

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. MA 350/00295/2015
OA 350/00827/2015
CPC 350/0099*/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R.Bandyopadhyay, Administrative Member

TAPAS KANTI ROY

VS

UNION OF INDIA & ORS. (DEFENCE)

For the applicant : Mr.S.Samanta, counsel

For the respondents : Mr.P.Mukherjee, counsel

Order on : 30.9.15

O R D E R

Ms.Bidisha Banerjee, J.M.

The OA has been preferred seeking the following reliefs :

- a) The reasoned order passed by the respondents on 21.4.14 rejecting the representation of the petitioner dated 3.12.13 may be quashed or set aside;
- b) The order of status quo dated 7.3.14 as directed by the Hon'ble CAT, Calcutta Bench till June 2014 may be extended on the order of transfer dated 26.2.14 till the disposal of the present application;
- c) The respondents be directed to accommodate the petitioner in the existing vacancies of CQA (SA) or CQA (SA);
- d) The respondents be directed not to relieve him till the disposal of the present application;
- e) Quash the transfer order dated 26.2.14 when the petitioner has been transferred from CQA (SA) Ichapur to SQAE (A) Trichi;
- f) Any other relief/reliefs for which the petitioner is entitled to.

2. The rejection order, impugned in the OA that is passed pursuant to our direction in OA 350/00615/2014, is quoted verbatim hereinbelow for clarity to the extent relevant and germane to the present lis :

"Aggrieved with above reasoned/speaking order you had filed an OA No. 350/00615/2014 in Hon'ble CAT, Kolkata. After hearing the case, the Hon'ble Court in para 5 of the Court Order at Para 1(a) above mentioned that "The Rotational Transfer Policy dated 20.5.11 is explicit that the persons less than 5 years for superannuation as on 1st Jan of the year are exempted from rotational transfer. Although it appears from the order dated 31.10.13 that the rotational transfer order dated 20.5.11 has been issued without the approval of DOP&T, we are unable to quash the policy simply on the ground that other organizations n

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the same Ministry of Defence do not have such transfer policy or it is a weapon to the authorities to disturb the employees."

The Contempt application CPC 350/00991/2015 has been filed alleging wilful and deliberate violation of the order/direction dated 24.11.14 passed by this Tribunal in OA 615/14 (Tapas Kanti Roy -vs- UOI & Ors.) by :

I. the contemnor/respondent No.1 by :

- i) not issuing the reasoned and speaking order personally as enjoined upon him by this learned Tribunal in paragraph 8 of the solemn order dated 24.11.14 but approving the purported reasoned and speaking order passed by the contemnor/respondent No.2 who had no jurisdiction to pass the said purported reasoned and speaking order;
- ii) approving the purported reasoned and speaking order passed by the contemnor/respondent No.2 which was in violation of the letter and spirit of the solemn order dated 24.11.14 more particularly paragraph 6 thereof which had directed the case of the applicant to be considered in the light of paragraph 8 of the transfer policy in the present circumstance i.e. as on the date of passing of the said solemn order of this learned Tribunal when he had crossed the age of 55 years and not as on the date of the order of transfer which was for the year 2014-15 thereby wrongly rejecting the case of the applicant;

II. the contemnor/ respondent No.2 by :

- i) issuing the reasoned and speaking order without jurisdiction as the solemn order of this learned Tribunal had directed the DG QA himself to consider the case of the applicant;
- ii) issuing the purported reasoned and speaking order in violation of the letter and spirit of the solemn order dated 24.11.14 more particularly paragraph 6 thereof which had directed the case of the applicant to be considered in the light of paragraph 8 of the transfer policy in the present circumstance i.e. as on the date of passing of the said solemn order of this learned Tribunal when he had crossed the age of 55 years and not as on the date of the order of transfer which was for the year 2014-15 thereby wrongly rejecting the case of the applicant;
- iii) wrongly stating that the purported reasoned and speaking order having the approval of DG QA was in conformity with the orders of the learned Tribunal knowing fully well the terms of the solemn order of this learned Tribunal required the DG QA himself to pass the reasoned and speaking order;

III. the contemnor/ respondent No.3 by :

- i) issuing the movement order on the same date 28.5.15 as the purported reasoned and speaking order which was dated 28.5.15 inspite of being a party to both the OA and the MA under Rule 24 and knowing the full facts thereby trying to overreach the orders passed by this learned Tribunal;

3. We note that the order dt. 24.11.14 passed in OA 827/15 was as under :

6. However, in regard to the OA, we find that by now the applicant has crossed 55 years of age having less than 5 years, to retire. In view of the para 8 of the said transfer policy, which in fact supports his case, he is entitled to exemption from rotational transfer. Para 8 of the said policy lays down the following :

“8. Persons having less than five years service for superannuation as on 01 Jan of the year are exempted from rotational transfer.”

7. We note that the applicability of para 8 of the policy circular to the present applicant, requires to be considered by the DGQA, who is the only competent authority to decide whether the applicant can be considered for retention in terms of para 8 of the transfer policy or whether there is any impending need to transfer him even with less than 5 years of service.

8. In such view of the matter, without going into the merits of the transfer policy, the OA is disposed of with a direction upon the DGQA to consider the case of the applicant in the light of para 8 of the transfer policy and to pass an appropriate reasoned and speaking order within a period of two months from the date of communication of this order. Till such time applicant shall not be compelled to join the transferred post.

4. Our order was unambiguously and expressly worded that the DGQA himself was the only competent authority to consider applicability of para 8 of the policy circular to the applicant and accordingly we had in no uncertain terms ordered the DGQA to consider whether the applicant could be retained in terms of para 8 of the circular or whether there was any impending need to transfer him even with less than five years.

The order was not reversed on appeal.

5. By virtue of the said order it was incumbent upon the DGQA to himself consider and pass the order. The DG QA instead of taking upon him the burden of considering the matter in terms of our order, allowed the Adm. DG to pass an order and approved it himself.

6. In the said speaking order issued by Adm. DG the said authority has not indicated why the applicant would not deserve a consideration in terms of para 8 of circular despite having less than five years of his service left. ^{He failed to do.} It also did not indicate the impending need to transfer the applicant out of the present place. He had rather tried to justify the original transfer order which was issued long before completion of 55 years of age. He thus failed to follow the spirit of the order passed in the OA. He had attempted to scuttle the right of the applicant that emanated from the order passed by this Bench towards his consideration

in the light of para 8 of the transfer policy, having already crossed 55 years of age in the meantime.

7. Since the directions were unambiguous and clear we feel that the DG QA ought not to have taken our order so lightly or loosely.

8. In the aforesaid backdrop the speaking order is quashed.

9. Consequently the MA application has been filed by the respondents seeking vacation of the interim order. In view of the aforesaid observations it is rejected.

10. The OA is disposed of with liberty to the DGQA to act in accordance with law and pass a fresh order within two months from the date of communication of this order. Till such time the status quo in regard to the applicant shall be maintained. No order is passed as to costs.

11. In view of the aforesaid direction contempt proceedings alleging violation of the order dt. 24.11.14 passed in the earlier OA are dropped. Notices, if any, issued are discharged.

R. B.
(R. BANDYOPADHYAY)
MEMBER (A)

B. B.
(BIDISHA BANERJEE)
MEMBER (J)

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