

**Central Administrative Tribunal
Madras Bench**

OA/310/00959/2017

Dated 7th December Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

S.Kalaganathan, AE(QA),
CQA (AVL), Avadi,
No.25A, 10th Avenue,
Siva Sakthi Nagar,
Thirumulaivoyal,
Chennai 600062. .. Applicant
By Advocate **M/s.D.Geetha**

Vs.

1. Union of India, rep by its
Secretary, M/o Defence,
Department of Defense Production,
Room No.136, South Block,
New Delhi 110001.
2. The Additional DGQA(L),
Directorate of Quality Assurance (DGQA/L-2),
Department of Defense Production,
G Block, Nirmal Bhawan,
New Delhi 110011.
3. The Controller,
Controllerate of Quality Assurances,
Avadi, Chennai 600054.
4. Colonel,
Joint Controller(O),
HVF Campus, Avadi,
Chennai 600054. .. Respondents

By Advocate **Mr.M.Kishore Kumar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“i) to call for the records relating to Order No.78823/14/ROT/2017/DGQA/L-2, dated 21.4.2017; Order No.78823/14/ROT/2017/DGQA/L-2/iii, dated 09.5.2017; Order No.78823/14/ROT/2017/DGQA/L-2, dated 16.6.2017, passed by second respondent and to quash the same.

ii) To award costs and pass such further and other orders as may be deemed and proper and thus render justice.”

2. The applicant's case is that he is working as Assistant Engineer in CQA (AVL), Avadi, Chennai and he is working in the said unit from the time of his appointment i.e. 17.6.2005 onwards. As per the transfer policy issued by the respondents which is produced as Annexure A1, Group B officials will normally be permitted to work in a station for 3 years. However, the tenure of the official in a station will be a maximum of 7 years inclusive of the period of service rendered in lower grade if any at the same station. The respondents had issued a notification for rotational transfer and the applicant has given his option as (a) Bangaluru, (b) Secundarabad and (c) Medak. The applicant has gathered an experience of 11 years in the seniority roll and as per vacancy list published by the respondents for Assistant Engineer (QA) as 93 vacancies at Bangalore and 4 vacancies at Secundrabad. There was no vacancy at Medak for the said post. The applicant was hoping a transfer to Bangalore which is his first preference and to his shock and surprise, the respondents had issued a transfer

order dated 21.4.2017 posting him to HQ DQAL, Delhi. According to the applicant, the transfer to Delhi is arbitrary and unreasonable. He could have been provided at Bangalore or Secundrabad or Medak. According to him, the transfer policy stipulates that before transferring, the authority has to consider his seniority and preference together. The applicant is holding seniority No.233 and his juniors are given posting in accordance with their preference. Aggrieved by the transfer order the applicant has preferred a representation on 24.4.2017 which is produced as Annexure A4 through proper channel seeking a change of station. He had represented that he had aged father of 70 years old suffering from seizul disorder. If he is transferred, he will be put to great difficulties. He also forwarded relevant medical certificate also. But the 2nd respondent rejected the representation on 09.5.2017. Eventhough, the 3rd respondent has recommended for transfer as per representation given by him, the 2nd respondent has not agreed for the same. On 20.6.2017, the 4th respondent had issued posting order to the 3rd respondent and issued movement order. Since the applicant was on leave he was not relieved on that date. According to him, the impugned order of transfer is arbitrary and unreasonable and violative of the applicant's right under Article 14.

3. The respondents appeared and filed a detailed reply to the allegations in the OA. According to the respondents, the tenure of all Group B officials is normally limited to 3 years. But it may be extended to 7 years if he had served in other lower

post in the same station. According to the respondents, the applicant has no right to claim that he should be posted at a particular station. He can only ask for his preference at a station of his choice and the respondents has to consider the interest of the institution also while considering the transfer. It is mainly based on the organizational interest, varied exposure, total service rendered in the present station, area of employment and vacancy position etc. The applicant in this case had worked at Avadi station for the last 12 years. The service conditions contains posting to anywhere in India and the applicant is liable for all India transfer. According to the respondents, other officers transferred were not having so much period at Avadi and the applicant had worked more than 11 years in the same station. The respondents has to consider the age factor also while making a transfer. The applicant is only 33 years and is one of the youngest with good health etc. According to the respondents, the applicant has not mentioned the sickness of his father etc. in his transfer application. It was mentioned only in the second representation issued after issuance of RT order. There is no consideration for seniority in the transfer policy.

4. The applicant has produced Annexure A1 to A35 and respondents have produced Annexure R1 to R10. The applicant has also filed rejoinder.

