

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.219/2019

Dated this Thursday the 6th day of June, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Shri Bhagwan Tomar / Age 55 Years
Working as Foreman in Naval Dockyard,
Mumbai. Residing at B-04/11,
Kendriya Vihar, Sector-11,
Kharghar, Navi Mumbai
- 410 210.

... **Applicant**

(**By Advocate Shri Vicky Nagrani**)

VERSUS

1. Union of India through
The Chief of Personnel
Integrated Headquarters of
MoD (Navy) Sena Bhawan,
New Delhi - 110 011.
2. The Admiral Superintendent
Naval Dockyard Mumbai
Lion Gate, Mumbai - 400 023.
3. The AGM (P&A)
Commodore Paar Sadiq
Naval Dockyard Mumbai
Lion Gate,
Mumbai - 400 023.

... **Respondents**

(**By Advocate Shri R.R. Shetty**)

ORDER

PER: R. VIJAYKUMAR, MEMBER (A)

This application has been filed by the
applicant on 13.03.2019 under Section 19 of
the Administrative Tribunals Act, 1985 seeking

the following reliefs:-

"8(1) Hon'ble Tribunal may kindly call for the record of the impugned order dated 03 Dec 2018 to the extent of transfer of applicant (Annexure A-1) and Impugned Minutes dated 16.01.19/17.01.19 (Annexure A-2) and hold to quash the same.

8(2) Hon'ble Tribunal may kindly hold that considering and reading recommendations of the head of department for retention of applicant on functional ground in conjunction with criteria for transfer on promotion vide para (23) of transfer policy (Annexure A-3) the applicant has merit for retention over and above others TA who have been retained in Mumbai station. Therefore, the applicant be retained in Mumbai station on his promotion to TA(Eng).

8(3) Hon'ble Tribunal may kindly hold that the respondent No.3 has malafied intention for transfer of the applicant to cover up his mistake for misusing his official position resulting waste of government money.

8(4) Hon'ble Tribunal hold that the applicant has liberty to intervene in the OAs(93/2017 and 497/2017) and OAs (503/2015 and 142/2017) filed by the staff working with and under him.

8(5) The Hon'ble Tribunal may kindly hold any other decisions as deemed fit."

2. The applicant joined service with the respondents on 20.07.1983 as a Highly Skilled Worker and was promoted on 31.05.2001 as Chargeman-II and posted to INS, Shivaji after which he was promoted to Chargeman Grade I on 30.06.2005 and posted back to Naval Dockyard Mumbai where he also later received a promotion as Foreman. He has now been transferred to INS Ekshila at Vishakhapatnam

on promotion as Technical Assistant (Engineering) in impugned orders dated 03.12.2018. His main contention is that he has been unjustly transferred to an outstation post even though he has previously taken an outstation posting at INS Shivaji, Lonavala near Mumbai whereas many persons, who have never been transferred outstation, have again been retained in Mumbai. He had filed a representation on 12.12.2018 (Annexure A-8) and despite recommendations of his supervisory officers, the respondent No.3- AGM(P&A) and GM(HR) of Naval Dockyard Mumbai have refused to pursue his representation with the Competent Authority which is cited as respondent No.1. He also alleges mala fide on the part of respondent No.3. In regard to the persons who have allegedly been preferentially retained at Mumbai, he has listed three persons Shri RG Chavan, Shri KS Mulay and Shri RCH Chenna Krishnaiah who have been retained at Mumbai. On the alleged mala fides against the AGM (P&A), Commodore Paar Sadiq, IN he argues that his actions as Union representative for obtaining legal remedies

for his subordinate staff by way of OA Nos.93/2017, 497/2017, 503/2015 and 142/2017 relating to issues of promotion and pay fixation and further, because he was also in the past, General Secretary of All India Naval Technical Supervisory Staff Association (AINTSSA), the said officer cited as respondent No.3 has developed mala fides. He decries the need for him to litigate by reference to judgment of the Hon'ble Apex Court in Dilbagh Rai Jarry Vs. Union of India, (1974) 3 SCC 554 and Punjab State Power Corporation Ltd. Vs. Atma Singh Grewasl, (2014) 13 SCC 666.

