
(2020) 02 CAT CK 0019

In the Central Administrative Tribunal

Case No : Original Application No. 1135 Of 2019

Chetan Kumar Sharma

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Citation : (2020) 02 CAT CK 0019

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Shoeb Shakeel, C. Bheemanna

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J

1. The applicant herein is aggrieved by his transfer order dated 29.3.2019 passed by the respondents and has approached this Tribunal with prayer to quash it.

2. The facts in brief are that the applicant was initially appointed as Investigator in the Regional Office of the National Commission for the Scheduled

Tribes (in short NCST) at Jaipur on 10.12.2002. After almost 12 years, he was transferred to the Headquarters of NCST located at New

Delhi in the same capacity as Investigator. On 21.9.2016, the applicant was promoted to the post of Senior Investigator.

After his promotion too, he remained at New Delhi Headquarters till 29.3.2019, when the impugned order, transferring him to Shillong Regional Office

of the NCST was passed. Feeling aggrieved, the applicant made a representation/appeal against the impugned order on 1.4.2019, but on the same day,

the respondents passed the relieving order whereby he was directed to report at

Shillong Regional Office of the NCST with effect from 1.4.2019. The copies of the impugned transfer order dated 29.3.2019 and relieving order dated 1.4.2019 have been annexed by the applicant as Annexures A-1 and A-5 respectively.

3. The applicant, by means of instant OA, has challenged the legality and correctness of the impugned transfer order mainly on the following grounds:-

(i) The respondents have acted illegally and arbitrarily and have violated the transfer policy of the Commission itself because the transfer policy of the

Commission clearly mentions that an employee of the post of the applicant can be transferred only on the completion of 10 years at a particular station

in the same or different capacity or on his promotion, whereas in this case, the applicant has neither completed his tenure of 10 years at this particular

station i.e. the headquarters of the Commission nor he was being promoted at that point of time so that he could be transferred to any other regional

office of the Commission. Therefore, this policy of the Commission is totally in contradiction of its own transfer policy and hence the impugned order

is not tenable in the eyes of law. In support, the applicant has quoted Section 4 (b) of the Transfer Policy in para 5.2 of his OA

which reads as under:-

“The Group A Officers (Directors, Deputy Directors, and Assistant Directors) and Group B Officers (Research Officers, Senior Investigators and

Investigators) of the joint cadre and the Office Superintendents (Group B post in the Regional Offices of NCST) would be liable for transfer to the

Headquarters/other Regional Offices on promotion or on completion of 10 years of continuous service in the same capacity or in different capacities

at a particular station.”

(ii) It is contended that the other employees/officers have been working at a particular station for almost last 25 years and are being promoted at that

station only. It has been averred that the transfer policy was formulated with a motive to eliminate any kind of discrimination among the officers and

the employees of the department but the impugned order has completely defeated the purpose of the formation of the transfer policy as there are

number of employees who are much senior to the applicant and are posted at the same station for more than 10 years and they have not been

transferred to any other regional office whereas the applicant has only served 4

years at the Head Quarters.

(iii) The next ground of challenge to the impugned order is that the Asstt. Director (Admin.) has not pondered over the transfer policy before issuing

the order and might not have put the same before the competent authority. Had it been read over to the competent authority, it would not have been

approved by the competent authority.

(iv) It is also contended that the decision of the transfer of the applicant seems to be biased as the applicant is a very hard working and honest officer

of the Commission who forces everyone to work honestly and this attitude of the applicant troubles many of the employees at the NCST

Headquarters.

(v) One more ground taken by the applicant is that the transfer of the applicant is illegal as the Modal Code of Conduct was in effect at that time and

according to rules, no Government employee can be transferred during the election period and if there is any urgency for the need of transfer, prior

approval of the Election Commission is required and specific reason and necessity should be mentioned for the transfer, whereas in this case, neither

any approval was taken from the Election Commission nor any specific reason has been mentioned for the transfer of the applicant in the impugned

order.

