

O.A.210/00621/2017

Dated this Friday the 30th day of November, 2018.

Shri Suresh Ankush Hatle,
Working as Senior Auditor AO(N),
Karwar,
Residing at 30-B, Jeevan Pushp CHS,
N.S.S. Cross Road,
Dombivali (W) - 421 202. .. Applicant.

(By Advocate Shri Vicky Nagrani).

Versus

1. Union of India, through
the Secretary,
Ministry of Defence,
South Block, New Delhi-110001.
2. The Controller General of
Defence,
Office of the Controller
General of Defence Accounts,
Ulan Batar Rd,
Palam Delhi Cant. 110 010.
3. The Principal Controller of
Defence Accounts (N),
No.1 Cooperage Road,
Post Box No.589,
Mumbai - 400 001.
4. The Principal Controller of
Accounts,
CA (Fys), 10-A S.K. Bose Road,
Kolkata - 700 001.

(By Advocate Shri B.K. Ashok Kumar).

Order reserved on : 09.10.2018
Order delivered on : 30.11.2018.

ORDER

Per : Dr.Bhaqwan Sahai, Member (A) .

In this O.A., the applicant Shri Suresh

Ankush Hatle, working as Senior Auditor AO(N) Karwar is seeking quashing and setting aside of the impugned orders dated 14.07.2017 and 31.08.2017 and direction to the respondents to consider him for posting at Mumbai or CFA (Fys) Ambernath along with cost of this application.

2. Summarized facts:

2(a). The applicant was appointed as a Clerk under Principal Controller of Defence Accounts, Mumbai from 01.12.1983, then got promoted as Auditor and also as Sr. Auditor in 1994. He is presently working as Sr. Auditor.

2(b). Vide order dated 17.12.2013, the Controller General of Defence Accounts, Palam, Delhi Cantt transferred Sr. Auditors to AO (N) Karwar. That transfer order also mentioned that it would be effective for two years and thereafter the staff may be posted to one of three stations of their choices at State expenses. Vide order of 15.01.2014, the applicant was transferred and posted at Karwar i.e. a hard tenure station and he reported there on 29.01.2014.

2(c). While he was working at Karwar, certain allegations were made against him and 2 other staff members resulting in initiation of criminal proceedings against them. After completing two years on 24.10.2016, the applicant claims to have

applied for his posting at Mumbai on personal and other grounds. Vide order dated 14.07.2017 he was transferred from AO (N) Karwar to CFA (Fys), Jabalpur. The applicant claims that he has been discriminated against while 3 other staff members were posted as per their choices of stations.

2 (d) . Aggrieved by the above transfer order, the applicant represented to Respondent No.3 i.e. Principal Controller of Defence Accounts (N), Mumbai on 20.07.2017 to cancel his transfer and to post him in any office in Mumbai or CDA (Fys) Ambernath. Since he did not receive any reply, he filed O.A.470/2017 challenging his transfer order which came to be disposed of on 02.08.2017 directing the respondents to consider his representation.

2 (e) . The Respondent No.2 decided his representation and passed the order on 31.08.2017 stating that his request for posting in Mumbai CFA (Fys) cannot be considered and advised him to join at CFA (Fys), Jabalpur at the earliest.

2 (f) . Then on 12.09.2017, the applicant was further informed by the office of Controller of Defence Accounts, Jabalpur that he should report to Accounts Office, Ordnance Factory, Itarsi instead of Jabalpur and that regularization of his absence may be considered by the Competent Authority after

he joined at Itarsi. The applicant claims that other similarly posted officers at Karwar i.e. Shri CV Shiri and Shri Ramesh G.A. have been posted at Balgaum and Main Office at Mumbai, but he has been discriminated against by not posting him to the station of his choice. Hence the O.A.

