

OA.No.170/00001/2018/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00001/2018

DATED THIS THE 31ST DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri N.N.Sawadi, 54 years
 S/o Sri Nagappa Sawadi
 Occn: Meteorologist 'A'
 Pilot Balloon Observatory
 Indian Meteorological Department
 Sambhapur Road
 Gadag: 582 101.

Postal Address: House No.2
 Vijayakalamandir Road
 Near Saibaba Temple
 Rajiv Gandhi Nagar
 Gadag; 582 101.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
 by its Secretary
 Ministry of Earth Sciences
 Prithvi Bhavan
 New Delhi-110 003.

2. Director General of Meteorology
 India Meteorological Department
 Mausam Bhavan
 Lodhi Road
 New Delhi: 110 003.

3. Deputy Director General
 India Meteorological Department
 Regional Meteorological Centre
 No.6, College Road
 Chennai: 600 006.

4. Director-in-Charge
 Meteorological Centre
 Central Observatory
 Palace Road
 Bengaluru: 560 001.

...Respondents

(By Advocate Shri K.Gajendra Vasu)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

“Quash the order bearing No:A-22013/Tr.Gr.'B'/26/2016-E1 dtd.26.12.2017 of DGM, New Delhi R-2 herein as received under order No:A-22013/1/2013-Estt., dtd.27.12.2017, Ann-A4, passed by Deputy Director General India Meteorological Department, Regional Meteorological Centre Chennai R- 3 herein.”

2. The case of the applicant is that he joined service as 'Senior Observer' on 23.7.1987 in the then Meteorological Institute of Govt. of India. The designation is changed over to 'Scientific Assistant' w.e.f. 1.1.2006. He is promoted as Assistant Meteorologist (Gr.V) in 2014. From 2016, the post is re-designated as Meteorologist 'A'. The applicant submits that on his initial appointment, he served at Pilot Balloon Observatory Gadag for a period of three years. Thereafter, he is shifted to Bengaluru where he worked from 1990 to 1999. From 1999, he was transferred to Gadag Observatory. In 2007, he was transferred to Hyderabad Centre and in 2012 he was transferred to Bengaluru Centre. On 8.4.2015, applicant came to be promoted to the Group 'B' Gazetted cadre and on promotion transferred to RMC, Chennai under R-3. He came over to Gadag on transfer from Chennai and working as Officer-in-Charge of the Gadag Observatory since 2.11.2016.
3. The applicant submits that on 31.10.2017 when he was on night duty, one Sri Raju V Rokhade, MTS working under him who was on leave for a period of 15 days since 28.10.2017 enters the office around 22:30 hours and attempted to manhandle him. This incident has been brought to the notice of the Chennai office(R3) vide report dtd.1.11.2017. A copy of the same was also submitted to Bengaluru Office(R4). He submits that the staff mentioned above, as a retaliatory measure, submitted a false complaint against the applicant on

OA.No.170/00001/2018/CAT/Bangalore Bench

7.11.2017 to New Delhi as well as Bengaluru Office. The Bengaluru Office on 30.11.2017(Annexure-A1) has asked for an explanation from the applicant. The applicant has submitted his explanation explaining the ill motives of the complainant. He further submits that on 22.11.2017 itself, he submitted a report(Annexure-A2) to the 2nd respondent in apprehension of adverse possibilities involved in the complaint. The report is supplemented by further correspondence sent by E-mail on 18.12.2017(Annexure-A3). Instead of taking action against Sri R.V.Rokhade, the respondents have chosen to take out the applicant out of Gadag by transferring him to Gulbarga vide order dtd.27.12.2017(Annexure-A4) under the guise of public interest even though public interest demanded shifting of Sri R.V.Rokhade out of Gadag as a matter of course. It cannot be viewed as public interest transfer in any case and the same is done by way of punishment even though he is not at fault. According to applicant, transfer order in question is also hit by principles of natural justice in addition to suffering from legal/factual mala-fide for the reasons explained. It is also premature transfer as he has joined at Gadag in Group 'B' post only on 2.11.2016 and no public interest is involved for his posting to Gulbarga. He further submits that the transfer in question has also bearing to applicant's approaching the authority in the matter of apathy in promotional avenues to the Scientific Officer grade in the department around the same time of the frivolous complaint in question. He submitted a representation on 13.11.2017 with a request for consideration of the promotion cases of Meteorologist 'A' grade for promotion to the post of Scientific Officer-I as no promotions have taken place in spite of his 30 years in the department. According to the applicant, since the transfer order is a clear case of colourable exercise of power vested in the authority in addition to a case of mal-administration under administrative law, the judicial