3. The respondents filed reply on the plea of interim relief on 09.04.2019 stating that the applicant had been transferred on promotion and had not expressed any intention to refuse promotion. Further, there was a acute shortage of Technical Assistants (Engineering) at INS, Ekshila with 2 sanctioned posts and no Technical Assistants (Engineering) available whereas Naval Dockyard, Mumbai had 14 Technical Assistants (Engineering) against a sanctioned strength of 10 posts. The applicant had 5 years and 5

months of service left to superannuate on 03.12.2018 and was therefore identified and transferred on service exigencies, considering that he was already overdue for outstation transfer and this was proposed only at the time of his promotion. They rely on the judgment of the Hon'ble Apex Court in Union of India Vs. S.L. Abbas, 1994 SCC (L&S) 230, that transfer is not only an incident but an essential condition of service; in Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433 which underlines need for transfer from one place to another as necessary for public interest and efficiency in public administration. Further, he relies on S.C. Saxena Vs. Union of India & Others, (2006) SCC (L&S) 1890 where the Hon'ble Apex Court ruled that a Government servant cannot disobey the transfer order. They have also submitted that in view of the fact that the transfer on promotion was made on service exigencies and organisational requirement, the OA may be dismissed at the preliminary stage.

4. When the matter came up for hearing on 12.04.2019 and the OA was to be considered on the plea for interim relief, learned counsel

for the respondents submitted that their reply although made in response to the plea for interim relief, was also complete and they were prepared to argue the matter on the main OA considering that the final relief sought was essentially identical with the interim relief now being sought. Learned counsel for the applicant was enquired and with his consent, the OA was heard both on the issue of interim relief and on the main OA itself.

5. Learned counsel for the applicant argued that the respondents had not followed their own transfer policy on promotion by which they were required to act under Section 23 which reads as follows:-

Transfer on Promotion

23. Transfers are also required to be effected on promotion in the event of non-availability of vacancies in the units/stations. However, to meet the functional requirements of a cadre, personnel on promotion also have to be transferred to remote stations such as Karwar, Ezhimala, Chilka, Port Blair etc. where feeder cadres are not large, but vacancies in higher posts exist. It has been the practice that employees send declaration expressing unwillingness for promotion in terms of DoP&T OM No.22034/3/81-Estt(D) dated 01 Oct 1981, if promotion is accompanied with transfer. It is emphasized that acceptance or non-acceptance of the requests from officers refusing promotion is purely at the discretion of the Appointing Authority. The above mentioned OM states that in cases where the reasons adduced by the officer for refusal of promotion are not acceptable to the Appointing Authority, then promotion of the officer may

be enforced. In case the officer still refuses to be promoted, then even disciplinary action can be taken against him. Transfer on promotion will be done based on the following criteria:-

- (a) Volunteers will be given first preference.*
- (b) Station senior will be considered to move first.*
- (c) If vacancies also exist in present unit, outstation transfers will be governed by seniority of stay in station."*

6. He argued that Station Senior should have moved first and not him especially since there were two Station Seniors Shri R.G. Chavan and Shri KS Mulay in the category of TA(Engineering). Moreover, he had already served at INS Shivaji which was an outstation posting. For this purpose, he produced an order of promotions/transfers of Technical Supervisory Staff in No.DYP/P/9350 (VO) /Shivaji dt. 15.05.2001 which states at para 4: *"TA/DA joining time etc is admissible for outstation transfers promotion as per existing rules."* Therefore, there was no doubt that INS Shivaji was an outstation posting and such outstation experience had not been given to any of the other two Station Seniors. Further, since he had returned from INS Shivaji only in the year 2005 whereas the others had remained in Mumbai all along, he was junior in this station and should not have

been disturbed. In this connection, learned counsel refers to the orders of the Cuttack Bench in Dr. U. Mishra Vs. Ministry of Defence, OA No.305/2018 dated 21.06.2018 wherein all aspects of representation of the applicant had not been replied by the respondents. He also refers to the orders of the Principal Bench in Pawan Kumar Vs. National Technical Research Organisation (NTRO), GOI, through the Chairman, New Delhi & 3 Ors., reported in 2014 SCC Online CAT, 5457 dated 18.12.2014 wherein it was held that once a transfer policy is issued, the respondents cannot fail to implement the policy for regulating transfers and postings. As mentioned in the pleadings, he reiterated the allegations of malice against the respondent No.3 and referred to four OAs filed by the applicant's subordinate staff before this Tribunal.

