

Reserved
(On 10.10.2019 on interim relief)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **01st** day of **November** 2019

Original Application No. 330/01021 of 2019

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Pradyumn Pathak

...Applicant

By Adv: Shri Avnish Tripathi

V E R S U S

Union of India and others

... Respondents

By Adv: Shri L.P. Tiwari

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

Heard Shri Avnish Tripathi, advocate for the applicant and Shri L.P. Tiwari, advocate for the respondents on interim relief.

2. This OA has been filed by the applicant - Pradyumn Pathak – seeking quashing of transfer order dated 24.05.2019 transferring the applicant from Agra to Jamnagar. The applicant also seeks quashing of order dated 14.08.2019 (Annexure A-2) rejecting his representation against transfer order. He has also sought direction to the respondents to allow him to work on the post from which he has been transferred and to make payment of salary to him. Vide interim relief, the applicant has sought for staying the operation of the impugned order dated 24.05.2019.

3. In the OA the applicant has stated that he was initially appointed on the post of Junior Statistical Officer (JSO) at Agra in December 2013 and he has been working there since then. He is a low paid employee

'getting only 45 thousands salary in hand'. He has a widowed mother and two young sisters and would not be able to maintain two establishments. He has pleaded that the respondents have not framed any transfer policy and the impugned transfer order dated 24.05.2019 is arbitrary and malafide. Persons with longer stay have not been transferred while persons with lesser stay at a particular station have been transferred out. Further, despite DOP&T instructions vide letters dated 02.07.2015 and 28.10.2015, directing the respondents to frame transfer policy for Subordinate Statistical Service Cadre, the respondents have not framed any such policy. Their OM dated 30.11.2015 in this connection is annexed at Annexure A-4, but formal transfer policy is yet to be framed.

4. During arguments, the learned counsel for the applicant also stated that vide impugned transfer order, the applicant has been transferred to Gujrat, even though his duties would involve data collection, supervision and liaisoning requiring him to be well conversant with the local language. However, he is not conversant with Gujrati language at all. It is also alleged that even though transfer order is stated to be issued on administrative requirements, but in-fact there is no administrative requirement. Transfer order has been issued on the basis of complaint made by Mr. Rakesh Kumar, the then Director, National Sample Survey Office, Agra. It is also alleged that the applicant was not given any opportunity with regard to the said complaint or prior to recommendation about his being transferred out. The applicant has alleged that complaint made by Mr. Rakesh Kumar is frivolous.

5. The applicant has also stated that he made a representation before respondents for cancelling his transfer order, but this was not considered. Thereafter, he approached this Tribunal in OA No. 658 of

2019 challenging the transfer order. This Tribunal vide order dated 02.07.2019 (Annexure A-9) directed the applicant to join at his new place of posting and also directed the respondents to dispose of the representation of the applicant dated 28.05.2019 within 8 weeks. In pursuance of this order of this Tribunal, the respondent department has issued impugned order dated 14.08.2019 (Annexure A-2). The applicant has stated that he was on medical leave and his leave applications alongwith medical certificates are placed at Annexure A-11.

6. The applicant has also alleged that he has been issued memo dated 21.06.2019 (Annexure A-12) seeking his explanation for not joining at his new place of posting, but this memo has not been served upon him. However, the department has presumed that it has been served and has passed suspension order dated 05.07.2019 (Annexure A-13). The applicant has further alleged that he visited the office on 12.07.2019 and only then he became aware of the suspension order. He has not been granted transfer allowance to enable him to join at his new place of posting and has also not been paid subsistence allowance during the period of suspension. The applicant has, therefore, concluded that the order passed by the respondents is arbitrary and malafide and needs to be quashed.

7. During arguments, learned counsel for the applicant relied upon number of judgments of this Tribunals as well Courts orders wherein it was held that transfer cannot be restored to as a softer option to avoid disciplinary action for misconduct if it is so warranted under the circumstances. In another case settled by the Principal Bench of this Tribunal, it is held that complaint cannot be the basis for transfer. The learned counsel for the applicant has, *inter alia*, cited following judgments in his support:-

- i. *Shri Chattar Singh vs. Union of India & Ors – 1996 (2) ATJ 222*
- ii. *Bhagwati Prasad Verma vs. Union of India & Ors – 2001 (1) ATJ133*
- iii. *Shri Hem Chand and Anr. vs. Union of India and Ors – 1996 (2) ATJ 96*

In view of all above, learned counsel for the applicant argued that the transfer order is wholly arbitrary and needs to be quashed.

8. Learned counsel for the respondents strongly opposed the submissions of the applicant's counsel. He stated that the transfer order dated 24.05.2019 is a valid order and has been passed by the competent authority keeping in view the interest of the organization. He also stated that as would be seen from the order itself, there are 7 persons other than the applicant, most of whom have been transferred out from Agra. As such the applicant has in no manner been singled out or discriminated against. Many of these other officers who have been transferred out from Agra have been posted to far away places like Karim Nagar, Vellore, Puducherry, Jalgaon and Nadiad. Hence, it is not only the applicant who has been posted to a far away place.

9. The counsel for the respondents stated that there is no malafide in the transfer. He stated that in order to maintain healthy working environment and office decorum and to ensure timely completion of surveyor work, transfers of certain persons was suggested by the In-charge i.e. Mr. Rakesh Kumar, Director, National Sample Survey Office, Agra (Annexure A-5). As the atmosphere of the office at Agra was getting spoiled, the Headquarters at New Delhi sent a senior officer from Headquarter to investigate the matter. This officer went into various allegations and counter allegations and in his report (Annexure A-6) recommended transfer of the applicant alongwith several other officers out of Agra.

