
(2018) 12 CAT CK 0143

In the Central Administrative Tribunal

Case No : Original Application No. 2791 Of 2017, Miscellaneous Application No. 2928 Of 2017

Alka Chauhan And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0143

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Avnish Ahlawat, Rajinder Nischal

Final Decision : Allowed

Judgement

A.K. Bishnoi, Member (A)

1. MA No.2928/2017 filed by the applicants for joining together in a single application is allowed.

2. The applicants have filed the present OA seeking the following reliefs and Interim Relief:-

Reliefs:

"a) Issue an order and directions in the nature of Mandamus, directing the respondents to keep the New Rotational Transfer Policy dated 24.11.2016 in abeyance (Annexure A-1) since the respondents have violated Articles of Constitution by excluding Non-Technical Group "B" officers, Junior Technical Officers (Drawing), Senior Draughtsman from the purview of New RTP and also the respondents failed to conduct DPC. Review DPC, and non-compliance of DOP&T/CVC guidelines and consequently also stay the transfer orders dated 19.7.2017 and 20.7.2017 in the case of the applicants.

b) Make necessary amendments in the transfer policy with respect to Group-B Technical Officers and scientific officers (AE(QA) & JTO (S) as has been done in

the case of other categories.

(c) Pass such other order or directions as this Hon"ble Tribunal deems fit in the facts and circumstances of the case, including an order of this application in the interest of justice and equity."

Interim Relief:

To stay the transfer order issued by the respondent dated 19.07.2017 & 20.07.2017 Annexure A-9 & A-10, since the New RTP has been kept in abeyance by CAT Bangalore Bench on 24.07.2017 and Bombay Bench, Bangalore Bench & Allahabad Bench have also stayed the operation of these two orders vis-a-vis those who have approached the Central Administrative Tribunal".

When the matter was taken up for admission on 19.08.2017, the Tribunal as an ad- interim measure directed that the movement of the applicants consequent upon their transfer vide the impugned orders dated 19.07.2017 and 20.07.2017 shall remain in abeyance.

2.1 Briefly, the facts of the case as stated by the applicants are as follows:-

2.2 The applicants are working in Technical Group "B" Officers cadre of DGQA, Department of Defence Production. A New Rotational Transfer Policy, hereinafter referred to as New RTP, of 2016 has been brought out by the respondents which was circulated and after objections were raised by the various Associations, many amendments were carried out following which several cadres were kept out of this purview and now it is applicable only to Scientific and Technical Cadre. It is the contention of the applicants that the amendments have been carried out by the respondents regarding applicability to different cadres without any valid grounds. The applicants have made several representations but the respondents have not given any response thereto.

2.3 The applicants have further averred that respondents have between 2014-2017 not conducted DPC for promotion of Group "B" officers which is mandatory, as per the model calendar for DPC issued by the DoP&T every years. As per the New RTP para 10 (b) officials due for promotion may be exempted from rotation transfer. The respondents have also not followed the guidelines of DoP&T/CVC as per which it is mandatory to identify the sensitive and non-sensitive posts before implementing the New RTP.

2.4 It is further claimed that the respondents have also ignored the concerned Sub-Committee's report while bringing the New RTP dated 24.11.2016 as also the mutual transfer policy of Ministry of Defence. They have also ignored the applicant while carrying out the cadre review for group B and discriminated against AE (QA) and JE(QA) by bringing them under RTP while exempting all other group "B"non-technical posts from the same. This has also curtailed the promotional avenues of the applicants.

2.5 The applicants have submitted that though the RTP has been stayed by the

Bangalore Bench of this Tribunal on 24.07.2017, respondents are still issuing posting transfer orders. These transfer orders have also been stayed by the Bombay Bench of this Tribunal vide order dated 14.08.2017. It has been further submitted that the respondents are insisting on implementing the aforesaid orders with regard to the applicants on the ground that there is no stay with respect to them.

2.6 The applicants have also mentioned a number of other OAs filed in benches of this Tribunal against the transfer orders by several applicants in which favourable orders have been passed. However, the respondents are staying the transfer orders only in respect of the applicants in the particular OA instead of keeping the entire transfer policy in abeyance.

2.7 It has been submitted that applicant nos. 1 & 2 are already reaching the age of 57 years and so otherwise also could not be transferred to an outstation. The applicant no.3 has sought VRS and requested for deferment of his posting/transfer accordingly.

2.8 It is also averred that the New RTP involves transfer of Technical staff who were working on the sensitive posts. They will now be transferred on All India Basis whereas in the old RTP transfers were within the stations. This would involve huge burden on the Government Exchequer.

