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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 218/2018

Date of Decision:- 09th August 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER(A)
 RAVINDER KAUR, MEMBER (J)

V. Sivaprakasam, Age 52 years,
 R/o A-606, Sai Vihar Co-op.
 Hsg. Society, Sector-15,
 CBD Belapur,
 Navi Mumbai - 400 614 ... *Applicant*

(By Advocate Shri R. G. Walia alongwith Shri R.P. Saxena)

VERSUS

- 1 Union of India,
 through the Secretary
 to the Govt. of India,
 Ministry of Defence,
 South Block,
 New Delhi - 110 001

- 2 The General Manager,
 Government of India,
 Ministry of Defence,
 Canteen Stores Department
 ADELPHI 119, M.K. Road,
 Mumbai - 400 020. ... *Respondents*

(By Advocate Shri R. R. Shetty)

Reserved on: 07.01.2019

ORDER
PER: RAVINDER KAUR, MEMBER(J)

This application has been filed under
 Section 19 of the Administrative Tribunals Act,
 1985 claiming the following reliefs:

“8.01 The Hon'ble Tribunal may be pleased to call for the record of the case and after examining the same to hold and declare that the applicant cannot be posted to the post of Manager which is lower in status than the post held by the applicant at the time of transfer.

8.02 The Hon'ble Tribunal may be pleased to hold and declare that the impugned transfer order dated 22/02/2018 cannot be sustained in law and the same may be quashed and set-aside.

8.03 The Hon'ble Tribunal may be pleased to direct Respondent No. 2 to post the applicant against the vacant post of Deputy General Manager (MS) as Officer I/c. (MS) as the applicant is entitled to the similar treatment which has been given to similarly situated officers of the respondent-department.”

2. The applicant is a civilian employee of Canteen Stores Department (CSD) of Government of India, Ministry of Defence. He was appointed on the post of Manager Gr. - I (Group A Officer) w.e.f. 26.08.1997 after selection through UPSC. The application states that the hierarchy of Group A posts in the CSD is as under:

1. Manager Grade - I.

2. Assistant General Manager (AGM) /Manager
Selection Grade.

3. Deputy General Manager (Dy.GM) /Regional
Manager.

4. Joint General Manager - II.

3. The applicant was promoted to the post of AGM on officiating basis vide order dated 30.01.2009 (Annex A-2). This promotion was regularized vide order dated 08.05.2009 (Annex A-3) w.e.f. 01.05.2009. It is claimed by the

applicant that the Ministry of Defence vide letter dated 26.05.2016(Annex A-4) directed the Dy. Director General(DDG), Canteen Services to fill up vacancies in the grade of Dy.GM by promotion of officers in feeder cadre of AGM on ad-hoc basis but no steps have been taken in this regard till date.

4. Vide order dated 03.04.2017(Annex A-5), seniority list for the post of AGM/Manager Selection Grade was published wherein the name of applicant appears at Sr. No. 4.

5. It is stated that Revised Posting Policy for Group-A Officers dt. 19.04.2017 was issued by the General Manager, CSD. Para 4(x) of the said policy reads as follows:

“"x) The posting of AGMs will be ordered to the depots having authorization of AGM/SGM as shown below, subject to availability of vacancy:

Jalandhar	Chennai	Delhi
Ambala	BD Bari	Jaipur
Srinagar	Kolkata	Ramgarh
Khadki	Lucknow”	

6. As per the applicant, his substantive post is AGM/Selection Grade Manager whereas he is working on the post of Dy.GM being the senior most AGM. It is further claimed that out of 34 depots run by the CSD, the officers holding the posts of AGM can be posted in the 11 depots as mentioned in para 4(x) of the order/policy dated

19.04.2017.

7. The applicant has claimed that vide impugned order dated 22.02.2018, he has been posted to Vishakhapatnam depot to the post of Area Manager, which is lower in status than the post held by him as AGM/Dy.GM. Further that he has already been granted 2nd Financial Upgradation under MACP scheme w.e.f. 26.08.2017 vide order dated 04.01.2018 and his Grade Pay raised, from Rs. 6600 to Rs. 7600 in pay scale of 15600-39100 which is equivalent to the Grade Pay and Pay Scale of Dy.GM in the CSD. The applicant has alleged that in these circumstances, the impugned transfer order is unfair, unjust and unwarranted.

