
(2021) 06 CAT CK 0095
In the Central Administrative Tribunal
Case No : Original Application No. 44 Of 2021

Abhijat Srivastava

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 24-06-2021

Acts Referred:

Constitution Of India, 1949 — Article 226

Citation : (2021) 06 CAT CK 0095

Hon'ble Judges : A. Mukhopadhaya, Member (A); Ashish Kalia, Member (J)

Bench : Division Bench

Advocate : Prince Lenin, Prayagmati Gupta

Final Decision : Dismissed

Judgement

A Mukhopadhaya, Member (A)

1. Heard learned counsel for the parties.

2. In sum and substance, this matter arises from the transfer of the applicant from Lucknow station to Shahjahanpur station as part and parcel of 57

transfers made by way of Annual General Transfers, (AGT), on 30.9.2020;

(Annexure A-3 to the OA). The matter was earlier agitated in this Tribunal vide O.A. No. 259/2020 which was disposed of at the instance of the

petitioner with an order enabling him to file a fresh representation before the respondent authorities. The relevant portion of this order is reproduced

below:

3. Looking to the limited prayer made by the learned counsel for the applicant and bearing in mind only the balance of convenience without going into

the merits of the case, I deem it appropriate to dispose of this matter at the admission stage itself by directing the applicant to make a fresh

representation detailing the medical reasons which are relevant to his plea for cancellation/reversal of the transfer order in question along with all supporting documents within a period of one week after receipt of a certified copy of this order. On receipt of such a representation, if made within the stipulated period, the respondent No. 4 i.e. Chief Commissioner, Central GST & Central Excise, Lucknow Zone, Lucknow, shall consider and dispose of the same by way of a reasoned and speaking order as per law within a further period of three weeks, after affording the applicant an opportunity of a personal hearing. Till such time the representation, if received as described above, is disposed of, the operation of the impugned transfer order dated 30.09.2020 shall be stayed.

3. After this, the respondent authorities proceeded to set up a Medical Board in order to make a determination with regard to the fresh representation submitted by the present applicant; (Annexure-A2 to the reply filed by respondents on 15.06.2021). This Medical Board consisted of the following members:

1- Chief Medical Superintendent, Gandhi Memorial and allied Hospital, King George Medical University, Lucknow : Chairman 2- Head of Department, Respiratory Medicine Department, KGMU, Lucknow : Member 3- Head of Department, Radio diagnosis Department, KGMU, Lucknow: Member 4- Head of Department, Medicine Department, KGMU, Lucknow : Member

4. The aforementioned Medical Board submitted its report to the respondent authorities on 5.12.2020, (Annexure A-2 to the reply filed by the respondents on 15.06.2021). Thereafter, vide impugned orders dated 18.01.21 and 19.01.21 respectively, the representation of the applicant was rejected and he was relieved pursuant to his transfer order dated 30.09.2020.

5. In his submissions, learned counsel for the applicant stated that in compliance of this Tribunal's orders dated 28.10.2020 in O.A. 259/2020, (Page 54 of the O.A.), the applicant submitted documents for verification to the respondent authorities and that the documents submitted by him were shown to be true and correct. He also argued that the applicant had co-operated with the Medical Board. With regard to the averment of the respondents and the report of this Medical Board that certain documents requested by the Medical Board were not supplied and certain tests advised by this board

were not undertaken, (Para 41 of the counter reply citing the Board's letter/report of 5.12.2020 refers), applicant's counsel argued that both these

were done but that the applicant was unable to submit the same to the Board for want of a next date of hearing in the matter.