interference is called for and the impugned transfer order is liable to be set aside.

4. The respondents have filed their reply statement wherein they submit that the OA is not maintainable as the applicant has not exhausted the remedies available to him against his transfer. The applicant was having an option to appeal against his transfer order dtd.27.12.2017 to respondent No.1 by submitting a detailed representation citing his case. The OA is not maintainable and tenable in the eyes of law as transfer is an incidence of service and is not liable to be interfered with by the Courts/Tribunals until and unless there is mala-fide shown in the transfer order. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time, a public servant is to be transferred from his/her present posting. Transfer is not only an incident but an essential condition to maintain the exigencies of service. It does not affect the service conditions of the individual as the individual concerned has submitted an undertaking just prior to joining the Department that they are aware that their services are liable to be transferred anywhere in India and prepared to work anywhere in India. An employee holding a transferable post cannot claim any vested right to work at a particular place. Various judicial pronouncements have upheld this view point.
5. They submit that on 31.10.2017, an incident of man-handling and heated argument between the applicant and one Sri Raju V Rokhade, MTS was reported by way of complaints both by the applicant and Sri Raju V Rokhade. The respondents taking a due cognizance of incident, asked explanation from both the employees concerned vide OM dtd.16.11.2017(Annexure-R1) and

OA.No.170/00001/2018/CAT/Bangalore Bench
dtd.30.11.2017(Annexure-R2). Further, to ascertain the factual position a Senior Officer was deputed to preliminarily inquire in to the incident. On preliminary inquiry, it was held that an incident of heated argument between the applicant and Sri Raju V Rokhade, MTS was happened. Almost every staff at Pilot Balloon Observatory, Gadag gave statements(Annexure-R3(Colly)) stating that the applicant is of habit of not coming to the office in time and is creating lots of troubles to duty staff, by suddenly intimating about his not coming/not attending the duty at the last moment. It was also reported that during the tenure of applicant as Officer-in-Charge at PBO Gadag, the working atmosphere has been deteriorated. In the preliminary enquiry report, the officer has suggested disciplinary action on the applicant as well as Sri Raju V Rokhade. In view of statement of most of the staff of PBO Gadag against the unruly behaviour of the applicant i.e. Officer-in-Charge of the Station and as per suggestion of Preliminary Inquiry Officer, to maintain congenial working atmosphere and for smooth functioning of PBO Gadag, it was first considered to shift the applicant and Sri Raju V Rokhade, MTS from the present place of posting. The respondents have acted only after a detailed investigation of the incident. The transfer of the applicant is not effected only due to the specific incident of 31.10.2017 but also have been effected on the basis of statement of most of the staff regarding denigrating working atmosphere at PBO Gadag due to applicant and he has not fulfilled the minimum responsibility to the level of Officer-in-Charge. Therefore, as a primary measure, the applicant was shifted from PBO Gadag. The transfer of the applicant is not unilateral as in view of suggestion of preliminary inquiry officer and in view of facts, Sri Raju V Rokhade has also been transferred vide office order dtd.31.01.2018(Annexure-R5) Thus, no mal-administration, malafide towards the respondents in transferring the applicant could be

attributed and they have acted in strict compliance of rules and procedures.

