

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00323/2018

Dated Wednesday the 19th day of June Two Thousand Nineteen

**CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)
HON'BLE MR. P. MADHAVAN, Member (J)**

Mrs. Meenakshi Bhaskaran,
W/o. R. Bhaskaran,
Working as Deputy Registrar,
Central Administrative Tribunal,
Chennai Bench and residing at
B-6, Mangaadu Apartments,
29, Ellai Amman Koil Street,
West Mambalam, Chennai 600033.

....Applicant

By Advocate M/s. Menon, Karthik, Mukundan & Neelakantan

Vs

1. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench,
Copernicus Marg,
New Delhi 110001.

2. Union of India rep by,
The Secretary to Government,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel,
North Block, New Delhi.

....Respondents

By Advocate Mr. M. Kishore Kumar

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief :

"To set aside Order No. CAT/PB/17/7/2005-Estt.-1 (Volume 2) dated 14.12.2016, issued by the 1st respondent and consequently direct the respondents to grant TA/DA and other admissible allowances and joining time on the applicant's transfer from Guwahati Bench to Chennai Bench as per Ministry of Finance, Department of Expenditure OM No. 20014/3/83-E.IV dt. 14.12.1983 and pass such further or other orders as may be deemed fit and proper."

2. The grievance of the applicant is that she had been denied grant of TA/DA and other admissible allowances as also joining time on her transfer from Guwahati Bench to Chennai Bench of the first respondent by Annexure A9 order dt. 05.07.2016. Attention is drawn to Annexure A1 OM of the Department of Expenditure, Ministry of Finance dt. 14.12.1983 which prescribed a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service for a posting in the north east. Officers on completion of the fixed tenure of service were allowed to be considered for posting at a station of their choice as far as possible.

3. It is submitted that the applicant was posted as Deputy Registrar in the Guwahati Bench of the Central Administrative Tribunal by an office order dt. 10.01.2014 of the first respondent. The applicant having been posted to the north east was allowed TA/DA in accordance with Sr. No. (vi) of the said Annexure A1 OM dt. 14.12.1983. It is clearly stated in the OM that the provision would also apply to the return journey back from the North Eastern

Region. It is submitted that the applicant's transfer to Chennai was ordered after completion of 2 years which is the fixed tenure for the applicant as an employee with more than 10 years of service. The applicant is accordingly entitled to TA/DA on her transfer out of the north east and the transfer order which denied the same to her on the ground that it was a 'request transfer' was untenable.

4. The respondents have filed a reply contesting the claim of the applicant. The sum and substance of the reply is that the applicant had made a request for transfer to Chennai ahead of completion of two years of tenure to take care of her ailing father. Had she been accommodated at that time, she would have forfeited her claim for TA/DA for non-completion of the fixed tenure. However, since there was no vacancy at Chennai at that point of time, the applicant had been informed that she would be considered for transfer after completion of two years in Guwahati in April 2016 as soon as a vacancy arose on the post of Deputy Registrar at the Chennai Bench. The respondents contend that the applicant left her family at Chennai itself purely for personal reasons and had not taken any permission for keeping her family at Chennai and had gone alone to Guwahati. The department never compelled or issued a direction to her to leave her family at Chennai before proceeding for Guwahati.

5. It is further submitted by the respondents that although the applicant had completed 2 years of tenure when she was finally transferred, it was clearly mentioned in the transfer order dt. 29.07.2016 that the applicant would not be entitled to any TA/DA and joining time. The applicant had not submitted any

objections or made a representation thereagainst prior to compliance thereof. She conveniently accepted the first part of the order and joined at Chennai and is now challenging the second part which was not permissible. She would be estopped from challenging the condition of transfer that no TA/DA and joining time would be admissible as it was a 'request transfer' after complying with the order. The applicant should not have accepted the order if the condition was not acceptable to her. The very fact that she accepted the order and joined at Chennai meant that she had accepted the condition of the transfer associated therewith.

6. Learned counsel for the applicant would submit that it would not be correct to say that the applicant had not made any representations. As the post in Chennai had become vacant and she was required to join, she represented against the denial of TA/DA citing the relevant provisions of OM dt. 14.12.1983. If a part of the order is violative of the Central Government's own policy and a condition was imposed in violation thereof, it does not mean that the order should be either accepted in toto or represented against before complying with the transfer itself. The principle of estoppel is not applicable in this case as the policy of the Central Government allows for the choice of the officer concerned to be accommodated as far as possible after the completion of the fixed tenure. The respondents have not assigned any reason for denial of TA/DA *per se* except to state that it was a 'request transfer' and she ought to have represented against the transfer itself if the condition of no TA/DA/joining

time was not acceptable. He seeks to rely on Annexure A14 order dt. 13.08.2015 of this Tribunal in OA 1501/2014 in a similar case and submits that the impugned order was contrary to the ratio of the order passed by this Tribunal.

7. Learned counsel for the respondents would, however submit that a request transfer cannot be paid for from the public exchequer regardless of whether it was to or from North Eastern Region or elsewhere. The respondents were only expected to accommodate the applicant at the applicant's choice 'as far as possible' and in the normal course, the applicant would have been transferred to any other Bench. To the extent that her choice for Chennai was accepted, she had to forfeit her claim, it is contended.

8. We have considered the relief sought in terms of the relevant provisions of the OM dt. 14.12.1983 containing the policy of the Central Government in regard to the allowances and facilities for Civilian employees posted in the north east. The policy appears to have been evolved with a view to incentivising employees to opt for a posting in the north east in view of the large number of vacancies in the region due to the reluctance of employees posted there to work in conditions of hardship. It is for this reason that the policy appears to allow for TA/DA, etc while returning from such transfer also. Such a policy cannot be defeated by the respondents by taking the plea that it was a 'request transfer' as such request transfers are permissible in terms of serial no. (i) of Annexure A1 OM dt. 14.12.1983. The respondents were at liberty not to accept the choice of the applicant if it was not in public interest. However, having accepted the

request, the TA/DA and joining time could not be denied only on the ground that the request was made for a posting at a particular station.

9. It is not in dispute that the applicant was transferred to a vacant post in Chennai which also required to be filled in public interest. Such transfer was made only after the applicant completed her tenure and not before. No valid reason is given why she should forfeit her claim when the choice expressed by her was permissible under the policy. The contentions raised by the respondents are totally devoid of merits. Under such circumstances, we have no hesitation in setting aside Annexure A13 impugned order dt. 14.12.2016 and directing the competent authority to pass orders allowing TA/DA and other facilities on her transfer from Guwahati Bench to Chennai Bench in accordance with the OM dated 14.12.1983 of the Dept. of Expenditure within a period of two months from the date of receipt of a copy of the order.

10. OA is allowed as above. No costs.

(P. Madhavan)
Member(J)

(R. Ramanujam)
Member(A)

19.06.2019

SKSI