

**Central Administrative Tribunal
Madras Bench**

OA/310/01221/2019

Dated the 15th day of October Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Manish Horo,
Qtr No.P-39/4, Type-III,
DGQA Complex,
Chennai 600 061. .. Applicant
By Advocate **M/s.Paul & Paul**

Vs.

1. Union of India, rep. by its
Secretary,
M/o Defence,
Department of Defence Production,
South Block, New Delhi 110 001.
2. The Director General Quality Assurance,
Directorate General of Quality Assurance (Stores),
Department of Defence Production,
M/o Defence,
Room No.308-A, D-1 Wing,
Sena Bhavan, New Delhi 110 011.
3. The Additional Director General of Quality Assurance (Stores),
Directorate of Quality Assurance (Stores),
Directorate General of Quality Assurance (DGQA),
Department of Defence Production,
M/o Defence,
'G' Block, Nirman Bhavan PO,
New Delhi 110 011.

4. The Senior Quality Assurance Officer,
Senior Quality Assurance Establishment (General Store),
DGQA Complex,
Nanganallut PO,
Chennai 600 061. .. Respondents

By Adovacte **Mr.SU.Srinivasan**,

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“To set aside the order of transfer passed by the 3rd respondent in B/89282/RTS-2019/DGQA/Store-1/S dated 30.5.2019 in so far as transferring the applicant from SQAE (GS) Chennai to SQAE (GS) Kanpur, and the movement order Number-235/EST dated 12.7.2019 issued by the 4th respondent, and the speaking order in No.B/98810/Court Cases/DGQA/Store-1 dated 27.8.2019 passed by the 2nd respondent.

Direct the 4th respondent to take the applicant in the strength of the SQAE (GS) Chennai and permit him to complete the station tenure as per the Posting and Transfer policy dated 24.11.2016.”

2. The brief facts leading to filing of this OA is as follows:-

The applicant while working as JTO (S) was transferred from SQAE(GS), Chennai to CQA(PP), Kanpur on rotational basis. Earlier he filed OA 1006/2019 before this Tribunal seeking to quash the order of rotational transfer passed by the 3rd respondent dated 30.5.2019, the communication of the 4th respondent dated 10.7.2019 and the movement order dated 17.7.19 of the 4th respondent and to consequently direct the respondents to take the applicant in the strength of the SQAE(GS), Chennai and permit him to complete the station tenure as per the Posting and Transfer Policy dated 24.11.2016. This Tribunal, by order dated 30.7.2019, without going into the merits of the case, directed the 2nd respondent to consider the representation of the applicant dated 10.7.2019 and pass a reasoned and speaking order regarding the

circumstances under which the applicant was transferred and whether any norms are violated with respect to post tenure, within a period of 30 days from the date of receipt of a copy of the order. Till such time no coercive action be taken against the applicant. In compliance of the said order of this Tribunal, the respondents passed a speaking order dated 27.8.2019 rejecting the claim of the applicant. Aggrieved by the said action of the respondents, he has filed the present OA seeking the aforesaid relief.

3. The grounds taken by the applicant for deferment of posting is that (1) he has not completed the station tenure of 7 years as per the Posting and Transfer Policy dated 24.11.2016 and its further amendment and therefore, his transfer is contrary to the said transfer policy. (2) The applicant has not completed the 5 years tenure either as administrative officer or in the Lab in SQAE(GS), Chennai and therefore, he cannot not be transferred under the Rotation Transfer at this stage. (3) The transfer is made on rotational basis and there is no administrative exigency. Further, due to his family circumstances he could not move out to the transferred place and hence he sought only the deferment of transfer till April 2020 in order to get transfer for his wife.

4. The main contention of the applicant is that after joining at Chennai his wife who is employed in the State Bank had obtained a transfer and she is also residing at Chennai in the official quarters. His minor child is also admitted in the school this year and the sudden transfer will cause much financial loss and inconvenience and he seeks to grant a permission to continue in the same station till he completes the

minimum tenure fixed at the station as per the RTP of the respondents.