(vi) It is lastly contended that as per the Transfer Policy, transfer should be made towards the end of the academic session so that the education of the

children of the employees may not be affected due to transfer/posting, but in special circumstances, transfer can be made at any time. The grievance

of the applicant is that in the instant case, there were no specific circumstances but the transfer of the applicant at the eleventh hour i.e. in the

beginning of the new academic session would badly affect the education of the children of the applicant.

4. In support of his contention, learned counsel for the applicant has placed reliance on the judgment of the Honâ?ble Delhi High Court rendered in the

case of Union of India and others vs. Raj Pal Chopra (Writ Petition (Civil) No.5422/2019 decided on 26.6.2019).

5. To the contrary, the respondents have vehemently opposed the OA by raising a preliminary objection that the applicant has not approached the

Tribunal with clean hands and he has suppressed the material facts. It has also

been contended that the applicant has interpreted the orders of

Respondent Nos.2 and 3 suiting to his own interest and hence, the OA is liable to be dismissed.

6. The contention of the learned counsel for the respondents is that the applicant was transferred to the Shillong Regional Office as no employee of certain administrative experience was left in the Shillong Office. The transfer of the applicant was made purely in the public interest and as per the transfer policy of the Commission. Hence, neither there was any bias nor malice and applicant's transfer to Shillong Regional Office was purely on the basis of requirement of experienced official at the regional office and in public interest.

7. It has also been submitted that the applicant's transfer to NCST, Regional Office, Shillong vide impugned order dated 29.03.2019 has been issued after a period of 04 years and 04 months as provided in (c) of the transfer policy mentioned above due to Administrative exigencies. He has been transferred to Shillong Office of the respondent Nos.2 and 3 (North-East Region) as per provisions under (d) of the same policy. Thus, there is no violation of transfer policy by the respondent nos.2 and 3. The applicant has selectively chosen relative para (b) of the policy as per his own convenience and deliberately left other relevant paras of the same transfer policy.

8. The next contention is that the decision to transfer the applicant from Headquarters Office of the respondent nos.2 and 3 to Regional Office, Shillong has been taken by respondent No.2, i.e., Hon'ble Chairperson, NCST who is the competent authority in the matter and all issues have been considered by him before taking decision of transfer of applicant. In fact, in his order, Respondent No.2 has taken this decision treating him as 'Kushal Karamchhari' (Efficient employee). A copy of order of respondent No.2 dated 27.3.2019 is annexed as Annexure R/2) with the counter affidavit.

9. It is further submitted that moreover, the applicant has concealed the material fact in the instant application that the transfer policy of the Respondent Nos.2 and 3 was again discussed in the 25th Meeting of the Commission held on 31. 3.2011, wherein one of the Members Shri Oris Syiem Myriaw mentioned that implementation of the transfer policy framed by the Commission may further worsen the availability of manpower in

Regional offices, as in some cases the officials may opt for pre-mature retirement due to their personal reasons. In the meeting, the then Secretary, of

Respondent No.3 mentioned that existential needs and demands of personal administration/good practices will be balanced in such cases. The

summary record of 25th meeting of the Respondent No.2 is annexed as Annexure R/3.

10. The respondents have further submitted that out of sanctioned strength of 128 posts in the office of respondent Nos.2 and 3, 79 posts of different

level were lying vacant on the date of transfer of the applicant. The Assistant Director posted at Shillong Office of respondent Nos.2 and 3 on

deputation was reverted back to his parent department in the month of January, 2017 and since then, no regular officer was posted in that office. The

posts of Senior Investigator, Office Superintendent and UDC in that office are also lying vacant. The Assistant Section Officer posted in Shillong

Office has also submitted his application for resignation from service which is under process. A copy of resignation letter of Assistant Section Officer,

Shillong is annexed as Annexure R/4. As a result, Shillong Office, which is looking after the issues of Tribals and handling their grievances in respect

of all the North & Eastern States, is now left with only two Multi-Task Staff. As there is no regular officer available in the Commission, Assistant

Director, NCST Regional Office, Ranchi (Jharkhand) has been given additional charge of Shillong Office since 27.12.2017. A copy of office order

dated 27.12.2017 showing the additional charge of Shillong office to the Assistant Director, Ranchi is annexed as Annexure R/5 in support of this fact

by the respondents.