5. On filing of the OA, the applicant sought for an interim relief for stay of the interim order. But the Tribunal has not allowed it and notice was issued to the respondents. The applicant in this case had filed a WP before the Hon'ble High Court

of Madras as WP 17114/2017 and the High Court has considered the application and ordered the respondents not to relieve the petitioner pending disposal of the proceedings before the Tribunal. The Hon'ble High Court has also directed this Tribunal to dispose of the matter as expeditiously as possible. Accordingly the matter was heard.

6. We have heard the counsel for the applicant and the counsel for the respondents and perused the pleadings from both sides and annexures produced before Tribunal. As per the transfer norms published for Group B officers in the Ministry of Defence dated 24.11.2016 (No.4/96995/RTP/DGQA/Admn.-7B/D (AQ) 2016) an official in Group B can normally continue in a post for 3 years. It can extend to 7 years if the service includes in a lower post also. It is also stated that the maximum tenure of official at a station shall not exceed 12 years. The rules provide relaxation to the above rule if they are about to retire within 2 years.

7. It is in this backdrop we have to look into the grievance of the applicant. According to the applicant he joined in the present station as Charge Man Grade II on 17.6.2005 at CQA(AVL), Avadi, Chennai. Thereafter, he was promoted to the post of Assistant Engineer in 2013. So from the joining, till the Rotational transfer order dated 21.4.17, the applicant had continued in the same station at Avadi. Annexure A3 Rotational transfer order was issued after obtaining the options of the officers. According to the applicant, he gave option as follows:- (1) Bangalore, (2)

Secundrabad and (3) Medak. To his surprise he was given a transfer to Delhi. According to the applicant, the order passed by the respondents is arbitrary and violative of Article 14 of the Constitution. The respondents had arbitrarily rejected his representation for modification of the place of posting dated 24.5.17. The respondents ought to have posted him at Bangalore, Secundrabad or Medak, This is done in violation of transfer policy. Rule 9(b) of the policy states that officials who had served for lesser number of years at the station where posting is to be made has to be taken into consideration. Even officials who had earlier worked at Bangalore was again posted there. The applicant has not at all worked at Bangalore. The applicant has a sick father and a new born child in the family. His presence is required at the house. The impugned order is passed with malafide and it is discriminatory in nature. His juniors are given preference than the applicant.

8. The counsel for the respondents submits that the authority had issued Annexure A3 impugned order as per the transfer policy and there is no material produced to show that applicant is discriminated and the order was issued malafide. The respondents on the other hand relies on the decision of the Hon'ble Madras High Court in *G.Saravanan vs. The Deputy Inspector General of Police (Madras) reported in 2018 (1) MLJ 63* holding that an employee has no legal or statutory right to claim his posting at Chennai.

9. On going through the pleadings, the applicant states that one S.Selvin who is working at Avadi for more than 18 years has been retained in the station, while he is transferred to Delhi. On a perusal of the seniority list at Annexure A10 produced by

the applicant, it can be seen that the said Selvin is born on 14.12.1961 and he was more than 56 years of age at the time of this order. The transfer policy gives importance to the advanced age and superannuation and his case cannot be considered on par with the applicant who is only less than 35 years at the time of order. So, we are of the opinion that this incident cannot be taken as a discrimination. As regards the name of second person S.Rajmohan, details are not seen in the seniority list. So, there is no merit in the contention of the applicant that he is discriminated and was not permitted to remain at Avadi. Eventhough the applicant alleged arbitrariness and malafides, he has not produced any material to support the above argument. On a perusal of transfer policy, it can be seen that seniority as such is not considered as a criteria for transfer. The applicant is working in the same station for the last 11 years and he is going to complete the maximum tenure of 12 years. The respondents had stated clearly in the Rotational transfer-2017 notification dated 16.12.16 (Annexure R2) that indication of preference of a place is not in a way an assurance of posting to the same station. This fact was known to the applicant even on the date of his giving option for transfer. It is also to be noted that the transfer was effected on the basis of Rotational transfer of the officers in 2017 and the facts stated in his representation dated 24.4.17 (Annexure A5) was not there for consideration when Annexure A3 order was issued. From the above discussion it can be seen that there is no grounds made out to interfere with the impugned order Annexure A3 in this OA.

10. The Hon'ble Apex Court in *State of U.P. And Others v. Gobardhan Lal* reported in AIR 2004 SC 2165 has held in para 7&8 as follows:-

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A Challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

A government servant has no vested right to ask to continue at a place of his choice. Transfer is an incident of service, and is not to be interfered with by courts unless it is arbitrary or vitiated by malafides.

11. The applicant is admittedly holding a post having All India transfer liability. So there is no merit in the arguments put forward by the applicant.

12. In the result, the OA lacks merit and it is dismissed forthwith. No costs.

(T.Jacob)
Member(A)

07.12.2018

(P.Madhavan)
Member(J)

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