5. The respondents entered appearance and filed a detailed reply denying the averments in the application. According to the respondents, the applicant was appointed as Drug Inspector in the Ministry of Health & Family Welfare and he was relieved from the respondents' organization on request and he joined in the Ministry of Health & Family Welfare. It was made clear in the order that the applicant will be having lien in the parent department for two years. Before completing the two years the applicant got relieved from his office as per Annexure A6 order dated 26.5.2014. As per the said order, the applicant was relieved from the Ministry of Health & Family Welfare w.e.f. 30.5.14 with a direction to report before the parent department. But when the applicant approached the SQAE(GS), Kolkata for joining in the said department they refused to allow him to join at the said station as there was no communication from the Headquarters regarding his repatriation and joining at Kolkata. Immediately, the applicant filed a representation as Annexure A7 before the ADGQA(S), New Delhi seeking consideration of his case for posting at SQAE(GS), Kolkata. The ADGQA(S) had considered the matter and issued order dated 25.7.2014 and permitted to rejoin the parent department. But the place of posting was changed to SQAE(GS), Chennai. It was also clarified that the M/o Health & Family Welfare had unilaterally relieved the applicant on 30.5.14 without taking prior approval of the DGQA for repatriation to parent department and this has caused the situation. But notwithstanding the error, DGQA considered his case and approved his repatriation to DGQA. It was also clarified in the said letter dated 25.7.14 (Annexure

A8) that he has to report before SQAE, Chennai on or before 11.8.14. The intervening period from the date of unilateral release by M/o H&FW till the date of rejoining SQAE(GS), Chennai will be adjusted/regulated by sanction of leave (e.g. EL/HPL/EOL) and joining time as admissible under rules. Accordingly, he joined SQAE at Chennai. According to the respondents, the applicant had completed 5 years and 1 month on 01.7.19 in the post at Chennai and he is liable to be transferred as per transfer norms. According to the respondents, the applicant was considered as joined at Chennai on 31.5.14 as HPL and his leave was granted from Chennai. So, according to the respondents, the applicant has completed 5 years 1 month in the post and he is liable to be transferred. His Paramount Card also shows that he joined duty on 31.5.14 and he has completed 5 years and 1 month in the post where he has joined and he is liable to be transferred. The respondents had clarified this in the impugned order dated 27.8.19 which was passed as per direction of the CAT in OA 1006/19. So, there is no merit in the contention put forward by the applicant in this case.

6. On going through the pleadings, it can be seen that admittedly the transfer was made as per Rotational Transfer Policy(RTP) of the respondents' department. It is also admitted that the transfer was effected on the basis of RTP implemented by the respondents in the department. So, the only point to be considered in this case is whether the applicant was transferred as per the transfer norms issued by the respondents and whether it is arbitrary and violative of the policy of the respondents themselves.

7. We have anxiously heard the counsel for the applicant as well as the counsel

for the respondents in this case. The first point to be considered is whether the transfer of the applicant was as per transfer norms issued by the respondents' department in this case. The transfer norms issued by the respondents is produced before this Tribunal as Annexure A11. The said transfer policy is dated 24.11.16 which is applicable to all Group B (Gazetted and Non-Gazetted) officials of DGQA. As per the said transfer policy "the tenure of all Group B officials will be 7 years inclusive of the period of service rendered in lower grade, if any in the same station. In case of non-availability of post in the same grade, such official will be posted out of the station as per the RTP". Subsequently, the respondents have issued an amendment to the said transfer policy as Annexure A12 dated 20.2.2017. As per the said amendment, the tenure of all Group B officials in a post was changed to 5 years. Rest of the paras in Annexure A11 will continue. Another amendment was the cut off date for calculation of length of tenure at a station as 1st July of the year in which rotational transfer is carried out.

8. So, on a reading of Annexure A11 transfer policy, it can be seen that "the tenure for an official in a post will be 5 years and tenure of an official at a particular station will be 7 years inclusive of the period of service rendered in lower grade, if any, in the same station. As regards the persons who were posted to sensitive post, the said period will be limited to 3 years. After the completion of the tenure of sensitive posting the official will be allowed to complete the normal tenure prescribed for the station, if another post in the same grade is available at that station. In case of non-availability of post in the same grade, such official will be posted out of the station as