10. Learned counsel for the respondents further stated that the applicant was suspended as, despite order of the department and even order of this Tribunal dated 02.07.2019 (Annexure A-9) directing the applicant to join at his new place of posting, the applicant failed to do so. Instead he chose to absent himself and applied for medical leave in piecemeal. But leave is yet to be sanctioned to the applicant.

11. Learned counsel for the respondents further stated that as per the transfer order already issued, the applicant already stands relieved on 24.05.2019 from his old place of posting. But he is yet to join his new place of posting. As despite order of the department, he failed to join at his new place of posting; order suspending him was issued on 05.07.2019 (Annexure A-13).

12. Learned counsel for the respondents, therefore, concluded that no relief was required to be given to the applicant as he failed to comply with the legally passed order of the Government.

13. We find from the order dated 24.05.2019 (Annexure A-1) that the same is not exclusively for the applicant alone. Besides the applicant, 7 other SSOs and JSOs have been transferred. Most of them have been transferred out of Agra and posted to far away places – namely Karim Nagar, Vellore, Puducherry, Jalgaon and Nadiad. The applicant has been transferred to Jamnagar.

14. Further, it is clear from the pleadings placed by the applicant himself in the OA that the mass transfers were required due to spoiling of the atmosphere at NSSO, Agra. After detailed inquiry in the matter by the officer sent by New Delhi Headquarter to the field office at Agra and

also after considering the recommendations of the in-charge Mr. Rakesh Kumar, the decision to transfer the SSOs and JSOs has been taken by the competent authority. We also understand that Mr. Rakesh Kumar has also been transferred from Agra.

15. It is also relevant to note that report of a supervisory officer – as is the case here - cannot be treated or equated to a complaint. In the instant case, it is the report of the incharge of the office where the applicant was working that is being termed as a ‘complaint’. It is also not correct to say that the applicant was not given any opportunity to present his side before the officer sent by the Headquarters at New Delhi to inquire into the matter. This officer’s report at Annexure A-6 includes the name of the applicant also as one of the persons with whom interaction was made. The officer also recommended transfer of the applicant, alongwith many others, out of the field office at Agra.

16. We further note that as per impugned order itself, officers already stand relieved to join at their new place of posting. Besides, we also observe from the order of this Tribunal dated 02.07.2019 (Annexure A-9) that specific direction was issued by this Tribunal to the applicant to join at his new place of posting. Despite this, the applicant has failed to join at this new place of posting. Initially, he applied for medical leave, but later his ground for not joining was that transfer advance was not given to him for travel to Jamnagar. We do not find this to be a convincing ground for not obeying the order and for not joining at his new place of posting. We also note that even though the applicant has applied for leave, no leave seems to have been granted to him as yet. Moreover, the applicant is now, by his own admission, not unfit for travel for joining at his new place of posting. In our opinion, the plea of the applicant regarding non-payment of transfer advance seems to be more of an

excuse than a justification for his not joining at his new place of posting. We also note that the transfer advance was applied by him only on 12.07.2019 (Annexure A-10) and not earlier while the transfer order was issued in May 2019. Thus, we do not find this ground as a convincing ground for not obeying the order.

17. The matter regarding the suspension and non-receipt of show cause notice by the applicant prior to the issue of suspension order are not directly related to the present case. The applicant is trying to rely on these to prove malafide. However, we note that the suspension order has been issued only on 05.07.2019 – i.e. more than one month after the issue of transfer order and when the applicant failed to report at his new place of posting even after this long period. In fact, this order has been issued after this Tribunal's order dated 02.07.2019 directing the applicant to join at his new place of posting. Hence, we do not *prima facie* find any ground to substantiate malafide.

18. We also do not find force in the argument of the learned counsel for the applicant that the applicant has been transferred while he is under suspension and that such transfer is not justified and is not valid. In fact, the applicant has been transferred in May 2019 and he has been suspended only in July 2019 – i.e. more than one month after the issue of transfer order. Also the ground for suspension is that the applicant did not comply with the order of transfer. As such, the applicant cannot now take the cover of his suspension order to defy the transfer order.

19. We also observe that the applicant is the member of Subordinate Statistical Service and is a Group 'B' officer. As per the terms of appointment dated 29.11.2013 (Annexure A-3), he is liable to be posted anywhere in India. As such, the transfer made vide the impugned order

is not in violation of his terms of appointment. In fact, by his own admission, the applicant has been at Agra right from his initial appointment in 2013 till the issue of transfer order dated 24.05.2019 – i.e. for over 5 years. Besides, being a Group 'B' employee, he cannot claim or be categorized as a low paid employee.

20. We also do not feel that in view of special facts and circumstances of the case as discussed above, the judgments relied upon by the applicant's counsel are applicable in the present case.

21. In view of all above, and especially in view of special facts and circumstances of this case, we do not find merit in the prayer for granted of interim relief and the same is rejected.

22. Respondents may file counter affidavit within 8 weeks. Applicant may file rejoinder affidavit, if any, within 2 weeks thereafter.

23. List this case on 16.01.2020.

(Rakesh Sagar Jain)
Member – J

/pc/

(Ajanta Dayalan)
Member – A