
(2018) 07 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 1957 Of 2018

Debananda Sahoo

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 07 CAT CK 0029

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

Bench : Division Bench

Advocate : M.K. Bhardwaj, Rajeev Kumar

Final Decision : Dismissed

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

"(ii) To quash and set aside the impugned Order No.4/6/2016-CS.I dated 23.01.2018 qua applicant (A-1) as well as OM/order dated 18.04.2018 (A-1A) and direct the respondents to continue the applicant in Ministry/Department, i.e. Ministry of Health & FW until he completes his tenure as per the RTP.

(iii) To allow the applicant to complete 5 years tenure as Deputy Secretary in Ministry of Health & Family Welfare as per the transfer policy."

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The applicant belongs to Central Secretariat Service (in short, CSS). The hierarchy of CSS comprises of Assistant, Section Officer, Under Secretary, Deputy Secretary, Director and Joint Secretary (in-situ). The Cadre Controlling Authority (CCA) of CSS is Department of Personnel & Training (DoPT)-respondent No.1.

2.2 The applicant joined as an Assistant on 20.06.1986 in the department of Telecommunications. On promotion as Section Officer, he was posted in Ministry of Finance, Department of Expenditure and joined there in April, 1993. He was promoted as Under Secretary vide DoPT order dated 15.12.2011 (Annexure A-2) and was posted in the Ministry of Health and Family Welfare-respondent No.2 where he joined on 20.12.2011. He was promoted to the grade of Deputy Secretary on ad hoc basis vide Annexure A-3 order of DoPT dated 19.11.2015 and was allotted to the Ministry of Health and Family Welfare where he has already been working as Under Secretary.

2.3 Thereafter the applicant, vide the impugned Annexure A-1 order dated 23.01.2018 of DoPT, has been transferred and posted as Deputy Secretary (ad hoc) in the Department of Agriculture and Cooperation-respondent no.3. It is stated in the Annexure A-1 order that he has been transferred from Ministry of Health and Family Welfare to Department of Agriculture and Cooperation on completion of his prescribed tenure under the Rotational Transfer Policy (RTP) applicable to CSS officers. The RTP was notified by DoPT vide Annexure A-7 OM dated 16.07.2015.

2.4 The applicant is aggrieved of the Annexure A-1 order. His contention is that in terms of the RTP, he should have been allowed to work in the Ministry of Health and Family Welfare as Deputy Secretary for the prescribed term of five years for the grade of Deputy Secretary under RTP. He earlier challenged the Annexure A-1 order dated 23.01.2018 before this Tribunal in OA No.631/2018, which was disposed of by the Tribunal vide order dated 06.02.2018 with the following directions:

"(i) The applicant is permitted to make another representation within a period of one week.

(ii) All the representations of the applicant referred to above and also the fresh representation which the applicant may make shall be examined and considered by respondent no.1 within a period of four weeks.

5. Needless to say that consideration shall be accorded to the representations of the applicant in accordance with the transfer policy and any other relevant factor. Let the representations be disposed of within a period of four weeks. Till the representations of the applicant are disposed of, the status-quo as existed today shall be maintained qua the applicant."

2.5 In terms of the aforementioned directions of the Tribunal, the applicant submitted a representation dated 12.03.2018 to DoPT through respondent no.2, requesting therein for his retention in the Ministry of Health and Family Welfare. However, DoPT vide impugned Annexure A-1A order dated 18.04.2018 have rejected his representation.

2.6 Aggrieved by the impugned Annexure A-1 and Annexure A-1A orders of the DoPT, the applicant has approached this Tribunal in the instant OA, praying for

the reliefs, as indicated in para-1 supra.

3. The applicant has pleaded the following important grounds in support of the reliefs claimed:

3.1 As per the RTP dated 16.07.2015 (Annexure A-7), he is entitled to have a five years fixed tenure as Deputy Secretary in the Ministry of Health and Family Welfare whereas he has been transferred even before completion of three years in the post of Deputy Secretary in the said Ministry.

3.2 Several officers of CSS, who have been promoted like the applicant as Deputy Secretary (ad hoc), have been posted and continued in their respective Ministries since they have not completed five years tenure as Deputy Secretary as prescribed in the RTP. Such dispensation has been denied in the case of the applicant and hence the transfer of the applicant from Ministry of Health and Family Welfare to Department of Agriculture and Cooperation is discriminatory. The impugned transfer is stigmatic in nature inasmuch as the applicant has been transferred before completion of the five years of tenure as specified in the RTP.