per the RTP". So, it can be seen that 2 conditions are there in the policy. One is for tenure in the post is 5 years and the other is tenure at the station is 7 years. Now we have to verify whether the applicant has completed the tenure of 5 years in the post and the tenure of 7 years at the station as contemplated under the transfer policy. According to the applicant, he had gone to the M/o H&FW as Drug Inspector after applying through proper channel and the respondents had relieved him for joining in the said office as per Annexure A5 order dated 04.10.2013. It is clearly mentioned in the said order that the applicant is entitled for a lien for a period of 2 years in the post of Scientific Assistant w.e.f. 05.10.13 and in case of repatriation he will be placed in JTO(S) with reference to his seniority in the cadre. Accordingly, the applicant was relieved and he joined the M/o H&FW. But before completing the 2 years, the applicant decided to return to his parent department and sought for repatriation. The Deputy Director Adm (D) had relieved him from the said post of Drug Inspector w.e.f. 30.5.14 by order dated 26.5.14 (Annexure A6) and he was directed to report before the parent department. Accordingly, the applicant reported in SQAE, Kolkata for joining but they refused to permit him to join duty as SQAE, Kolkata has not received any repatriation order and concerned order from DGQA. Immediately he made a representation to the ADGQA (S), M/o Defence on 11.6.2014 stating the difficulty experienced by him. The DGQA had considered the matter and permitted him to join duty at SQAE, Chennai and as per Daily Order Part II (Annexure A9), he was taken on the strength by SQAE and he was put in a post in the Lab. He was also granted Half Pay Leave w.e.f. 31.5.14 to 31.7.14 (62 days) and availed joining time

from 01.8.14 to 10.8.14 (10 days) and the travel will be on public expenses. Thereafter, on 22.10.14, he was internally transferred to the post of Administrative Officer (AO) and he joined the said post. On 12.4.18 he was again transferred from the post of AO to Lab. In January 2019 the M/o Defence, Department of Defence Production (DGQA) sought for the list of Group “B” Civilian Officers who are due for rotation transfer and SQAE had forwarded Annexure A14 list. As per the said list of Group “B” Officers, the applicant was shown at Sl.No.38 and the total current tenure in the station including service rendered in lower grade/rank was shown as 5 years. According to the applicant, he was not expecting transfer at this juncture as he has not completed the tenure of 5 years in the post at Chennai and he has not completed the station tenure of 7 years. He was not holding any sensitive post at Chennai. So, he thought that he will not be transferred. But on 30.5.2019 the competent authority has issued Annexure A15 transfer order including him also and he was transferred to CQA(PP), Kanpur. Immediately the applicant had filed representation seeking deferment of his transfer as he has not completed the tenure of 5 years in his post and tenure at the station also. He had only completed 4 years and 10 months on 01.7.19 which is the cut off date for rotational transfer. The SQAE intimated that the authority had rejected the representation and he was asked to intimate the date of joining the office at the transferred place. Immediately he approached the CAT with OA 1006/19 since his representation was rejected and his subsequent representation dated 10.7.19 was not considered. The CAT, considering the facts and circumstances, directed the 2nd respondent to consider the detailed

representation submitted by the applicant and pass a speaking order considering the relevant transfer policy and other rules within a period of 30 days. But R2 had again rejected the said representation holding that he had completed 5 years and 1 month at Chennai in his post and he is liable for transfer. According to R2, he is treated as posted at Chennai w.e.f. 31.5.14 as his leave and joining time etc. was granted from Chennai.

9. Counsel for the respondents mainly rely on the contention that the applicant has completed 5 years and 1 month as on 01.7.19 at Chennai and he is liable to be transferred. It was also submitted by Mr.SU.Srinivasan, counsel appearing for the respondents that Hon'ble Supreme Court in ***State of UP & Others v. Gobardhan Lal [2004 (11) SCC 402]*** held that *even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant consent to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. It was further held that "this court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any*

statutory provision”. According to them, there is no malafide and the transfer was done for the benefit of the establishment and public interest. So, the contention of the applicant cannot be maintained. It was also submitted that it is a settled law that Courts and Tribunals should not interfere over the administrative decision of transferring a government employee as transfer is an incident of service and no government employee can claim any vested right to be posted in a particular place according to his choice.

10. But, on the other hand, counsel for the applicant submitted that the decision cited by the respondents is not at all applicable in this case as the transfer was not made in public interest. The respondents had not transferred the applicant under public interest. He was transferred as part of rotational transfer policy after completing the tenure of post or station as per transfer policy issued by the respondents. So, the respondents are bound by the transfer policy declared by them. Any deviation of transfer policy will have to be considered as arbitrary in nature and it has to be interfered with.