7. Learned counsel for the respondents also referred to para 23 of the transfer policy in regard to the three other Technical Assistants (Engineering). He mentioned that the applicant had been posted to INS Shivaji, Lonavala bordering Mumbai for four years and has never gone to any other outstation and

admitted that TA had been given as entitled. He argued that the three other persons who were Technical Assistants (Engineering) included one Shri RCH Chenna Krishnaiah who was much younger and therefore, not relevant for the present purpose. He then referred to the seniormost, Shri R.G. Chavan, (DOB 08.11.1961) who was retiring in 1921 and was posted in the Materials Organisation outside the Dockyard. Further, the next senior, Shri K.S. Mulay (DOB 20.05.1962) was retiring in 1922 well prior to the applicant who was having more than five years left in service. The transfer of the applicant was purely for service exigencies and the records which have been submitted by the applicant himself showed that his supervisors including respondents Nos.3 & 4 wanted to retain the best staff but in the present circumstances, there was a severe shortage at INS Ekshila and therefore, the transfer had become warranted. The applicant had himself filed Annexure A-2 wherein his case had been taken up by the respondent Nos.3 & 4 with IHQ (respondent No.1) and it was further clarified by IHQ to

the General Manager who has also recorded the result of his personal discussions and inability of IHQ (Respondent No.1) to retain the applicant at the present station.

8. On the issue of malafide, he refers to the judgment of the Hon'ble Apex Court in State of Bihar Vs. L.K. Advani, AIR 2003 Sc 3357 where it was necessary for applicant to have impugned the concerned competent transferring authority who was in this case, the IHQ, and not his supervisors or their immediate senior, namely respondent No.3, who was only carrying out the orders of transfer passed by the Competent Authority and who was himself serving under the General Manager (R-4).

9. As noted by the applicant himself by enclosing Annexure -2, it was the PDCP of IHQ who had rejected his request and this officer has not been named specifically alleging malice. He also denied the relevance of four OAs filed by the applicant's subordinates as evidence of malice borne by the respondents towards him. He also denied the relevance of the orders of the Cuttack Bench and the Principal Bench to the specific case of the

applicant and that para 23 of the transfer policy provided for adequately manning remote stations by the Competent Authority. He also refers to the transfer policy at para 7 which proscribed transfers of employees with less than 2 years of service although service exigencies could take precedence. In Shri Mulay's case, although he was the immediate senior of the applicant, he had only 2^{1/2} years service left and it was not considered prudent to disturb him.

10. In rebuttal, learned counsel for the applicant argued on the retention of three seniors and that one of them Shri RCH Chenna Krishnaiah had 12 years to retire and was an expert in the same field.

11. We have heard Shri Vicky Nagrani, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents. We have also carefully considered the facts and circumstances, law points and rival contentions in the case.

12. It is claimed from the figures provided in the Annexures and from arguments that the respondents were faced with an extreme

shortage at INS Ekshila where they had two sanctioned posts without staff in Technical Assistant (Engineering) and had four surplus staff at Mumbai. From Annexure A-4, which was sent by the Naval Dockyard Mumbai to IHQ, it is clear that there was even earlier a plan to consider the transfer of Shri Mulay and Shri Bhagwan Tomar (applicant) subsequent to their proposed promotions as TA (Engineering). Both were considered to have a high level of technical expertise in Gas Turbines and both were sought to be retained at Mumbai. Their cases were also recommended at the level of Admiral Superintendent in letter dated 16.10.2018 (Annexure A-5) and again by the Western Naval Command on 28.11.2018 (Annexure A-6) to the IHQ for retention. Therefore, there is clearly no evidence of any kind of malice that can be attributed to supervisors/officers within the Western Naval Command in regard to the applicant's promotion and transfer. The applicant had not made any specific allegations of malice against the Competent Authority who ordered the transfer and therefore, there is little evidence left

to support this charge. The four OAs cited by the applicant as having been filed by his subordinates for promotion and pay fixation are evidently pending with this Tribunal for adjudication and cannot, by any reason, become a basis for alleging malice when the rights of parties in such matters are to be adjudicated as per rules and would have wider application.

