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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 440 OF 2018

Date Of Decision:- 11th January, 2019.

***CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SHRI. R. N. SINGH, MEMBER (J).***

Shri. Vilas Satpalkar

Age: 54 years,

Working as JTO(S), SQAE,
Mumbai.

Residing at 1502, Malaygiri CHS,
Shantiwan, Shrikrishna Nagar,
Borivali (E), Mumbai-66.

...Applicant

(Applicant by Advocate Shri. Vicky Nagrani)

Versus

1. *Union of India*

Through its Secretary,
Ministry of Defence,
Department of Defence Production,
Room No.136, South Block,
Nirman Bhawan, New Delhi-110011.

2. *The Directorate General of Quality*

Assurance, Department of Defence Production,
Min of Defence, South Block No.308-A,
D-Wing, Sena Bhawan, Nirman Bhawan,
New Delhi-110011.

3. *The Additional DGQA (Stores)*

Department of Defence Production (DGQA)
Government of India, Ministry of
Defence, DHQ P.O. New Delhi.

4. *Senior Quality Assurance Officer*

(G&S), (SQAE) Adm Building 2nd
floor, DGQA Complex LBS Marg,
Vikhroli (West), Mumbai-400 083.

...Respondents

(Respondents by Advocate Shri. B.K. Ashok Kumar)

ORDER (ORAL)

Per:- Shri. R. N. Singh, Member (J)

1. This OA No. 440/2018 was filed by the applicant on 19.06.2018 under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

“8(a) Set aside the impugned Rotational Transfer Policy vide No.A/96995/RTP/DGQA/ADmn-7B (QA)/2016 dated 24.11.2016 and amendment dated 10.02.2017 as illegal, without guidelines of the DoP&T and vide letter dated 30.04.2009 and transfer order dated 16.05.2018 and movement order dated 18.05.2018 qua the applicants and order dated 14.06.2018 with all consequential benefits.

(b) Direct the Respondents to revise the Rotational Transfer Policy dated 24.11.2016 while preparing the lists of sensitive and non-sensitive posts of Group B (Gazetted and Non-Gazetted) officials viz., Technical and Non-Technical in Director General of Quality Assurance (DGQA) Organisation in terms of the letter dated 30.04.2009 and the guidelines of the DoP&T OM dated 16.07.2015 in the interest of justice and equity, and

(c) Alternatively this Hon'ble Tribunal may further be pleased to quash and set aside order dated 16.05.2018 and 18.05.2018 qua the applicant holding that the same is in violation of

RTS 2016 with all consequential benefits.

(d) Grant relief or reliefs as deemed fit and proper, with costs, in the interest of justice and equity.”

2. The applicant in the present OA has challenged the impugned order dated 24.11.2016. When the case was first heard on 20.06.2018, the applicant brought to notice the orders of the Bangalore Bench granting interim relief to the applicant therein, and the applicant in the present case was granted interim relief, which continues till today. During the hearing on 08.08.2018 in similar OA Nos. 305/2017 and 486/2017, the learned counsel for applicants informed that the transfer application had been filed before the Principal Bench for transfer of this OA, but, that was not granted. In response, the Principal Bench passed orders on 31.08.2018 in PT Nos. 142/2018, 146/2018 and 174/2018 staying the proceedings before this Tribunal. Thereafter the applicants all along are arguing for keeping these matters pending until orders of the Principal Bench on the principal issue of their challenge to the Rotational Transfer Policy.

