
(2022) 07 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 769 Of 2019

Digambar Panda

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Constitution Of India, 1949 — Article 14, 16

Citation : (2022) 07 CAT CK 0009

Hon'ble Judges : Swarup Kumar Mishra, Member, J

Bench : Single Bench

Advocate : A. K. Mohanty, D. K. Mohanty, S. K. Patra

Final Decision : Disposed Of

Judgement

Swarup Kumar Mishra, Member, J

1. The applicant, challenging the order dated 08.11.2019 (Annexure A/4) issued by Respondent No. 4 transferring him to Samablpur Divisional Audit Office has filed the present OA praying for the following reliefs :

I. To allow the original application, and

II. To quash the impugned order of transfer of the applicant dated 08.11.2019 as per Annexure A/4 which is arbitrary, fanciful, capricious, colorful exercise of powers, without any administrative exigencies and based on malafide intention of the Respondent No. 4 and also being violative of the provision of Article 14 and Article 16 of the Constitution of India and be pleased to direct the respondents to post the applicant in the post/office in which the applicant was working prior to joining his present post at Sambalpur in the interest of justice and equity, and

III. To direct that the cost of litigation be paid to the applicant by the respondent no. 4 for acting in a manner contrary to the provision of Rules and also contrary to public interest only with intention to harass and torture the applicant based on his personal atrocity and dragging the applicant in to unnecessary litigation, and

IV. To issue any other order or orders, direction or directions as the Hon'ble Court deem fit and proper in the interest of justice, and fair play for the benefit of the applicant.

2. The fact of the case, in brief, as inter alia submitted by the applicant in the OA is that the transfer order was issued by Respondent No. 4 purely out of vindictive action because the applicant had complained about some of the action of Respondent No. 4 to Respondent No. 2 vide Annexure A/3. He submitted that due to such complaint of the applicant, Respondent No. 3 vide order dated 08.11.2019 transferred him to Samablpur, where as per the submission of applicant there is no sanctioned post of clerk available. Applicant submitted that he had submitted a representation dated 10.11.2019 (Annexure A/6). Applicant submitted that after getting the said representation, Respondent No. 3 immediately relieved him from his post at Bhubaneswar vide order dated 12.11.2019. Thereafter the applicant joined at Sambalpur on 27.11.2019. Hence the OA.

3. The respondents in their counter inter alia averred that after decentralization of Traffic Audit Unit to three divisional units at Khurda Road, Visakhapatnam and Sambalpur w.e.f. 01.10.2019, the workload increased there necessitating requirement of additional manpower. For strengthening those divisional units, transfer order were issued in all cadres amongst which applicant, a clerk was transferred. The respondents submitted that the transfer order dated 08.11.2019 was not issued by Principal Director of Audit, against whom the applicant had made allegations, but by Director of Audit who is the competent authority to make transfer of Group C employees like the applicant. The respondents further submitted that the transfer of the applicant was done in public interest, administrative convenience and strictly in adherence to transfer policy, service conditions etc of Central Government employees. The respondents submitted that the contention of the applicant that transfer was made on personal atrocities is false. The respondents submitted that since workload of each divisional units was enhanced, posts were sanctioned to each of them. Hence they prayed for dismissal of OA.

4. Heard learned counsel for both sides and perused the records.

5. Scope of judicial review by Courts/Tribunals against the transfer order is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides are established. In case of mala fides, the employee has to make specific averments and should prove the same by adducing impeccable evidence. It doesn't need a Sherlock Holmes deducing abilities to connect dots for establishing malafide in the case and to find that the transfer of the applicant was a punitive action done under the guise of administrative reasons. The applicant had made allegations against Respondent No. 4, which was being enquired into by the department i.e. CAG by way of series of correspondence from 26.04.2019 to 13.10.2019 (Annexure A/3). The applicant thereafter is transferred vide order dated 08.11.2019 (Annexure A/4).

It is the case of the respondents that creation of new division led to transfer of the applicant since more personnel were needed, but in the transfer order, only the applicant, out of five people, was transferred to the newly created division. The respondents have also argued that the transfer order has been issued by Director of Audit and not by Principal Director of Audit, against whom the applicant had raised some allegation, therefore there is no malafide. It is fact that the transfer order has been issued by Respondent No. 3 i.e. Director of Audit and he is the competent authority to do it, but it is also a fact that Principal Director of Audit i.e. Respondent No. 4 is the immediate superior of Respondent No. 3. The power dynamics needn't be explained in details to know the situation leading to issue of transfer order of the applicant.

6. It is not known what action has been taken on the complaint made by the applicant and what the end result was. The applicant as an obedient employee joined at his new place of posting and working there since last three years. He had raised some personal problems, like his wife working as a nurse in a hospital at Bhubaneswar and his children studying there, vide his representation dated 07.04.2018 & 10.11.2019, which has not been disposed yet. The respondents have submitted that the wife of the applicant is working in private hospital, therefore the DOPT OM on posting of spouse at same station is not applicable to the case of the applicant. It is not in dispute that the DOPT OM on posting of spouse at same station is applicable to Govt employees, but the rationale behind issuing of the said OM was that, the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children, however it depends upon the administrative constraints. This Tribunal feels, it is upto the competent authority to decide at his discretion and taking into consideration public interest, administrative exigencies if an employee can be posted at a place where his/her spouse is working. Therefore, this Tribunal is of the view that the matter should be remitted back to the Competent Authority of the respondent department who should consider the personal ground raised by the applicant in his representation, sympathetically and in accordance with law. Accordingly, this Tribunal give liberty to the applicant to make a fresh comprehensive representation, if so advised, raising his personal grievance within a period of 10 days from receipt of copy of this order. Respondent No. 3, as a benevolent employer, is directed that on receipt of such representation from the applicant, will consider and dispose of the said representation, in accordance with law, with a sympathetic view and pass a speaking and reasoned order to be communicated to the applicant preferably within a period of 90 days thereafter.

7. The OA is accordingly disposed of. No costs.