11. The respondents have submitted that the transfer policy of the Commission in question has not been violated in this case. It is the applicant, who is

misusing the judicial forum and is not abiding with the Transfer Policy of respondent Nos.2 and 3. No discrimination has been meted out in the matter

of transfer of the applicant. The respondent nos.2 and 3 have transferred many other officers working under the office of respondent nos.2 and 3

during the last two years as per their administrative requirements. The applicant working as Senior Investigator in the office of respondent Nos.2 and

3, has knowingly concealed the fact that out of 08 sanctioned posts of Senior Investigator, 05 posts are lying vacant and only 03 posts including that of

applicant were filled. He has also not disclosed the information that all the 10 sanctioned posts of Investigators are lying vacant in the office of the respondent Nos.2 and 3.

12. It has further been submitted that the impugned order dated 29.03.2019 is an administrative order and no reason is required to be given in such orders. Moreover, the language of transfer order of the applicant dated 13.10.2014 transferring him from Regional Office, NCST, Jaipur to Respondent Nos.2 and 3 Headquarters at New Delhi, was similar and at that time, he did not raise any objection to the language or sought reason for the transfer. Thus, the averments made by the applicant are self contradictory to the facts stated in the Application, however, the respondent No.4 has issued a Office Memorandum, whose copy has already been annexed as Annexure R/8 above.

13. The respondents have further contended that the applicant is trying to mislead this Tribunal with the help of Model Code of Conduct imposed by the Election Commission of India. Learned counsel for the respondents has submitted that as per the code of conduct, no Government officials, especially those who are having duties in connection with the election should be transferred from their present posts or stations on the eve of General Elections/Bye/Elections to Parliament/Legislative Assemblies till all the work connected with the elections is over, whereas the applicant in no way was associated with the General Elections. Neither he, nor any of the officers and officials of the respondent nos.2 and 3 were engaged in election duty. Hence, averments made by him are not maintainable.

14. The respondents have lastly contended that the applicant in his representation dated 01.04.2019 (copy at Annexure A-4) has not indicated about the age of his children or about the studies which they are pursuing. Moreover, Shillong city has also Kendriya Vidyalayas and all the Central Govt. Employees transferred, have the facilities of admission in Kendriya Vidyalayas of Shillong without any problem.

15. The applicant has filed rejoinder affidavit, in which, for the first time, he has alleged about the "malafide intention" of the respondents behind his transfer. It is noteworthy that in the OA, he has stated only about the biased attitude of the respondents (in para 5.6) with the averments that as the applicant is a very hard working and honest employee, his attitude troubles

all the employees in the NCST Headquarters.

Therefore, he was transferred. It is only in the rejoinder affidavit that the applicant, for the first time, has stated about the "malafide intention" of

the respondents by disclosing a new fact that his transfer was done with a view to get rid of him, as he had filed several applications under RTI Act

seeking information about the financial irregularities committed by the respondents. He has also stated for the first time in his rejoinder affidavit about a complaint made against him by the

Driver of the Chairperson's car in which the Driver of the Chairperson had alleged that the applicant had instigated him to commit the murder of

Chairperson by asking him to do the accident of the car of Hon'ble Chairperson for which the Driver was offered Rupees two or three crores by

some politician through the applicant. On the complaint of the Driver, a departmental inquiry as well as Police inquiry was conducted in the matter and

the applicant was found not guilty. The applicant has submitted that in view of aforesaid facts and circumstances, his transfer order is clearly malafide

and it should be set aside.

16. We have heard Shri Shoeb Shakeel, learned counsel for the applicant and Shri C. Bheemanna, learned counsel for the respondents and have

carefully gone through the records.