3. Respondents in their reply have denied the claim of the applicants that through various amendments, particular set of officers have been excluded from the purview of New RTP and have submitted that the New RTP is applicable to all Group "B" (Gazetted and Non-Gazetted) officials of DGQA. However, the posting/transfer of Non-Technical Group "B" cadre of DGQA has only been kept in abeyance vide DGQA letter dated 28.12.2016. Holding of DPC and posting/transfer under RTP are totally different matters and cannot be linked. The stay granted by the Bombay Bench of the Tribunal on 14.08.2017, relates only to the applicants in that OA and no blanket stay has been granted. The said orders have been fully complied with in respect to those who were covered by it. The respondents have denied any violation of any DoP&T order or any instruction of CVC. Declaration of sensitive/non-sensitive post is not a statutory requirement before formulating RTP, is only advisory in nature and has not been laid down in the guidelines of DoP&T/CVC. However, such categorisation has been done and has been circulated to all concerned vide DGQA Note dated 19.05.2017. The recommendations of JCM-III Level Council (DGQA) have been incorporated in the New RTP to the extent possible and though the mutual transfer policy is exclusively not mentioned in the New RTP, any request of transfer on mutual grounds is considered by the competent authority. As regards the issue of cadre review, it has been done to rationalize the position and with respect to AE (QA)/JE (QA), it was felt that re-structuring is not required.

3.1 The respondents have submitted that nowhere the Hon"ble Courts have granted a blanket stay on rotational transfer/posting in DGQA. The Bombay

Bench in OA No.486/2017 has passed the following orders:

"The respondents are restrained from giving effect to the impugned transfer order dated 19.07.2017 and the Movement order dated 28.07.2017 so far as it relates to applicants in the present OA only."

3.2 As regards all OAs filed in benches of this Tribunal by other affected parties the respondents have stated that all orders have been complied with in respect of applicants in those OAs and in some cases the stay orders initially given have subsequently been vacated.

3.3 It has been further submitted that several cases have been filed in Bombay, Bangalore, Chennai, Jabalpur, Allahabad, Hyderabad, Kolkatta and the Principal Bench by the All India DGQA Engineers Association and individual petitioners for stay of the transfer orders. They have particularly mentioned the following:

a) OA No.1310/2017 - Gautam Singh, v. Union of India & Ors., which was dismissed by the Principal Bench in favour of the respondents vide order dated 25.04.2017.

b) OA No.1339/2017 - Pawan Jindal v. Union of India & Others, which was dismissed by the Principal Bench in favour of the respondents vide order dated 25.04.2017.

c) OA No.330/516/2016 - Smt. Kanaujia v. Union of India & Others, which was dismissed by the Allahabad Bench in favour of the respondents vide order dated 04.05.2017.

3.4 It has also been submitted that the applicants have been serving in their respective stations of present posting as per the following details:

S. No.

Name and Designation

Place of present posting

Establishment

Tenure in the station

Total No. of years in the station

a.

Smt. Alka Chauhan, AE QA

New Delhi

HQ, Dte of Standardisation, New Delhi

26 Years

26 Years

b.

Smt. Renu Ahuja, JTO (S)

New Delhi

HQ, Dte of Standardisation, New Delhi

08 Years

08 Years

c.

Shri Sandeep Khattri, JTO (S)

Dehradun

Dte of Standardisation, Dehradun

12 Years 09 Months

22 Years

3.5 It is further averred that applicant nos. 1&2 do not qualify for exemption in this criterion as the officials having two years or less service for superannuation. This has been amended to three years vide order dated 10.02.2017. As for the applicant no.3 the fact of his applying for VRS does not qualify for exemption from rotational transfer.

3.6 It is contended that the Ministry of Defence and DGQA have considered all cogent and reasonable requests preferred by the staff side association and had rendered the revised posting/transfer policy in respect of Group "B" officials user friendly and reasonable.

The New Policy is applicable only to Group "B" Technical and Scientific Staff similar to the erstwhile RTP of 20.05.2011.

4. The applicants have filed rejoinder to the OA in which they have more or less reiterated the points raised in the main OA.

5. Heard the learned counsel for the applicants as also for the respondents.

6. During the course of arguments, learned counsel for the applicants submitted that at the time of filing of the OA applicant nos. 1 and 2 were close to attaining the age of 57 years which could have qualified them under the New RTP also to be given exemption from transfer, and, applicant no.3 has applied for VRS. It is also submitted that as per para 10 (b) of the New RTP, officials likely to be promoted within one year can be temporarily exempted from the RTP and that the issue of holding of the DPC becomes relevant in this context. The learned counsel has also referred to the personal difficulties of the applicants and that the transfer order was requested to be stayed on compassionate grounds also.

7. The learned counsel for the respondents has defended the New RTP calling it reasonable and valid and has termed the transfer of the applicants as fully justified. He has cited the following judgments in support of his contention that in transfer matters Courts can only interfere in certain conditions:

- (i) P. Pushpakran v. Coir Board & Another, [1979 (1) LLJ 139].
- ii) Gujarat Electricity Board & Another v. Atma Ram Sungomal Poshani, [1982 (2) SCR 357].
- iii) Shilpi Bose & Others v. State of Bihar & Ors., [1993 Supp. (2) SCC 659].
- iv) Union of India & Others v. S.L. Abbas, [(1993) 4 SCC 357].
- v) State of U.P. & Ors. v. Gobardhan Lal, [MANU/SC/0281/2004].
- vi) All India DGQA Engineers Association & Ors. v. Union of India & Others, [WPC No.48428-48431/2017].
- vii) All India DGQA Engineers Association & Ors. v. Union of India & Ors.. [OA No.320/2017 Bangalore Bench].
- viii) Pawan Jindal (supra).