6. The applicant has filed rejoinder reiterating the submissions made in OA and submits that there is no memo of services issued on him after his taking over the Gadag posting on 2.11.2016. Further the APARs for the two years are 'Outstanding' and 'Very Good' respectively(Annexure-RJ1 & RJ2). The Reporting Officer who has graded the applicant as 'Outstanding' has given an adverse preliminary inquiry report against the applicant based on which the impugned punitive transfer action is taken by the administration. If such report be the basis for impugned action, the same would be untenable as it would be one sided report prepared with ulterior motives to trouble the applicant. If a detailed inquiry is held in the matter in accordance with law truth will automatically come out.
7. The respondents have filed additional reply statement wherein they submit that the action taken by them is on administrative grounds, to maintain decorum, punctuality, good working atmosphere which the applicant failed to ensure. Sri Raju V Rokhade who is involved in quarrelling with applicant was also transferred in addition to the applicant.
8. They submit that the applicant is a habitual trouble maker. On 12.7.2011 the applicant was issued with Office Memorandum(Annexure-R6) considering several discrepancies based on the complaints given in which the colleagues of applicant listed out several discrepancies. On 14.07.2011, Director in Charge(DIC), Meteorological Centre(MC), Bangalore who is the controlling officer for entire Karnataka State made complaint(Annexure-R7) based on the comments received from various sections of MC Bangalore, who are monitoring work status of PBO Gadag to Regional Meteorological Centre, Chennai (RMC Chennai), the controlling officer for the entire Southern India,

OA.No.170/00001/2018/CAT/Bangalore Bench

about discrepancies of PBO Gadag in respect of normal work to which the applicant as the officer in charge of the station is solely responsible. The Director in Charge (DIC), Meteorological Centre, Chennai has received the complaints(Annexure-R8) against the applicant from all the colleagues. The applicant was recommended for a transfer by DIC of MC Bangalore on 15.9.2011(Annexure-R9) based on the deterioration of office work due to applicant. Based on the recommendations of the DIC, MC Bangalore, the competent authority the Dy. Director General of Meteorology (DDGM), Regional Meteorological Centre(RMC) Chennai has issued transfer order dtd.27.9.2011(Annexure-R10) to the applicant from Gadag to Bangalore. This itself clearly shows that the applicant is a habitual trouble maker and not competent to hold the position of in-charge of the station at PBO Gadag. After receipt of transfer order to Bangalore, the applicant requested for cancellation of transfer order and also given undertaking to abide all the 16 points mentioned in the undertaking dtd.5.10.2011(Annexure-R11). The undertaking given by the applicant clearly canvasses the acceptance of the applicant of his shortfalls and mistakes. Based on the undertakings submitted by the applicant, the respondents took the matter in a lenient view and his request was considered and deferred the transfer order by retaining him at PBO Gadag dtd.10.10.2011(Annexure-R12) until further orders. In spite of many opportunities given by the respondents to the applicant to get himself corrected his behaviour, the applicant failed to prove himself competent to hold position of in-charge of the station. This is evident by the complaints received from the colleagues of the applicant submitted to DIC Bangalore making allegation against him. One of the complaints was life threatening. Based on the complaints on 29.6.2012(Annexure-R13), the DIC, Bangalore took note of the complaint and recommended to the competent authority to

shift the applicant from Gadag to some other place. Based on the above, the competent authority i.e. RMC Chennai has transferred the applicant from Gadag to Bangalore on 6.7.2012(Annexure-R14). Based on the applicant's request, he was transferred to PBO Gadag back on 24.10.2016(Annexure-R15) thereby the respondents had offered yet another opportunity to the applicant. Again as usual, instead of rectifying himself, the applicant started troubling the staff and thereby spoiling the peaceful atmosphere of the office. When the troubles culminated, the respondents have left with no other option than shifting the applicant to Gulbarga to bring back the peaceful working environment at PBO Gadag. The APAR submitted by the applicant is nothing to do with his transfer.

9. The applicant has filed additional rejoinder wherein he submits that the stand taken by the respondents in the additional reply should amply demonstrate that the action taken by the administration against him in the instant case is wholly motivated and not a case of bonafide action. In respect of the allegations, the applicant has given explanation/clarification called for by the higher authority. The authority while pointing out the allegations against the applicant has not revealed about his clarifications offered thereon. If the correspondence that has taken place in this regard and the connected file is called for and perused, truth should be readily surfacing. Using the incident of 31.10.2017, all connected personnel are seeking to settle their scores with him because of his forthright running of the administration at Gadag Observatory on day-to-day basis. In other words, he is sought to be victimized in the matter when he is totally disciplined and duty conscious.

