

(Reserved on 10.10.2019)

*CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD*

This the 23rd day of October, 2019

Present:

HON'BLE MS. AJANTA DAYALAN, MEMBER-A.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J

**ORDER ON INTERIM RELIEF
IN
ORIGINAL APPLICATION NO. 330/01019/2019**

Ajay Saxena

.....Applicant.

V E R S U S

Union of India and others. Respondents

Present for the Applicant : Shri Avnish Tripathi

Present for the Respondents: Shri Vinod Mishra

ORDER ON INTERIM RELIEF

Delivered by Hon'ble Ms. Ajanta Dayalan, AM

Heard Shri Avnish Tripathi, counsel for the applicant and Shri Vinod Mishra, counsel for the respondents on prayer for interim relief.

2. The present original application has been filed by the applicant-Ajay Saxena seeking quashing of order dated 24.05.2019 (Annexure A-1) passed by the respondents transferring him from Agra to Karim Nagar. He has also sought quashing of order dated 14.08.2019 (Annexure A-2) rejecting his representation. Further, the applicant has sought direction to the respondents to allow him to work on the post from which he has been transferred and to make

payment of his salary. By way of interim relief, the applicant has sought stay of the impugned transfer order.

3. The matter was earlier agitated by the applicant before this Tribunal in O.A. No. 689/2019 which was disposed of vide order dated 08.07.2019 (Annexure A-12) directing the respondents to pass a reasoned and speaking order on the representation dated 03.06.2019 of the applicant within a period of 6 weeks. In compliance of this order, the impugned order dated 14.08.2019 has been passed by the respondents.

4. The order dated 14.08.2019 is now being challenged by the applicant on the ground that it is non-speaking and not in compliance with the Tribunal's order. Counsel for the applicant specifically pointed out that the issues raised by this Tribunal in the concluding paragraphs regarding impending superannuation of the applicant as well as the fact that the place where the applicant has been transferred is over 1500 kilometres away from the applicant's home town and is non-Hindi speaking area, have not been touched at all in the impugned order.

5. Counsel for the applicant further stated that the impugned order is punitive in nature as the applicant being President of All India Association of Statistical Officers had to raise several issues with the administration and these resulted in issue of a number of warnings to him earlier also. Learned counsel for the applicant argued that the transfer cannot be resorted to as a shortcut for punitive action as has been held by Principal Bench of this Tribunal in its order dated 29.03.1996 in OA no. 889/95. It is also stated that the

transfer cannot be issued on the basis of complaint as has been held by Lucknow Bench of this Tribunal in its order dated 16.05.1996 in OA No. 245/95.

6. Counsel for the applicant also argued that despite DOP&T order dated 28.10.2015 directing the respondents to frame transfer policy for Subordinate Statistical Service Officers , no policy has been framed by the respondents.

7. Learned counsel for the applicant stated that the applicant has been transferred despite the fact that the committee which was set up to inquire into the incidence leading to spoiling of the atmosphere in the office had in fact found the superior officer Shri Rakesh Kumar also responsible. Learned counsel further stated that as Shri Rakesh Kumar has since already been transferred, there is no need for transfer of the applicant and the transfer order needs to be stayed now in the interest of justice. He also pleaded that the transfer order per se does not state that the order is in public interest.

8. Learned counsel for the respondents pleaded for time to seek instructions and to file counter affidavit in regard to submissions made by the applicant and his counsel.

9. We observe that the main grievance of the applicant is regarding his transfer made vide order dated 24.05.2019 transferring the applicant from Agra to Karim Nagar. The arguments heard were mainly with regard to interim prayer. In this regard, our prima facie views are as follows: -

A. No doubt, the new place of transfer is quite far away and to a non-Hindi speaking area. Accordingly, in our earlier order dated 08.07.2019 passed in OA No. 689/2019 (Annexure A-12) we had directed the respondents to decide the representation dated 03.06.2019 of the applicant in a time bound manner by passing a reasoned and speaking order. We had at that time also observed that 'We would appreciate if the concerned authority keeps in mind the impending superannuation of the applicant as well as the fact that the place where the applicant has been transferred is over 1500 kms away from applicant's home town and is a non-Hindi speaking area.'