8. It is further stated that he has been transferred to the post of Manager, CSD depot at Vishakhapatnam due to closure of CSD Base Depot, Mumbai where he was posted as Officer I/c(Base) as Dy.GM(Base). It is claimed that when the posts of Dy.GM are vacant at Mumbai, he could have been posted there instead of being transferred to Vishakhapatnam to a lower post. He has cited the case of three officers namely Shri K. K. Srivastava, Shri Patanjali Sharma and

Ms. Shandhya Kujur who as per inter-se seniority of AGM/Managers (Selection Grade) are carrying out higher responsibilities of the post of Deputy Manager/Regional Manager designated I/c. He claims that his name comes after Ms. Sandhya Kujur and since the post of Deputy Joint Manager (MS) is vacant at Mumbai, he should be accommodated thereon. He has alleged that denial of his posting on the post of Dy.GM as Officer I/c is arbitrary, capricious and discriminatory as well as violative of Article 14 and 16 of the Constitution of India, in view of the fact that when similarly situated persons have been working as Officer I/c on the higher post of Dy.GM/Regional Manager.

9. The applicant submitted his representation dated 23.02.2018 against the impugned order dated 22.02.2018. However, he did not receive any reply from the respondents. Hence he filed the present OA challenging the propriety, legality and validity of the impugned order.

10. The respondents have filed detailed affidavit in reply wherein it is stated that the respondent department under the Ministry of

Defence is an All India Service. The applicant being Group A Officer is having all India transfer liability and thus, can be transferred anywhere in the country in the organizational and administrative interest. Reference has been made to transfer policy dated 19.04.2017 to the effect that the posting of Group 'A' officers is made keeping in view the Administrative interests of the organization and the right to relax any of the provisions of the policy on the basis of the exigencies of the service vests with the General Manager, CSD. It is submitted that the applicant was transferred from CSD, Mumbai to Visakhapatnam as a routine along with other officers.

11. It is further stated by the respondents that the applicant has been working in CSD, Mumbai since June 2016 and will be completing two years in June 2018. As per the transfer policy in vogue, an officer is liable to be transferred from one installation to another on completion of two years at one station. Regarding the representations of the applicant dated 23.02.2018 against the posting order dated 22.02.2018, it is stated that the same was

replied vide letter dated 23.03.2018 ie. Annex R-1 (during the pendency of the present proceedings.).

12. Regarding the contention of the applicant that there is no post of Area Manager in CSD and his transfer to Visakhapatnam is lower than his status, it is stated by the respondents that the substantive post of the applicant is of AGM, though he was holding the charge of Dy.GM as Officer I/c on stop gap arrangement due to shortage of regular incumbent to ensure uninterrupted service to the customers of esteemed armed forces. Further, it is submitted that as per the policy of the department, AGM having Grade Pay of Rs. 6600 and Manager Gr.-I having Grade Pay of Rs. 5400 (6th CPC) are posted at Area Depots of the respondent department and are designated as Area Manager and Manager respectively. Further, there are about 10 AGMs having the same Grade Pay and status as that of the applicant and many of them have the same seniority as of the applicant, posted in the area depots as Area Managers. It is further stated that the applicant was promoted as AGM w.e.f. 01.02.2009 and he has

also held the post of Area Manager at Mumbai, Jalandar and Lucknow Depots.

13. That the depot at Visakhapatnam at present is not treated as one of the larger depots. However, it is likely to be configured as a major depot as the department is in the process of acquiring defence land for constructing the depot at an approximate expenditure of Rs. 50-100 Cr. Since massive construction and acquisition of assets etc. will have to be incurred at Visakhapatnam in the window period of next three years, the competent authority decided to post a seasoned senior officer in the rank of AGM and consequently, the applicant has been transferred to the said place.

14. Further, at present three officers senior to the applicant on the post of AGM have been given the responsibility in the rank of Dy.GM and no officer junior to the applicant has been posted in the post normally occupied by DGM. It is admitted that until recently, the applicant was occupying the post of Dy.GM but on account of exigencies, the respondents decided to post him at Visakhapatnam. It is once again

reiterated that the applicant has not been promoted to the post of Dy.GM though on account of second upgradation under the MACP scheme, he is drawing salary in the rank of Dy.GM.

15. It is also submitted that on posting as Area Manager in a depot, the status, the Grade Pay or the promotional aspects of the applicant will not be affected adversely and he will also continue to hold the same seniority in his substantive post. It is submitted that in catena of judgments, the Hon'ble Apex Court has held that transfer is an incidence of service and courts should not interfere with the purely administrative matters except when absolutely necessary on account of violation of any fundamental or other legal right of the employee. The respondents have prayed that the OA being without merits is liable to be dismissed.

16. The applicant filed rejoinder whereby he has reiterated that the impugned transfer order of the applicant from Mumbai to Visakhapatnam has not been issued as a routine but the applicant is being transferred arbitrarily and discriminately on the post which is lower in

status than the one held by him substantively.