6. Applicant's counsel further argued that his spouse is also in Government of India service in a different cadre and therefore, in terms of DoP&T OM

No. 28034/9/2009 Estt(A) dated 30th September, 2009, (Annexure- 25 of the O.A), the respondent authorities should have retained the applicant at

the same station, (i.e. Lucknow), as his spouse was already serving there. On a clarification being sought by the Court, learned counsel stated that

while this kind of posting at the same station was not mandatory, it was strongly indicated as being desirable in the aforementioned circular of

DoP&T. He argued that it was only because the applicant was the General Secretary of the regional unit of the All India Central Excise Inspectors

Association and had raised certain questions relating to the wearing of uniform and giving a Guard of Honour to Senior officers of the respondent

department that he had been victimized and transferred out of station.

7. On a clarification being sought by the court, applicant's counsel admitted that the provisions for retaining the General Secretary of such Associations

at Headquarters as made in the guidelines circulated vide OM No. 23/3/69- Estt (B) dated 8.4.1969 of the Ministry of Home Affairs, (Annexure CR-5

to the CA), are perhaps confined to Chief Executives or General Secretaries of the Association as a whole. He admitted further that the said

Association of the Central Excise Inspectors is an All India Body which has a Secretary General functioning as its Chief Executive.

8. In sum, applicant's counsel argued that because of the aforementioned reasons, the applicant's transfer from Lucknow to Sahjahanpur is indeed

punitive in nature and further argued that the note-sheets submitted by him in the shape of a supplementary affidavit in this case provided clear

evidence of the same. He pleaded that the impugned transfer order of 30.09.2020, as well as the impugned order rejecting his representation against

this transfer dated 18.01.2021 as well as the order dated 19.01.2021 relieving him from Lucknow be set aside.

9. Per contra, Ms. Prayagmati Gupta, learned counsel for the respondents, pointed out that, as admitted by the applicant himself, his transfer is one of

57 such transfers made as part of the Annual General Transfers, (AGT), exercise and therefore any suggestion that this is punitive is prima-facie not tenable. Drawing the attention of this court to the detailed counter reply as well as the supplementary reply placed by the respondents on record, she stated that the applicant had already agitated this entire matter relating to the mandatory wearing of uniform and giving a Guard of Honour to senior officers of the department both before this Tribunal in his earlier O.A. 259/2020 as well as the Hon'ble High Court in PIL Civil No. 14581/2020. She reiterated that, as specifically pointed out in her counter reply, (para the 58 refers), while OA 259/2020 had cited both spouse related grounds as well as Association office bearer related grounds as reasons for cancelling his impugned transfer, this Tribunal after hearing both parties and at the instance of the applicant's counsel thereafter, had given the applicant leave to approach the respondent authorities with a fresh representation citing medical grounds only. She also pointed out that the Hon'ble High Court after hearing the applicant in detail, passed an order dated 17.3.2021 is dismissing the writ petition as being ""misconceived"". Respondent's counsel drew this court's specific attention to the order passed by the Hon'ble High Court in this regard, (Annexure A-1 to the supplementary reply), and pointed out that while the applicant expressly sought the relief, (relief No. v), to issue a writ, order or direction in the nature of Mandamus thereby directing the opposite parties to not harass and victimize the officials/staff in garb of vigilance inquiries initiated or contemplated to be initiated against the executive staff posted in Central GST, Central Excise & Customs department for not wearing of Khaki Uniform till any appropriate rules are framed in this regard by the authorities concerned.", the Hon'ble High Court, after full hearing of the case, not only dismissed the applicant's petition but also observed as follows:

.....We cannot appreciate the manner in which, the instant writ petition has been filed, particularly, when the disciplinary proceedings were initiated against the General Secretary of the petitioner's association and he has himself challenged the same before the Central Administrative Tribunal where the case is pending. The writ petition appears to have been filed with ulterior motive to put undue pressure on the authorities, which cannot be appreciated.

Respondent's counsel further pointed out that the Hon'ble High Court had also observed as follows:

.....So far as disciplinary action against members of the petitioner's association is concerned, we are of the considered opinion that the same

constitute a personal cause of action for which the association cannot be permitted to agitate the same.

As indicated hereinabove, such disciplinary proceedings have already been challenged before appropriate forum.

