

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01461/2018

DATED THIS THE 06th DAY OF FEBRUARY, 2019

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

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

N. Cyrus
S/o Late J.Nelson,
Aged about: 57 years,
Working as Draftsman Grade-I,
At Karnataka Geo Spatial Data
Centre, Survey of India,
Bangalore – 560 034
Residing at:
Quarter No. P/2,
Survey of India Staff quarters,
(KGSDC)
Koramangala II Block,
Bangalore – 560 034.

.....Applicant

(By Advocate Sri P.Kamalesan)

Vs.

1. Union of India,
Reptd. by Surveyor
General of India,
P.B. No. 37,
Dehradun – 248 001

2. Director,
Karnataka Geo Spatial Data
Centre,
Survey of India,
Kormangala,
Bangalore – 560 034.

.....Respondents

(By Advocate Sri M.Vasudeva Rao, Sr.PC for CG)

ORDER

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

The case of the applicant is that while working as Grade II Draftsman at Karnataka Geo Spatial Data Centre, Bangalore, he was transferred to

Chennai during 2011. Aggrieved by which, the applicant, as he is a physically handicapped with 60% Locomotive disability, has filed a complaint with the State Commissioner for persons with disabilities, Bangalore who vide order dtd.18.11.2011(Annexure-A2) directed the Survey of India/Karnataka Geo Spatial Data Centre authorities to cancel the transfer order. Against the said order, the respondents have filed WP.No.12894/2012 before Hon'ble High Court of Karnataka who has allowed the writ petition on 17.1.2018(Annexure-A3) on the ground that the applicant's case does not fall within Section 62(b) of the Act and the State Commissioner was unjustified in cancelling the transfer order dtd.5.4.2011. In the meanwhile, the applicant was promoted to the post of Draftsman Grade I and posted at Karnataka Geo Spatial Data Centre, Bangalore vide order dtd.8.6.2018(Annexure-A5). Vide letter dtd.13.8.2018(Annexure-A6), the Director, Karnataka Geo Spatial Data Centre, Bangalore communicated the transfer order issued by Surveyor General, Survey of India, Dehradun, transferring the applicant again to Chennai on the ground that the Hon'ble High Court has allowed the writ petition filed by them. The applicant submitted a representation to 1st respondent on 16.8.2018(Annexure-A7) requesting to cancel the transfer order saying that he is undergoing treatment at Sanjay Gandhi Institute of Trauma & Orthopaedic, Bangalore and is having only three years of service left and there was no staff quarters nearby office at Chennai and it will be difficult for him to travel more than 20 KMs every day at Chennai. And the order of Hon'ble High Court of Karnataka is related to a transfer made during 2011 when he was Draftsman Grade II. At present, he was promoted to Draftsman Grade I and posted at Bangalore by the respondents. Therefore, the transfer order dtd.13.8.2018 is arbitrary, illegal and unsustainable under law. He submits that the juniors in the gradation list were promoted and

OA.No.170/01461/2018/CAT/Bangalore Bench posted at Bangalore by Surveyor General, Survey of India, Dehradun vide letter dtd.9.2.2018(Annexure-A8). Therefore, transferring him to Chennai even though he is senior and promoting and posting his juniors at Bangalore is discrimination, malafide and vindictive action on the part of the respondents and they failed to take cognizance the fact that he is physically disabled employee. Hence, he filed the present OA seeking to quash the transfer order dtd.13.08.2018 issued by Director, Karnataka Geo Spatial Data Centre Bangalore.

2. The respondents, per contra, in their reply statement submit that the applicant is appointed on All India Service and therefore can be transferred to any station in the interest of the organisation based on the functional requirement. There are 135 sanctioned posts of Group 'C' Establishment including 35 posts of Draftsman Cadre. Out of 135, only 16 personnel were posted at Chennai Station in different cadres. Since the Draftsman strength by then at Chennai GDC was nil, the applicant was transferred to Chennai on 1.4.2011 for technical tasks. The said transfer order was examined by the Hon'ble High Court of Karnataka in WP.No.12894/2013 and held that 'the applicant was merely transferred from Bangalore to Chennai. Since a transfer is but an incident of service, the applicant cannot claim that he is being discriminated against, or is being deprived off any rights'. The High Court did not quash the transfer order issued earlier by the respondents and hence the same was reissued. They considered the application of the applicant for cancellation of transfer but since his services as Draftsman were required at Chennai GDC as he is senior most and well experienced Draftsman, his request for cancellation of transfer is not considered. The intention of transferring him to Chennai is not malafide and hostile as alleged by the applicant. The promotion order of the applicant was issued according to the DOPT's