8. We have gone through the pleadings and documents placed on record and given careful consideration to the arguments advanced by the learned counsel for both the sides.

9. As for the different judicial orders placed on record they relate to only the applicants in the particular matters. Further, there is no order on record in which the RTP has been interfered with.

10. On the contrary, the Bangalore Bench of this Tribunal in OA No.170/00320/2017, vide its order dated 17.10.2017 passed the following order:

"On a detailed consideration of the facts and circumstances of the cases, we are of the view that the contentions raised by the applicants against the Rotational Transfer Policy-2016 do not merit any consideration. There is also no ground to interfere in the transfer order dtd. 21.4.2017 which was issued pursuant to the policy and which was agitated against by the applicants though not specifically mentioned in the relief sought. We therefore hold that the OAs are without any merit and are liable to be dismissed."

11. The said order was challenged before the Hon"ble High Court of Karnataka in Writ Petitions No. 48428-48431/2017, which were dismissed on 08.02.2018, the relevant portion of the order reads as under:-

"8. The learned Central Government Counsel further submitted that the transfer policy of the year 2011 has been revised by the Ministry of Defence by its order dated 24.11.2016. In the said revised policy, in addition to the Technical/Scientific Group 'B' officials, Non-Technical Group 'B' officials were also included.

Various associations and Trade Unions of DGQA Organisation submitted representations with regard to 2016 Transfer Policy. Ministry of Defence in consultation with the DGQA Head Quarters has carried out certain amendments to the 2016 Transfer Policy which includes deletion of non-technical staff from the purview of transfer policy. The revised transfer policy is applicable to WPs No.48428-48431/2017 Group 'B' Technical/Scientific staff of DGQA irrespective of whether they hold 'sensitive' or 'non-sensitive' posts.

9. The petitioners' prayers before the Tribunal as also this Court are not very clear. In substance, they have challenged the 2016 Transfer Policy and classification of posts as 'sensitive' and 'non-sensitive'. Admittedly, DGQA is an organisation under the Ministry of Defence. The classification of posts and deployment of its personnel remains the prerogative of the organisations concerned and Courts cannot substitute their opinion.

10. In the circumstances, these writ petitions must fail and are accordingly dismissed. We make no order as to costs."

12. In the other judgments cited by the learned counsel for the respondents, the underlying principle which has been enunciated is that the Courts shall ordinarily not interfere in a transfer matter unless it suffers from mala fide, is violative of any statutory provision or passed by an authority not competent to do so.

13. On the basis of the above discussion, it is sufficiently clear that there is no existing order of any Court or Tribunal against the impugned RTP dated 24.11.2016.

14. This matter is squarely covered by the order of the Bangalore Bench of this Tribunal dated 17.10.2017 and quoted above. The same has been upheld by the Hon"ble High Court of Karnataka, as mentioned in para-12 above.

15. The arguments of the applicants against the New RTP relating to not holding of DPCs, not identifying sensitive and non sensitive posts, presumptive cost to exchequer and not following the recommendations of the concerned committee are not tenable.

Formulation of policy is in the domain of the competent authority and unless there is some clear irregularity, which the above points do not indicate, any interference by this Tribunal is totally unwarranted. Thus, the matter regarding the validity of the New RTP being completely covered by the judgement of the Bangalore bench of this Tribunal referred above and, furthermore, the applicants have failed to give any convincing reason why this policy should be interfered with, we come to the conclusion that there is no ground to interfere with the New RTP dated 24.11.2016 challenged in the present OA.

16. As regards the prayer of the applicants regarding stay of the transfer orders dated 19.07.2017 and 20.07.2017 it is noted that the dates of birth of Smt. Alka Chauhan, applicant no.1 and applicant no.2 Ms. Renu Ahuja, are 16.01.1961 and 14.09.1960 respectively. Thus, both the applicants no.1 & 2 are due to

superannuate much before the expiry of the period of three years from now, prescribed under the New RTP, as amended, to qualify for exemption from transfer. When the transfer orders were issued Applicant no.1, Smt. Alka Chauhan was about three years and six months short of the age of superannuation and applicant no.2, Ms. Renu Ahuja was about three years and two months short of the age of superannuation. Thus, even under the provisions of the new RTP as on date they are covered by the exemption from RTP and were fairly close to the prescribed period when the transfer orders were issued.

17. Thus, taking a holistic view, incorporating the letter and spirit of the RTP, in the facts and circumstances of the case it would be in the interest of justice if the impugned transfer orders dated 20.07.2017 with respect to applicant no.1 and dated 19.07.2017 with respect to applicant no.2 and are set aside. As regards applicant no.3, it has been informed by the learned counsel for the applicants, at the time of arguments, that he has taken VRS. Even otherwise, looking at his age, his case is on a different footing from that of applicants 1 and 2 and merits no intervention.

18. The OA is accordingly allowed to the extent that the transfer orders with regard to applicant no.1 Smt. Alka Chauhan dated 20.07.2017 and applicant no.2 Ms. Renu Ahuja dated 19.07.2017 are set aside. No order as to costs.