17. A perusal of the transfer policy filed by the applicant (Annexure A-6) shows that NCST has approved the following transfer policy for its

officers/staff:-

(a) As far as possible groups C and D employees should not be transferred, except on promotion and non-availability of higher post at the station of

working and for administrative reasons. This should, however, be subject to maintenance of efficiency, discipline in the interest of the organisation.

(b) The Group A Officers (Directors, Deputy Directors, and Assistant Directors) and Group B Officers (Research Officers, Senior Investigators and

Investigators) of the joint cadre and the Office Superintendents (Group B post in the Regional Offices of NCST) would be liable for transfer to the

Headquarters/other Regional Offices on promotion or on completion of 10 years of continuous service in the same capacity or in different capacities

at a particular station.

(c) In the entire service career, each Group A and Group B officer/staff of the joint cadre will serve at the Commissioner's Hqs for a period of at least 3 years.

(d) Each Group A and Group B officer/staff (including the Office Superintendent in Regional Offices) will be liable to be posted in the North-Eastern Region for a period of two years in the entire service career.

(e) Officers and staff retiring within three years may be considered for posting to the stations of their choice.

(f) Deputationists selected for posting at a particular station should not normally be transferred to other station during their normal deputation tenure.

(g) As far as possible, and within the constraints of administrative feasibility, the husband and wife should be posted at the same station taking into account the guidelines in this respect issued by DoPT from time to time.

(h) The rotational transfers under this policy should, as far as possible, be made towards the end of academic session so that the education of the children of the Officers/staff is not adversely affected.

Clause (a) of the aforesaid transfer policy clearly reveals that it should be subject to maintenance of efficiency and discipline in the interest of the organisation. Clause (d) also indicates that each Group A and Group B officers will be liable to be posted in the North-Eastern Region for

a period of two years in the entire service career. Admittedly, the applicant is a Group B officer and his transfer was made for

maintenance of efficiency and in the interest of organisation as there was no officer at Shillong Regional Office of NCST and the officer posted at

Ranchi Regional Officer of NCST was discharging the duties of Shillong Regional Office also as Incharge Officer.

18. Insofar as allegations of malafide intention of the respondents behind the transfer of the applicant is concerned, the applicant in the OA has

nowhere mentioned a single word about the malafide intention of the Chairperson of the NCST behind his transfer so that the respondents might have an opportunity to controvert it. It was for the first time in the rejoinder affidavit, he has stated about all these facts. As per the guidelines of Hon'ble

Apex Court quoted above, a person against whom allegations of malafide made, should be impleaded as a party by name. The applicant has made

allegations of malafide against two persons, i.e., Chairperson of NCST and his

Advisor but he has not made any of them as party by name. The guidelines issued by the Honâ?ble Apex Court also shows that the transfer policy or guidelines issued by the State or employer does not have any statutory force and there is very little scope of judicial review by the Courts and the same is restricted only if the transfer order is found to be in contravention of some statutory rules and if the malafides are established.

19. Insofar as the case in hand is concerned, various letters of appreciations annexed by the applicant himself as Annexure A-3 (Colly) show that his work performance has been appreciated by the Chairperson and Vice-Chairperson of NCST and in the departmental inquiry and Police inquiry also, he has been exonerated from the charges. He has been found to be a very hard working employee and an asset to the NCST. Therefore, it cannot be said that there was any malafide intention of the respondents behind his transfer.

20. The impugned order Annexure A-1 starts with the words â??With the approval of Competent Authorityâ? which indicates that approval of competent authority was taken prior to passing of this order by the Asstt. Director (Admin.). Hence, it cannot be held illegal on this ground.

21. An employee has no vested right to get a posting at a particular place for a particular time. Transfer is an essential condition of service and it is within the exclusive domain of the employer to determine as to at what place and for how long services of a particular employee are required.

