausible excuses have been made to deny payment of salary to the applicant, which have been dealt with above. For instance, the period during which the applicant was on training under due authorisation has also not been reckoned as a legitimate period spent on duty. We do not approve the action of the respondents in withholding the salary of the applicant without calling for any explanation from him.*

23 *In view of the facts and discussions made above, we find that in respect of both the aforesaid issues, we are satisfied that due composite transfer advance has not been paid to the applicant as per his entitlement and a good deal of effort is being vested (sic) within the department which could have been better utilised to things of national interest in denying salary to the applicant.....(emphasis supplied)."*

13 In spite of all the observations made in the order dated 12.02.2015, the respondents have not fully complied order passed in OA 294/2015 and the applicant had to move a Contempt Application 259/2015 and the same was disposed of by order dated 13.05.2015. The harassment of the applicant at the hands of the Respondent -2, however, continued unabated. Being compelled by the notice in the CA 259/2015 respondent though released the full salary of the applicant, due from October 2014 but to harass the applicant, Respondent no.2 within a month thereafter got a minor penalty disciplinary proceeding, under Rule 16 of the CCS(CCA) Rules 1965, initiated against the applicant.

14 Having recalled the observations made by Principal Bench in their order dated 12.02.2015, in OA 294/15 (as quoted in paras 12 & 13 above) it is the time now to analyse also whether the impugned Order of instant OA is indicative of anything suggestive of intent, to harass and victimise the applicant. It is indisputable that applicant was transferred to accommodate someone, he was transferred from Chennai to Ahmedabad and any order of transfer issued

to accommodate someone solely can't be said to be on account of any administrative exigencies, public interest or efficiency in public administration. Applicant had not completed his minimum stipulated tenure at Chennai as well. Applicant has given consent for mutual transfer but for Delhi and he was transferred to Ahmedabad. Transfer Order also appears to be suffering from other infirmities and appears to be in violation of Ministry's guide lines, which found strength from new development as well, meant to say fresh Transfer Order, dated 16.10.2018 whereby applicant has been transferred to Delhi.

15 All being indicated by circumstances, cumulatively, is that applicant was harassed unnecessarily in past and perhaps the same may also be intent behind impugned transfer order as well. However, in view of the fact that for this or that reason two reliefs (sought in para 8(i) & 8(ii) of OA) has turned infructuous or has not been pressed for by applicant all that remains is to address the grievance in para 8(iii) viz. *"Impose exemplary costs on the Respondent-2 (holding the post of Respondent-1) for his mala fide motives and intentions to and misusing his position as well as the public resources to victimise the Applicant"*. Applicant is an officer in the Senior Administrative Grade. It does not behove the Government of India to meet out such harassment to such a Senior officer.

16 In view of what has been observed by Principal Bench in OA & taking note of the fact of harassment & suffering caused to applicant since 2014, it seems appropriate to allow this OA partly, to do whole justice, by awarding compensatory cost of Rs.25,000/- (Rs. Twenty-five thousand only) to the applicant for harassment and agony suffered by him and for expenses incurred for litigation thrust upon him.

17 The OA thus is allowed partly, to the extent noted above, and is disposed of with direction to Respondents to pay cost -of Rs.25,000/- to the applicant. Concerned Ministry of UOI, if desire & deem fit and proper may take steps to fix responsibility for dereliction and to realize amount of cost imposed from derelicting officer/ officers.

9 Accordingly, OA is disposed of. MA, if any is pending also stand disposed of.

(M C Verma)
Member(J)

(Archana Nigam)
Member(A)

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