3. Taking into consideration the stand of the parties all along during the pendency of the OA that the present OAs are identical to the OA No. 2791/2017 in Mrs. Alka Chauhan & Ors. V/s. Union of India & Ors. decided, pending before the Principal Bench of this Tribunal, and the fact that the said matter

Alka Chauhan (Supra) has since been decided by the Principal Bench vide Judgment and Order dated 17.12.2018, we are of the view that the present OA may also be disposed in the same terms as order dated 17.12.2018 in OA No.2791/2017. Those orders are now available in orders of the *Principal Bench in OA No.2791/2017 decided on 17.12.2018* by which it has been decided as below:-

“15. The arguments of the applicants against the New RTP relating to not holding of DPCs, not identifying sensitive and non sensitive posts, presumptive cost to exchequer and not following the recommendations of the concerned committee are not tenable. Formulation of policy is in the domain of the competent authority and unless there is some clear irregularity, which the above points do not indicate, any interference by this Tribunal is totally unwarranted. Thus, the matter regarding the validity of the New RTP being completely covered by the judgment of the Bangalore bench of this Tribunal referred above and, furthermore, the applicants have failed to give any convincing reason why this policy should be interfered with, we come to the conclusion that there is no ground to interfere with the New RTP dated 24.11.2016 challenged in the present OA.”

4. During arguments, the learned counsel for the applicant also pressed reference to paras 16 to 18 of the above said orders of the Principal Bench and urged reliefs on the basis of parity with that case and after the dismissal of the challenge

to the policy of the orders of the Principal Bench, learned counsel for applicant specifically emphasized relief on this aspect alone. These paras of that decision are as below:

"16. As regards the prayer of the applicants regarding stay of the transfer orders dated 19.07.2017 and 20.07.2017 it is noted that the dates of birth of Smt. Alka Chauhan, applicant no.1 and applicant no.2 Ms. Renu Ahuja, are 16.01.1961 and 14.09.1960 respectively. Thus, both the applicants no.1 & 2 are due to superannuate much before the expiry of the period of three years from now, prescribed under the New RTP, as amended, to qualify for exemption from transfer. When the transfer orders were issued Applicant no.1, Smt. Alka Chauhan was about three years and six months short of the age of superannuation and applicant no.2, Ms. Renu Ahuja was about three years and two months short of the age of superannuation. Thus, even under the provisions of the new RTP as on date they are covered by the exemption from RTP and were fairly close to the prescribed period when the transfer orders were issued.

17. Thus, taking a holistic view, incorporating the letter and spirit of the RTP, in the facts and circumstances of the case it would be in the interest of justice if the impugned transfer orders dated 20.07.2017 with respect to applicant no.1 and dated 19.07.2017 with respect to applicant

no.2 and are set aside. As regards applicant no.3, it has been informed by the learned counsel for the applicants, at the time of arguments, that he has taken VRS. Even otherwise, looking at his age, his case is on a different footing from that of applicants 1 and 2 and merits no intervention.

18. The OA is accordingly allowed to the extent that the transfer orders with regard to applicant no.1 Smt. Alka Chauhan dated 20.07.2017 and applicant no.2 Ms. Renu Ahuja dated 19.07.2017 are set aside. No order as to costs."

5. Reference to the application filed shows that the applicant was 54 years of age at the time of filing this application on 19.6.2018. Whereas, the cases considered by the Principal Bench in OA No.2791/2017 involved persons who had completed 56 years and were nearing the 57th year of age after which, in terms of the amendment to the RTP issued on 10.2.2017 (Annexure-A2), officials having 3 years or less service for superannuation will be exempted from rotational transfers. While it is not necessary in the present matter to examine the issue of whether these orders issued by the CAT, Principal Bench in exercise of jurisdiction of equity are applicable as precedents in law, the case of the applicant is entirely different as he has 6 years to go before retirement and cannot be said to be a case of parity. In the circumstances, there

are no merits in this OA, as discussed above, and it is accordingly dismissed without any order as to costs. However, given the irrelevant and inapplicable claim of parity made by the applicant in an evident attempt to abuse the process of law and stall his transfer, the applicant is directed to avail only actual travel time to join at his posted station forfeiting full joining time to which he may have been eligible.

~~(R.N. Singh)~~
Member (J)

~~(R. Vijaykumar)~~
Member (A)

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