3. Contention of the parties:

The applicant and his counsel have contended that -

3(a). the applicant has not been posted as per his choice although when he was posted to Karwar, an understanding was given that after completing 2 years period there, further posting would be considered as per choice of the applicant;

3(b). a criminal case against the applicant and others is pending at Indore; and

3(c). in view of discrimination against him in the transfer and posting orders of 14.07.2017 and 31.08.2017, interim relief was granted on 13.10.2017 which has been continued since then. While he was first transferred on 14.07.2017, he was posted at Jabalpur by rejecting his representation on 31.08.2017. Subsequently on 12.09.2017 he has been directed to join at Accounts Office, Itrasi. Therefore, the transfer orders should be cancelled and he should be posted at Mumbai.

In the reply filed on 07.03.2018 and during arguments, the respondents have submitted that -

3(d). the applicant is the key accused in the criminal proceedings going on against him and others at Indore. There are very serious charges against him in the criminal proceedings such as fraudulent financial transactions of Rs.6.33 Crore, involving conspiracy, cheating, forgery, etc, because of which he was kept under suspension from 30.04.2016 to 21.06.2017;

3(e). his claim of discrimination is false as the two other staff members involved in the criminal case have also been transferred out of Karwar and posted at Belgaum and Mumbai Main Office i.e. they also have been posted away from Karwar where the forgery and criminal conspiracy took place;

3(f). the applicant was first temporarily attached to AO (N) Karwar for six months and subsequently posted there on regular basis along with Shri Bansidhar Tiwari, SA and Shri A.P. Bairagi, SA from the Main Office, Mumbai. While the two other had applied for transfer to stations of their choices after completing period of two years, the applicant did not apply for such transfer when he was under suspension;

3(g). the applicant has been transferred to Jabalpur on administrative grounds as it is closer to Indore where investigation of the criminal case by Police is going on. Therefore, the O.A. does not have any merit and should be dismissed.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, reply filed by the respondents and considered the arguments advanced by the parties on 16.10.2018. After consideration of all these, we conclude as follows:

4(a). We find that all the grounds stated by the applicant in this O.A. were considered by the respondents before passing the order of 31.08.2017.

4(b). The applicant did not avail of exemption from transfer in 2014 when he was transferred and posted at Karwar.

4(c). The forgery of documents is alleged to have been committed by the applicant along with others during the period from 21.07.2014 to 19.09.2015.

4(d). The two other staff members mentioned in the order of the respondents dated 12.05.2017 have also been transferred out of Karwar and posted away from that station i.e. at Belgaum and Mumbai. Therefore, the claim of the applicant that he has been discriminated against is not acceptable.

4 (e) . The contention of the respondents that during his suspension after detection of the forgery, he did not apply for transfer seems correct.

4 (f) . Their contention that since the investigation of the case is being carried out by the Police at Indore, posting of the applicant at Jabalpur/Itarsi will facilitate his participation in the investigation as these stations are geographically closer to Indore as compared to Mumbai also seems justified.

4 (g) . It is also revealed that after registration of FIR in the criminal case, during searches and raids cash of Rs.more than 1.08 Crore was seized from the applicant's house at Kalyan on 03.05.2016 along with a gold chain of Rs.75,000/-. Some more cash was also recovered on other dates. Even then he wants posting back at Kalyan/Mumbai. In view of these details of seizure, the request of the applicant is not justified.

4 (h) . In view of these special facts of the case, we conclude that the action of the respondents to transfer and post the applicant at Jabalpur/Itrasi is fully justified. We find no justification or merit in this O.A. It is a wasteful litigation and seems only a deliberate attempt by the applicant to create obstacles in the

ongoing investigation of the fraud and, therefore, the O.A. deserves to be dismissed with cost.

5. Decision :

The O.A. is dismissed with cost of Rs.10,000/- to be paid by the applicant to the respondents. The respondents should recover this amount from his salary.

(R.N. Singh)
Member (J)

(Dr.Bhagwan Sahai)
Member (A) .

H.