17. Learned counsel for the applicant has argued that presently the applicant is working on the post of Dy.GM and also drawing the salary for the said post whereas the post at Vishakhapatnam on which he has been presently transferred vide impugned order, is lower in status.

It is further argued that the respondents have violated the terms of the Revised Transfer Policy for Group 'A' officers dated 19.04.2017. As per this policy, he could only be transferred to the depots mentioned in para 4(x) thereof.

18. It is further argued that despite directions from the M/o Defence vide ID dated 26.05.2016 to the DDG, Canteen Services, to fill up the vacancies in the Grade of Dy.GM by promotion of eligible officers in feeder grade of AGM on ad-hoc basis, no steps have been taken so far. A post of Dy.GM is vacant in Mumbai itself and therefore, the respondents be directed to withdraw the impugned order and accommodate the applicant in Mumbai itself.

19. In support of his claim, the applicant relies upon the following judgments:

a) **Shri Gangadhar G. Khapekar vs Union of India**

& Ors in O.A. No. 1479/2013 by Central Administrative Tribunal, Calcutta Bench.

b) **Ms. Sandhya Kujur vs Union of India & Ors** in O.A. No. 1489/PB/2013 by Central Administrative Tribunal, Chandigarh Bench.

c) **Shri Ajay Kumar Nagar vs Union of India & Ors** in O.A. No. 291/277/2017 by Central Administrative Tribunal, Jaipur Bench.

20. On the other hand, learned counsel for the respondents has argued that on account of shortage of officers in the rank of Dy.GM, the responsibilities of the said post have been delegated to AGM/s to function as Officer in Charge(O/I), which otherwise does not confer any right for promotion or financial benefits. The applicant too has been delegated the powers of I/c(Base) which is equivalent to the post of Dy.GM but he has not been promoted to the said post as the substantive post of the applicant is of AGM.

21. It is further submitted that the applicant held the post as O/I(Base) as long as

the base depot establishment was in full operation but now with the decision to wind up the operation of the base depot at Mumbai, the requirement of Officer in Charge has become redundant. Also no officer junior to the applicant has been posted as Dy.GM. Therefore, he cannot be posted as Dy.GM as a matter of right. The revised transfer policy, Group 'A' officers is in the form of guidelines to be followed as far as possible. However, in case of administrative exigencies and for justifiable reasons, the authorities can deviate from those guidelines.

22. Learned counsel for the respondents has brought to our notice that the present transfer of the applicant to Vishakhapatnam is due to administrative requirement as at CSD Depot, Vishakhapatnam, some major infrastructural development, including taking over the Defence land is in progress, which needs to be supervised through effective monitoring by an experienced officer and it is in these circumstances, the applicant has been transferred to Vishakhapatnam vide impugned order.

23. It is observed that the applicant in his rejoinder has not denied the administrative exigencies pointed out by learned counsel for respondents. His concern that he will be posted on a lower post too is of no consequence as though presently he is working as Officer in Charge Dy.GM but his substantive post is of AGM. As explained by the respondents on his transfer as Area Manager, Vishakhapatnam depot, there would be no change in his status, the Grade Pay or salary and promotional aspects. He will also continue to hold the same seniority in his substantive post as AGM. Moreover, the post of Area Manager to which the applicant has been transferred, is just a change of designation and in no manner it is lower than the status of post of AGM, presently held by the applicant in substantive capacity. The respondents have brought to our notice that there are several officers with the rank of AGM who are posted at Area Depots and designated as Area Managers.

24. His other concern is that his prospects of promotion will be effected, however, we find no merit in this contention as this posting will

have no adverse effect on his promotional aspect. Though the applicant has alleged that the respondents have arbitrarily issued the transfer order, however, he has failed to point out any malafide on the part of the issuing authority.

25. The Hon'ble Apex Court in the following judgments has held that the Courts should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rules or on the ground of malafide.

(i) **In G.J. Fernandez Vs. State of Mysore (1967) 3 SCR 636**, it was held that administrative instructions issued under the executive power have no statutory force and they do not confer any right on anybody and nobody can claim any rights on the basis of such administrative instructions.

(ii) **In Shilpi Bose (Mrs.) and others Vs. State of Bihar and others, (1991) 2 Supp. 659**, the Apex Court observed that -

"In our opinion the Court should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the

ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

(iii) In the case of **Bank of India vs. Jagjit Singh Mehta** (1992) ILLJ 329 and **Union of India vs S. L. Abbas AIR (1993) SCC 444**, it has been held that guidelines on instructions do not confer any rights on the employee to challenge the transfer order on the ground of their violation. Merely because the guidelines are violated is not sufficient to quash the order of transfer as malafide. Order of transfer on administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory post.