10. Learned counsel for the respondents forcefully argued that even a plain reading of the Hon'ble High Court's aforementioned order dated 17.3.2021

makes it abundantly clear that the presently repeated issues related to wearing of uniforms and giving a Guard of Honour to senior officers being

grounds for allegedly punitive action being taken against the applicant along with some of his colleagues, was fully addressed by Hon'ble High Court.

Thereafter, finding nothing of substance in all these allegations, the Hon'ble High Court dismissed the Writ Petition with the following order:

Be that as it may, we do not find any reason to grant indulgence in exercise of powers under Article 226 of the Constitution of India. The writ petition

being misconceived is dismissed.

11. Respondents' counsel argued that the applicant, despite the aforementioned order of the Hon'ble High Court, has persisted in trying to make out

that his transfer is also a punitive action since he has been manifestly unsuccessful in convincing the Hon'ble High Court that the disciplinary action

initiated against him was also a punitive action.

12. Learned counsel for the respondents also argued that a plain reading of the note-sheet in the supplementary affidavit filed by the applicant shows

that while the disciplinary proceedings against the applicant have been acknowledged in factual terms, it has nowhere been stated or even implied that

the applicant's transfer is any kind of punitive action. Rather, the note- sheet specifically states that the transfer of the applicant is due to

administrative reasons. She argued that in the light of the Hon'ble High Court's findings in this entire matter in its aforementioned order dated

17.3.2021 in PIL Civil No. 14581/2021, there are no substantive grounds for considering the routine AGT related transfer of the applicant as being

punitive. Respondents' counsel forcefully argued that the DOP&T OM and the

MHA OM referred to by the applicant are not in the nature of mandatory directions. She submitted that the posting of the applicant at a station around 149 kms from his earlier headquarters does not represent any kind of infringement of the applicant's rights or prospects. Learned counsel for the respondents argued that in a catena of decisions, the Hon'ble Apex Court and the High Courts had repeatedly ruled that where an official is posted, when he is a member of a transferable service, lies entirely within the administrative discretion of his employing authority, (the respondent authorities in this case), and that such transfer should not be interfered with except on proven grounds of mala fide which the applicant has not been able to demonstrate in any manner whatsoever. Finally, respondent's counsel also argued that it is apparent in this case that the applicant has not approached this Tribunal with clean hands because while the O.A. claims that his medical conditions, (Bronchial Asthma etc.), have been with him since childhood, (para 2 of OA refers), he made no mention of the same in the self- declaration that he provided to the Government when he joined service. She pointed out that the specific declaration made in this regard by the applicant when joining service, (Annexure no.CR-4 of the CA refers), is as below:

3(a) Have you ever had small-pox, intermittent or any other fever, enlargement or suppuration of Glands, spitting of blood, asthma, heart disease, lung disease, fainting attacks, rheumatism, appendicitis? (Answer)- NO

13. Learned counsel for the respondents vehemently argued that not only had the applicant not brought to the specific notice of this court that his purported grounds for seeking relief relating to wearing of uniforms and giving of Guard of Honour etc. had been addressed and rejected by the Hon'ble High Court, but that he had also suppressed the true facts regarding his alleged long term illness as evidenced by the discrepancy between his self- declaration at the time of obtaining employment and his present assertions. She further pointed out that in its medical report, (report dated 05.12.2020), an eminent Medical Board had clearly opined with reference to the applicant that the ""patient should stick to his prescribed treatment and exposure to COVID can happen anywhere, irrespective of the city and to avoid that he should follow physical distancing, mask wearing with hand hygiene measures."".

14. Respondents' counsel argued that just as with the aforementioned writ

petition filed before the Hon'ble High Court, this O.A. being agitated before the Central Administrative Tribunal is also totally misconceived and that in any case, the applicant has selectively suppressed relevant matters as mentioned earlier while making his submissions before this Court.