22. TheÂ Â lawÂ Â regardingÂ Â interferenceÂ Â byÂ Â CourtsÂ Â in transfer/posting of an employee is well settled. The Honâ?ble Apex Court and various Honâ?ble High Courts in a catena of judgments have issued guidelines on this aspect.Â The Honâ?ble Apex Court inU .O.I. and

Ors. vs. S.L. Abbas, (1993) 4 SCC 357, Mrs. Shilpi Bose and others vs. State of Bihar and others, Air 1991 SC 532, State of Uttar Pradesh & Ors. v.

Gobardhan Lal, (2004) 11 SCC 402, State of Madhya Pradesh & Another vs. S.S. Kourav & Ors., AIR 1995 SC 105 6and M. Sankaranarayanan,

IAS v. State of Karnataka & Ors., AIR 1993 SC 763, has thrown light on the subject and the conclusions may be summarized as under:-

- 1) Transfer is a condition of service.
- 2) It does not adversely affect the status or emoluments or seniority of the employee.
- 3) The employee has no vested right to get a posting at a particular place or

choose to serve at a particular place for a particular time.

4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6) There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.

7) In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.

8) The person against whom allegations of malafide is made should be impleaded as a party by name.

9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

10) The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11) If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

Further in *State of U.P. and another vs. Siya Ram and another*, (2004) 7 SCC 405, the Apex Court has observed that, "transfer of a particular

employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary

too in public interest and efficiency in the public administration. The courts or the tribunals normally cannot interfere with such orders as a matter of

routine, as though they were Appellate Authorities substituting their own decision for that of the employer."

In *Shilpi Bose (Mrs.) and others vs. State of Bihar and others*, 1991 Supp (2) SCC 659, the Apex Court while setting aside the order passed by the

Honâ?ble High Court, has observed that, â??Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order; instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.â??

23. Judgment relied upon by the learned counsel for the applicant in support of his contentions cannot give any benefit to the applicant because the

facts before the Honâ?ble Delhi High Court in Raj Pal Chopraâ?s case (supra) were entirely different from the facts of the case in hand. The

employee â?" Raj Pal Chopra was working as an Executive Engineer (Elect.) in CPWD, he was transferred from Delhi to IIT, Palakkad Project on

15th January, 2019. The said employee challenged the transfer order before this Tribunal by way of OA 628/2019, which was disposed of vide Order

dated 26.2.2019 and certain directions were issued to the respondents. However, the respondents did not implement the directions and instead

challenged the same before the Honâ?ble Delhi High Court by filing the aforementioned Writ Petition. The said Writ Petition was disposed of on

22.5.2019 directing the employers to call for options from the respondent therein for his transfer/posting by informing of the vacancy position in

different stations and after receiving the options to consider his transfer and posting in terms of O.M. dated 25.05.2016. However, the employers

again posted the employee (Raj Pal Chopra) at IIT, Palakkad Division reiterating the initial transfer order. In these circumstances, in the Civil Misc.

Application No.28283/2019 in Writ Petition (C) No.5422/2019 filedÂ byÂ theÂ saidÂ employee,Â theÂ Honâ?bleÂ DelhiÂ HighÂ Court

expressed its view that the petitioners/employers have made every attempt to over reach the orders of the Court as well as to ensure that the

respondent (Raj Pal Chopra) does not reap the fruits of the judgments in his favour. Accordingly, the transfer order was stayed till the next date of

hearing, vide Order dated 26.6.2019.

24. It is also noteworthy that the order passed in Rajpal Chopraâ??s case

(supra), cited by learned counsel for the applicant, shows that Honâ?ble Delhi High Court had only stayed the transfer order till the next date of hearing that too on the grounds that despite two judicial orders, the employers failed to implement those orders and passed the transfer order in total defiance of Courtâ??s order, whereas no such fact exists before us in this case.

25. In view of the above discussion, we are of the firm view that the present OA is devoid of any merit and is liable to be dismissed because the impugned transfer order neither suffers from any illegality nor it is violative of any of the conditions of transfer policy of the NCST.

26. Accordingly, the OA is dismissed. No order as to costs.