B. We note that the respondents in compliance of this order have passed speaking order on 14.08.2019 vide which they have rejected the representation of the applicant. Tribunal's order dated 08.07.2019 has been quoted extensively in the order of the respondents dated 14.08.2019. We do note that the respondents have not specifically touched on the two issues observed by us. However, we also note that there was no specific direction in this regard by us to the respondents. We further note that the order of the respondents cannot be said to be a non-speaking order. It gives grounds for rejection of the representation of the applicant. Inter alia, the order states that the transfer is an incidence of service and the applicant has no right to insist on posting to a particular place. It also states that Shri Ajay Saxena has been posted for 27 long years at Agra in his total career span of around 35 years. Further, he has continuously been posted at RO, Agra for last 09 years and these factors were weighed and

considered by the competent authority. Further, the order states that being a member of Subordinate Statistical Service (SSS), the applicant has all India transfer liability and he is bound to obey the legally passed orders of the Government. In view of all above, his representation has been rejected.

C. Considering the grounds in the order - specially the fact that Shri Ajay Saxena has already been posted for 27 long years at Agra out of total career span of around 35 years and has been continuously posted at RO, Agra for last 09 years as well as the fact that as a member of Subordinate Statistical Service he has all India liability - we prima facie find the order to be speaking, logical and reasoned. We, therefore, do not find any need for interference in this order at this stage.

D. As regards the other grounds raised by the applicant's side, we note that the transfer policy for Subordinate Statistical Service Officers has already been considered in compliance of the DOPT order dated 28.10.2015. In fact, this is annexed by the applicant himself at Annexure A-3. The title of this OM itself states 'Framing of Transfer Policy of Subordinate Statistical Service Cadre (SSS)-regarding'. We, therefore, do not completely accept the applicant's version that no transfer policy has been framed by the respondents' department despite instructions of DOPT to undertake this exercise. It is true that regarding two issues - namely maximum tenure and formal transfer policy, a committee was to deliberate. However, the order dated 30.11.2015 is quite detailed and deals with framing of transfer policy issue. It discusses the unique structure and specific character of

Subordinate Statistical Service cadre and states that fixation of maximum tenure is not necessary or appropriate for this service.

E. We also prima facie do not accept the contention of the applicant's counsel that merely because Shri Rakesh Kumar, the superior officer, has been transferred, the applicant need not be transferred now from his present place of posting. These are administrative decisions within the ambit of the executive authorities and we do not wish at this stage to curtail their authority in this regard - specially when they seem to be dealing with the matter in an equitable manner and have transferred both the applicant and Shri Rakesh Kumar outside their place of posting.

F. We are also of the prima facie view that by merely being an office bearer of a recognized association, the officer does not get a right to be indefinitely retained at a particular station of posting. In the instant case, we have already observed earlier that the applicant had already been posted at Agra for 27 long years out of total 35 years of his career span and has been continuously posted at RO, Agra for the last 09 years. These facts were not so clearly brought before us at the time when the order dated 08.07.2019 was passed in earlier OA No. 689/2019. In the face of these facts, our observation regarding impending superannuation would not hold ground specifically as at the time of issue of transfer order, the applicant had more than two years left for retirement. Even today, he has more than two years left for his retirement. Having benefited already by posting at RO, Agra for over 09 years, the applicant

does not now have claim for seeking further grace and sympathy from the department to continue him at Agra till his superannuation.

G. We also note that vide transfer order dated 24.05.2019, the respondents' department has transferred not only the applicant but 07 other officers as well, who are all Senior Statistical Officers. Many of them have been transferred out of Agra and to far away places like Vellore, Puducherry, Jalgaon, Jamnagar and Nadiad. Hence, we do not prima facie accept the applicant's plea that the transfer is punitive in nature or that it is discriminatory. Also, mere fact that the transfer order does not specifically state that the transfer is in public interest cannot be made to infer that it is not in public interest. In fact, the order clearly states that the officers have been transferred 'on administrative requirements'. As such it would normally imply that the order is in public interest. Besides, the order states that the officers stand relieved of their duties w.e.f. 24.05.2019 and as such no case is made out for interim relief at this stage.

10. In view of all above, we prima facie find no ground for staying the impugned transfer order.

11. Respondents may file counter within four weeks. The applicant may file rejoinder, if any, within two weeks thereafter.

12. List on 09.12.2019.

(Rakesh Sagar Jain)
Member – J
Anand...

(Ajanta Dayalan)
Member – A