(iv) In case of **State of M.P. and others Vs.**

S.S. Kourav and others, 1993(3) SCC 270, it was held that -

"The Courts or tribunals are not appellate forums to decide on transfer of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court."

(v) In case of **Ekta Shakti Foundation Vs.**

Govt. of NCT of Delhi, AIR 2006 SC 2609, it has been held that -

"While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. & K.* (AIR 1989 SC 1899), *Shri Sitaram Sugar Co. v. Union of India* (AIR 1990 SC 1277)). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the

position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere."

(vi) **In S. C. Saxena vs Union of India & Ors.**

(2006) 9 SCC 583, it has been held that a Govt. Servant cannot disobey the transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievance. It is his duty to first report for work where he is transferred and then make a representation about his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

26. Admittedly, the respondent department is under the M/o Defence having coverye all over the country. The applicant is Group 'A' Officer and has transfer liability to any of its establishments. He can be transferred to any of them in the interest of organization and administration. The perusal of impugned order shows that along with applicant, several other officers have also been transferred from CSD, Mumbai. In these circumstances, only the applicant has not been singled out due to some ulterior motives or he was the only officer

chosen to be transferred out of Mumbai.

27. The applicant has relied upon para 4(x) of the revised transfer policy Group 'A' officers dated 19.04.2017 that he could be transferred only to the depots mentioned therein. Para 4(x) has already been reproduced above in para 4. However, the objective of the transfer as per this policy is to enable the planned movement of Group 'A' officers from one station to another to meet the operational and/or administrative requirement of the department from time to time as well as to enable the officers acquire multi-dimensional knowledge or skills for self development, to shoulder the higher responsibility and to develop managerial skills through a structured job rotation and exposure to the diversified geographic and operational areas of the department.

28. Para 4(x) of these guidelines is to be read in harmony with the objectives of the transfer. We are of the view that service exigencies will always take precedence and all the guidelines issued from time to time are subject to administrative feasibility as has

happened in the present case. It is not mandatory to transfer the AGMs only to the depots mentioned under 4(x) in case the administrative requirement of the officer is somewhere else.

29. The respondents have categorically stated that the transfer of the applicant to Vishakhapatnam was due to administrative reasons. The Depot at Vishakhapatnam is situated on naval land and the department is in process of acquiring Defence land for constructing the depot at an expected expenditure of Rs. 50-100 Cr. It is categorically stated by the respondents that this depot is likely to be configured as major depot. Since massive construction and acquisition of assets, etc. are required at the said place during the period of next three years, the competent authority decided to post a seasoned senior officer in the rank of AGM and the applicant has been chosen for the same. Being posting at the said place, the applicant in no manner is likely to be affected adversely as no junior to him has been working on the post of Dy.GM so as to say that he would be posted at a lower post than his

juniors.

30. Merely for the reason that the applicant was working on the post of Dy.GM on a stop gap arrangement, in no manner his transfer as Area Manager to Vishakhapatnam can be treated as downgrading him in his seniority in the rank of AGM or his salary and pay scale in any manner. The scope of promotion of the applicant is also not likely to be effected as he will continue to hold the same seniority in his substantive post.

31. It appears from the record that the transfer of the applicant to Vishakhapatnam is only with a view to meet the organizational requirements. We cannot ignore the fact that transfer is not only an incidence but an essential condition of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. More particularly, when such transfer is necessary in public interest and efficiency of the Public Administration.

32. During the pendency of the present OA,

the representation dated 22.02.2018 moved by the applicant against the impugned order was disposed of vide order dated 23.03.2018. However, it is observed that the applicant did not challenge this order in the present OA by way of amendment. This order has been brought to our notice by the respondents along with their reply as Annex R-1. Para 2 of the said letter is relevant and is reproduced as follows:

"2. You are holding the substantive post of AGM. As per existing policy, AGMs are either posting in HO or command designated Depots. Moreover, keeping in view the upcoming construction work at Vishakhapatnam, a senior and experienced officer is required to be posted to progress the case in a time bound manner."

The perusal of the above order clearly shows that keeping in view the construction work at Vishakhapatnam, a senior and experienced officer is required to be posted to ensure the progress of the project in a time bound manner and vide this order, the attention of the applicant was also invited to para 7b of the Transfer Policy for Group 'A' officers circulated vide letter dated 19.04.2017. It is strange that the applicant has not challenged this order in the present proceedings.

33. In the facts and circumstances of the

case as above, it is clear that there are no valid grounds provided by the applicant to justify intervention in his transfer order. The OA is therefore, found to be devoid of merits and is accordingly dismissed. MA No.257/2018 stands closed. There shall be no order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

gm.

JD
16/8/19