15. Closing her arguments, respondents' counsel reiterated the averments of her Counter Affidavit, pointing out, (Paras 4 and 5 refer), the transfer is an incidence of service in the case of the applicant and the Government is the best judge of how to distribute and utilize the services of its employees.

Employees such as the applicant do not develop any vested right to continue on a particular post as per their choice. It is well understood that where a Government servant who is appointed to a particular cadre of transferable posts, is transferred from one place to another, this is an ordinary incidence of his service and therefore does not result in any alteration of any of the conditions of service to his disadvantage.

16. We have carefully considered the rival submissions of opposing counsel and perused the available record.

17. As regards the question of the medical reasons advanced by the applicant against the transfer in question, a plain reading of the Medical Board report dated 05.12.2020, (Annexure A-2 - reply filed by respondents dated 15.06.2021), makes it clear that this argument is without any substance

whatsoever. Not only this, there is prima-facie indication of the applicant not cooperating with this Medical Board which consisted of four senior

medical officers and later seeking to explain this away by stating that he was prevented from making available documents and test reports etc. as

sought by the Medical Board only because no date was given for him to do so. The applicant, being an official with many years of service in the

government, is well aware of the method by which he can make documents/ test reports available to a Medical Board and the explanation of his

failure in this regard is just not credible. It also appears prima-facie that the applicant has not approached this court with clean hands as the documents

of his self- declaration, produced by the respondents, (Annexure-CR 4 to the CA), clearly shows that the ailments which he now asserts are childhood

ailments were not mentioned by him in any manner when he entered service. The credibility of his assertions is further assailed by the report of the

Medical Board dated 5.12.2020, (Annexure A-2 to the reply filed by the

respondents on 15.06.2021), in which it appears to have been clearly opined that there is no bar on medical grounds to the transfer of the applicant from Lucknow to Shahjahanpur.

18. Coming to the spouse ground pleaded by the applicant against his transfer, it has been clarified by him on a query from this court that he is not

covered by any mandatory provision of the DOP&T OM dated 30th September, 2009;

(Annexure- 25 to the OA). Further, as regards his being General Secretary of the All India Central Excise Inspectors Association Lucknow Circle is

concerned, this is clearly a regional unit of the national body. Perusal of the OM No. 23/3/69/Estt(B) dated 8-4-1969 of the Ministry of Home Affairs,

(Annexure-CR-5), clearly appears to indicate that its provisions for retention at headquarters apply only to one Chief Executive of Unions/Associations

etc. or, in the absence of a clearly defined Chief Executive, the General Secretary functioning as Chief Executive. As such therefore, since it is

admitted that the All India Central Excise Inspectors Association is a national body, the benefit of this OM cannot be claimed by the applicant who is

the General Secretary of one of the regional units of the All India organization and not of the national body.

19. As regards, the transfer of the applicant being of a punitive nature, we are inclined in the facts and circumstances of the case, to give credit to the

respondent counsel's forceful contentions that the applicant's transfer is clearly a part of an Annual General Transfer, (AGT), exercise which is not

prescribed either by law or policy. In the light of the Hon'ble High Court's findings with regard to issues related to wearing of uniforms and giving

Guard of Honour to senior officers, being raised by the applicant as reasons behind the allegedly vindictive attitude of the respondent authorities, we

also find that there is no evidence which can substantiate such a charge of malafide in any meaningful manner. Rather, it is difficult to escape the

impression that the applicant has consistently been trying to use enabling provisions relating to spouse transfer and the retention of Union chief

executives at headquarters as well as unsubstantiated medical reasons to try and thwart his transfer from Lucknow to Shahjahanpur. Taking note of

the catena of decisions by the Hon'ble Supreme Court and various High Courts reiterating the discretion of the Government to post officials like the

applicant, who are in a transferable service, as per its own discretion looking to administrative requirements, we therefore do not find any specific or substantive grounds to warrant intervention in the present matter.

20. This O.A., therefore, being found bereft of merit is dismissed. With this, all linked MAs also stand disposed of. There shall be no order as to costs.