3.3 The respondents have failed to consider that the applicant has been assigned very important and sensitive cases and considering it the Additional Secretary, Ministry of Health and Family Welfare has also recommended the case of the applicant to DoPT seeking his continuation in the said Ministry.

3.4 The respondents have failed to consider that the basic object of notifying the RTP was to ensure fairness in the matter of transfers and postings of the CSS officers. The impugned transfer orders have been issued in violation of the transfer policy.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which broadly it has been stated as under:

4.1 The RTP does not confer any right on any CSS officer to stay in a particular Ministry. RTP is only a device through which uniformity and transparency is achieved in affecting inter-ministerial transfers of CSS officers.

4.2 The Government is not bound to follow RTP with mathematical precision. The Government is entitled to make appropriate adjustments keeping in view the administrative exigencies. With a view to provide clean administration, the officers working on sensitive posts are rotated after some interval so that no officer develops any vested interest. The policy also gets support from the Vigilance Manual. Annexure R-2 OM dated 06.02.2018 of respondent no.2 also indicates that the applicant was handling sensitive matters in Drugs Division and hence for the reasons stated in the impugned Annexure A-1-A order, his transfer is in the public interest.

4.3 The applicant's transfer from Ministry of Health and Family Welfare to Department of Agriculture and Cooperation involves just change of building (from Nirman Bhawan to Krishi Bhawan) without affecting his pay and allowances or his

status. The applicant has already stayed in the Ministry of Health and Family Welfare for more than five years as such he was overdue for inter-ministerial transfer.

4.4 The applicant has already been relieved from Ministry of Health and Family Welfare vide office order dated 15.05.2018 (Annexure R-3). Thus the impugned transfer has come into operation.

5. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 13.07.2017. Arguments of Shri M.K. Bhardwaj, learned counsel for the applicant and that of Shri Rajeev Kumar, learned counsel for the respondents were heard.

6. The thrust of the argument of Shri Bhardwaj was that the applicant has not completed the prescribed period of five years as Deputy Secretary in the Ministry of Health and Family Welfare and hence his transfer effected vide impugned Annexure A-1 order dated 23.01.2018 is in complete violation of the RTP.

7. Per contra, the argument of Shri Rajeev Kumar, learned counsel for the respondents was that the applicant has already worked for over five years in the Ministry of Health and Family Welfare and was holding a sensitive post and hence in terms of the RTP, his transfer was necessary.

8. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The applicant has worked as Under Secretary in the Ministry of Health and Family Welfare from 20.12.2011 to 18.11.2015 and on promotion as Deputy Secretary (ad hoc) from 19.11.2015 to 22.01.2018 till he was transferred to the Department of Agriculture and Cooperation vide impugned Annexure A-1 order dated 23.01.2018. The transfer of CSS officers is done normally in accordance with the RTP notified vide Annexure A-7 OM dated 16.07.2015 of DoPT. The RTP stipulates tenure of five years for the Deputy Secretary. Likewise, it prescribes normal tenures for other CSS grades. The RTP is basically in the nature of guidelines. It does not have any force of law. The Cadre Controlling Authority of CSS, i.e., DoPT is generally obliged to conduct the transfer of CSS officers in accordance with RTP. This does not mean that in all situations and for all time to come, the DoPT is completely bound by the RTP in transferring the CSS officers. We are in agreement with Shri Rajeev Kumar, learned counsel for the respondents that the RTP cannot be implemented with mathematical precision in all situations involving transfers of CSS officers. In the instant case, we find that the applicant has already worked for over five years in the Ministry of Health and Family Welfare as Under Secretary/Deputy Secretary and was holding a sensitive charge of Drugs Division. Hence, we do not find any fault in the action of the DoPT in transferring him from Ministry of Health and Family Welfare to Department of Agriculture and Cooperation vide Annexure A-1 impugned order dated 23.01.2018. Such a transfer is envisaged even in the RTP. As submitted on behalf of the respondents, this transfer has not affected pay, allowances and

status of the applicant in any way. It is bewildering to note as to why the applicant wants to stay in the Ministry of Health and Family Welfare. There is no change in the place of posting nor any kind of inconvenience has been caused to him or his family by this transfer.

9. In the conspectus, we are of the view that there is no legal flaw in the impugned Annexure A-1 and A-1A orders of the DoPT. We do not find any merit in this OA and accordingly, we dismiss it.

10. There shall be no order as to costs.