10. Heard the Learned Counsel for both the parties in detail and perused the materials placed on record. The respondents have cited several complaints

OA.No.170/00001/2018/CAT/Bangalore Bench

given against the applicant over a period of time by various members of the staff and also about his manner of working. Vide Annexure-R11 they have also brought in an undertaking signed by him in 2011 relating to taking certain specific action points, technical as well as human relations. Subsequent to this undertaking, apparently, the applicant continued with his old ways resulting in his transfer to Bangalore in the year 2012. However, the respondents themselves brought him back to his present station in October 2016 and he has been continuing in the same place. Citing an incident which happened in Oct., 2017, the respondents have once again attempted to transfer the applicant along with another MTS involved in an incident of manhandling to maintain peace in the office. As rightly contended by the respondents, the employee does not have any specific right to remain in station and he can always be transferred on administrative exigencies. At the same time, what can be achieved by taking disciplinary action as per rules should not be sought to be achieved by attempting to undertake a punitive transfer with resultant disturbance in the official and the personal matters of the individual especially during the mid-academic year. The applicant has furnished the Annual Personal Appraisal Reports(APAR) for two years where the same superior officer of the respondents has certified regarding his efficiency and cordial nature of relations with his colleagues as well as outsiders. We, therefore, feel that mere transfer of the individual will not serve the purpose of the organisation if he is indeed incorrigible. The latest APARs do not suggest that he has remained immune to all the criticism against him. We therefore, quash the transfer order at Annexure-A4 and if the respondents feel that appropriate action should be taken against the individual if his performance is not up to the mark, they can do so as they are well within their powers.

11. The OA is allowed with the above direction. No costs.

(C.V.SANKAR)
MEMBER (A)

MEMBER (J)

(DR.K.B.SURESH)

/ps/

Annexures referred to by the applicant in OA.No.170/00001/2018

Annexure A1: Memo dtd.30.11.2017

Annexure A2: E-mail message dtd.22.11.2017 sent by applicant to respondent
No.2

Annexure A3: One more e-mail message dtd.18.12.2017 from applicant to R-2

Annexure A4: Impugned transfer order dtd.27.12.2017 issued by respondent

OA.No.170/00001/2018/CAT/Bangalore Bench
No.3 under the orders of R-2

Annexures with reply statement:

- Annexure-R1: (Office Memorandum dtd.16.11.2017 served to Shri Raju V.Rokhade, MTS)
Annexure-R2: (Office Memorandum dtd.30.11.2017 served to Shri N.N.Sawadi, AM-II)
Annexure-R3: (Colly) Statement of staff of PBO Gadag
Annexure-R4: (letter dtd.01.11.2017 from applicant)
Annexure-R5: (Transfer order in r/o Shri Raju V.Rokhade, MTS)

Annexures with rejoinder:

- Annexure-RJ1: Copy of the APAR for the period 2016-17 (2.11.2016 to 31.3.2017)
Annexure-RJ2: Copy of the APAR for the period from 1.4.2017 to 31.3.2018

Annexures with additional reply:

- Annexure-R6: Copy of OM dtd.12.7.2011
Annexure-R7: Copy of complaint dtd.14.07.2011
Annexure-R8: The DIC forwarded complaints to RMC, Chennai
Annexure-R9: Copy of letter dtd.15.09.2011
Annexure-R10: Copy of transfer order dtd.27.09.2011
Annexure-R11: Copy of undertaking dtd.05.10.2011
Annexure-R12: Copy of order dtd.10.10.2011
Annexure-R13: Copy of letter dtd.29.06.2012 of DIC
Annexure-R14: Copy of Office Order dtd.06.07.2012
Annexure-R15: Copy of Office Order dtd.24.10.2016

Annexures with additional rejoinder:

-NIL-