13. In regard to the choice of the applicant over his two seniors, it is quite apparent that both are retiring much earlier than the applicant who has more than 5 years left for superannuation. Moreover, Shri R.G. Chavan is in an unrelated organisation and Shri Mulay is the only person with the similar expertise but has only 2^{1/2} years left for retirement. Therefore, the respondents appear to have had little choice in this matter. Reference to the transfer policy guidelines dated 11.08.2015 shows the background and aim of the policy as under:-

“POLICY GUIDELINES ON TRANSFER OF CIVILIAN PERSONNEL

Background:-

1. The need to have a well articulated, robust, and fair/just transfer policy has been brought up at various forums, so as to bring in objectivity and transparency into the transfer process. It has also been experienced that inspite of all efforts, promotional posts are not being filled up in certain

offices/stations. Senior posts in such places remain vacant as personnel refuse promotion as a matter of routine. There is also a requirement to create an environment where service exigencies/requirement get due importance.

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Aim:-

3. The aim of this policy is to ensure objectivity, fairness and transparency in transfer of Civilian Personnel and to minimise discretions. The Transfer Policy, like any other guidelines, can at best serve as a framework for effecting a transfer. It cannot be expected to be rigidly enforced at all times. Although organisational compulsions would take precedence over personal requirements, the latter would also need to be considered, before a final decision is taken."

14. We may also bear in mind the transfer guidelines annexed to the policy at para 23 which has already been excerpted in a previous para in this order.

15. It is clear from a comprehensive reading of this policy, that the respondents are faced with a situation where staff who have gained expertise, refused promotion in order to avoid outstation transfer and therefore, senior posts remained vacant at certain offices and stations especially remote yet important. Therefore, organisational compulsions necessarily take precedence over personal requirements and transfers have necessarily to be made on administrative grounds in public interest and based on

functional requirements of the organisation. As mentioned in para 7 on transfer prior to retirement, the guidelines provide that an employee with less than 2 years of service shall not normally be transferred except on promotion but service exigencies will take precedence even in such cases. However, all these guidelines are subject to administrative feasibility as has happened in the present case and it appears from the documents placed on record and pleadings that the respondents had no option but to transfer the applicant to the place where his expertise was required and would meet organisational requirements over a sufficiently long time period.

16. After this case was heard and orders reserved on 12.04.2019, the applicant filed MA No.285/2019 seeking to be heard in person. The applicant has submitted in this MA that the OA was listed on 12.04.2019 only for deciding interim relief and was not listed for final hearing. He was, therefore, not prepared for final hearing and has submitted that he has not been heard fully in this matter especially because there was no reply from the

respondents to his OA. In reply filed on 01.05.2019, the respondents state that they had filed an affidavit-in-reply to oppose ad-interim relief and during the hearing, they had agreed to treat the same as a comprehensive reply. They referred to para 10 of the affidavit-in-reply praying that the Tribunal may dismiss the OA at the preliminary stage itself. Therefore, they opposed the plea of the applicant that the OA could not be decided in the absence of their reply and referred in this context to orders passed by this Tribunal in OA No.453/2011 in a similar matter, although not enclosed.

17. As we have noted previously, the interim relief sought in this case is equivalent to final relief and both seek interference in the orders of the transfer of the applicant. The respondents have, as submitted by them, requested orders of this Tribunal even at the preliminary stage in their affidavit-in-reply. It is for the respondents to decide if they wish to file a reply and if they do not and are satisfied with the contents of their reply to the

request for interim relief, their arguments get limited to that extent and therefore, it is only the applicant who stands to be benefited. The applicant cannot insist that a reply should be filed especially in the face of a refusal of the respondents to avail all these opportunities. In such circumstances, it was a decision for the learned counsel for the applicant to take and to decide whether he wishes to argue the matter at that stage or to seek postponement. As we have seen, learned counsel for the applicant has extensively argued the matter as also the learned counsel for the respondents. In these circumstances, the prayer of the applicant in MA No.285/2019 for further hearing has no basis in law or in natural justice and is accordingly dismissed.

18. In the circumstances as discussed above, this OA is dismissed as lacking merits and without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)/^e/
Member (A)

ma.