11. We have carefully gone through the various annexures produced in this case. On a perusal of the transfer policy and the impugned transfer order dated 30.5.19 and the rejection order passed by R2, it can be seen that the entire exercise was done and the applicant was transferred holding that the applicant has completed 5 years tenure in the post and he is liable to be transferred. If we go through Annexure A14 list of

persons who are to be transferred in the RTP, it can be seen that the applicant was shown at Sl.No.38 and the period of 5 years is shown against total **current tenure in the station** inclusive of service rendered in lower rank. So, what is shown in Annexure A12 list of officers is the period the applicant has completed at the Chennai station. As per RTP, a person can be transferred from one post to another on completion of 5 years. An officer is also entitled to continue in a station till completion of 7 years if he is not holding any sensitive post. As per RTP, the applicant has to either complete 5 years tenure in a post or 7 years tenure at a station. Column II in Annexure A14 **is the period spent at the station and not in the post.** The period shown at the station is 5 years. When the applicant joined at Chennai he was at first posted to the Lab and he continued there. Subsequently he was transferred as Administrative Officer in another post. In the year 2018 he was again transferred to Lab. So, when considering the above posting and the period spent by him, it can be seen that he has not completed 5 years in any of the above post in which he was posted. Even without considering the same, the applicant has joined the SQAE establishment only on 11.8.14. So, if the total period is taken as the period in the post, he had completed only 4 years and 10 months and he is not due for a transfer as per RTP. Here SQAE has made a strange contention that the applicant was relieved from the HFW Department on 30.5.14 and he had to join in the respondents establishment immediately on 31.5.14. But due to the discrepancies in the order he

could not join SQAE, Kolkata as the HFW Department has committed an error in relieving the officer without consultation with the respondents department. SQAE, Kolkata rejected his request for joining at the station and he had to approach DGAQ for permitting him to join the DGQA after considering all the relevant aspects, posted him at SQAE Chennai and directed the applicant to join there on or before 11.8.14. It was also ordered that the applicant had to join SQAE establishment on or before 11.8.14. The period of absence from duty in between 31.5.14 to 11.8.14 was regularised by granting leave. Now the contention of the respondents is that the applicant has to be treated as joined duty at Chennai w.e.f. 31.5.14 onwards and hence he has completed 5 years and 1 month on 11.7.19. On a perusal of the speaking order dated 27.8.19, we cannot find any reference or reference to any rule or OM or circular which permits such a consideration. Even the order to join at Chennai was given only on 25.7.14. Further the delay occurred was due to the mistakes committed by the Health & Family Welfare Department. The argument raised by R2 is strange and cannot be acceded to. It seems that the respondents are bent upon substantiating the mistake they had already committed and rejected the representation filed by the applicant. The action of the R2 in rejecting the representation and ordering transfer to Kanpur is highly arbitrary and not at all justifiable in the facts and circumstances of the case. The applicant has neither completed 5 years tenure in the post nor at his station. The action of the respondents is clearly against the RTP under

which the applicant was transferred. The decision produced by the counsel for the respondents referred supra has absolutely no application in the matter of RTP which is given effect to on the basis of the policy enunciated by the respondents themselves. The above decision of the Hon'ble Supreme Court was against interference in a transfer made in public interest by the administrative authority. It is true that Tribunals' never interfere in such matters as it has to be dealt with by the administrative machinery. But this is not a case coming under the purview of the above decision as the rotational transfer is given on the basis of completion of a particular period mentioned in the transfer policy. The respondents had clearly failed in proving that the applicant has completed 5 years and 1 month as on 01.7.19 in this case. One argument raised by the counsel for the respondents is that as per the paramount card prepared the applicant joined duty on 31.5.14. But on a perusal of the official records of the respondents which is produced as Annexure A9 the argument is contradictory to the said record. As per the Daily Order Part II, the applicant has reported for duty at Chennai only on 11.8.14 and he was added to the strength of the SQAE only on 11.8.14. He was posted to the Lab on that date. So, Annexure A9 clearly contradicts the contention of the respondents that the tenure of the applicant has to be considered from 31.5.19.

12. Considering all the above circumstances, we hereby quash the order of transfer passed by the 3rd respondent in B/89282/RTS-2019/DGQA/Store-1/S dated 30.5.2019

in so far as transferring the applicant from SQAE (GS) Chennai to SQAE (GS) Kanpur and the movement order Number-235/EST dated 12.7.2019 issued by the 4th respondent, and the speaking order in No.B/98810/Court Cases/DGQA/Store-1 dated 27.8.2019 passed by the 2nd respondent. The respondents are directed to permit the applicant to complete his tenure at station as per RTP and transfer him in accordance with the said policy.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

15.10.2019

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