instructions in OM dtd.30.9.2016 and DST's order dtd.7.7.2017. The select list of the panel will be subject to the outcome of CP.314/2016 in SLP(C) No.4831/2012- Samiti through its President Vs. Sanjay Kothari & others. The other Draftsmen were also promoted on the above terms and conditions. They submit that the applicant on the one or the other pretext is avoiding his transfer to Chennai which hosts number of reputed hospitals and the applicant can continue his treatment at Chennai as well. Moreover, Chennai is very well connected by various means of transportation, thus he may not face any difficulty for his treatment. In view of the above, the OA being devoid of merit is liable to be dismissed.

3. We have heard the Learned Counsel for both the parties and perused the materials in detail. The respondents have transferred the applicant by order dtd.1.4.2011 from Bangalore to Chennai in view of the earlier antecedents relating to the applicant. Apparently, within three years of joining the service in 1996, considering the fact that the applicant happened to be a physically challenged person, he was transferred to his home station i.e. Kerala at Thiruvananthapuram. As noted in the orders of the Hon'ble High Court of Karnataka in WP.No.12894/2012(S-TR) dtd.17.1.2018, allegedly the applicant started misbehaving with the lady colleagues and started creating problems with the superior colleagues at Thiruvananthapuram. He was not only charge-sheeted, but also punished. The applicant did not improve his behaviour at Trivandrum and therefore he was transferred back to Bangalore. His behaviour even in Bangalore was disrupting the smooth functioning of the department. Therefore, in April, 2011, when Draftsmen were needed for different parts of the country including Chennai, considering the fact that the applicant would have equal distance from Trivandrum, by order dtd.1.4.2011, the applicant was transferred from Bangalore to Chennai. However, the State

OA.No.170/01461/2018/CAT/Bangalore Bench

Commissioner for Persons with Disability, Govt. of Karnataka had directed vide his order dtd.18.11.2011, to cancel the transfer order to enable the applicant to continue his service at Bangalore. Based on this order, the applicant has been in Bangalore since 2011. The Hon'ble High Court of Karnataka set aside the order of the State Commissioner of the Welfare of Disabled Persons by its order dtd.17.1.2018. Subsequently, the applicant has been promoted to Draftsman Grade-I w.e.f. 1.7.2018 and vide Annexure-A6 the impugned order, he has been relieved from Bangalore on 13.8.2018 to report to Chennai. The respondents have stated that the Draftsman cadre strength in Chennai is zero and therefore, being an experienced person, the applicant has been given the transfer order. They have also cited the order of the Hon'ble Apex Court in *Union of India vs. Sri Janardhan Debanath and others* wherein the Hon'ble Apex Court had held that "No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration". Further the Hon'ble High Court of Karnataka in its order in Writ Petition(supra) has also opined that 'the respondent was merely transferred from Bangalore to Chennai. Since a transfer is but an incident of service, the respondent cannot claim that he is being discriminated against, or is being deprived off any rights.' The respondents have also in their reply reiterated the above position and have noted that the applicant ought to have reported for duty at Chennai GDC as per the transfer order and for any grievances, he can approach the authority through proper channel. We agree with the above and therefore hold that the case of the applicant has no merit. The OA is therefore dismissed. No

costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01461/2018

Annexure-A1: Copy of the disability certificate issued by Govt. of Karnataka S.
No. 513013

Annexure-A2: Copy of the court of the State Commissioner for persons with

OA.No.170/01461/2018/CAT/Bangalore Bench
disabilities order dated 18.11.2011

Annexure-A3: Copy of the Hon'ble High Court of Karnataka order dated
17.01.2018 in Writ Petition No. 12894/2012 (S-CAT)

Annexure-A4: Copy of the medical certificate of Sanjay Gandhi Institute dated
18.06.2018

Annexure-A5: Copy of the Surveyor General of India, Dehradun letter dated
08.06.2018

Annexure-A6: Copy of the Director, GSDC, Bangalore letter dated 13.08.2018

Annexure-A7: Copy of the representation of the applicant dated 16.08.2018

Annexure-A8: Copy of the Surveyor General letter dated 09.02.2018

Annexure-A9: Copy of the gradation list of Draftsman Grade II as on
01.01.2017

Annexures with reply statement:

-NIL-
