

(2018) 08 CAT CK 0096

In the Central Administrative Tribunal

Case No : Original Application No. 3047 Of 2018

Dimple Chandel

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-08-2018

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 20

Citation : (2018) 08 CAT CK 0096

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

Bench : Division Bench

Advocate : M.K. Bhardwaj, Ranjan Tyagi

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. Heard Shri M.K. Bhardwaj, the learned counsel for the applicant and Shri Ranjan Tyagi, the learned counsel appeared on behalf of the respondents on receipt of advance notice.

2. The applicant has filed this OA seeking the following reliefs:-

"(i) To quash and set aside the impugned transfer order dated 19.04.2018, order dated 04.06.2018, 05.07.2018 as well as 25.07.2018 and direct the respondents to continue the applicant in Delhi as per their own transfer policy and till the transfer of all longest stayees.

(ii) To declare the action of respondents in transferring the applicant to Kolkata before maturing her turn on the principle of "longest stayee" as illegal and accordingly set aside the impugned transfer order dated 19.04.2018 and consequential orders.

(iii) to allow the OA with costs.

(iv) To pass any such other order as this Hon"ble Tribunal may deem fit and

proper in the facts and circumstances of the case."

2. Facts in brief are that the applicant, a Personal Assistant in the Cabinet Secretariat, filed this O.A. questioning the Office Order No.125/Pers.8/2018 dated 19. 04.2018 (Annexure A-1) whereunder the applicant was transferred from New Delhi to Kolkata along with some others as also order dated 04.06.2018, 05.07.2018 as well as 25. 07.2018, on various grounds.

2.1. Earlier also the applicant has challenged the said order dated 19.4.2018 by filing OA No.2513/2018 and this Tribunal vide Order dated 10.7.2018 by observing that "Admittedly, the impugned order itself provides for making a representation against the transfer and also a further appeal, if the said representation is not considered in favour of the applicant. Though the representation of the applicant was rejected, but the subsequent appeal filed by the applicant is said to have been pending. It is also a fact that the applicant is already relieved on 05.07.2018", disposed of the said OA at the admission stage itself, without going into the merits of the case, by directing the respondents to consider the Annexure A-6 appeal, dated 07.06.2018, of the applicant, if the said appeal has not yet been disposed of already, and to pass an appropriate speaking and reasoned orders thereon, in accordance with law. The joining of the applicant at the new place of posting is without prejudice to her rights. Further, if the applicant joins at the new place of posting and applies for any kind of admissible leave, the respondents shall consider the same sympathetically, in accordance with rules and law.

2.2. In compliance of the aforesaid Order of this Tribunal, the respondents have passed order dated 25.07.2018 as under:-

"6. Her aforesaid request dated 07.06.2008 was considered at appropriate level but could not be acceded to. Her father also met with Secretary on 14.6.2018 in connection with her transfer posting. She was suitably apprised about the decision of the Department with regard to her transfer to EZ, Kolkata by DS (Pers.II) in a meeting held in his office on 19.6.2018. Thereafter, vide her representation dated 20.6.2018, she requested for personal audience with Secretary. Her representation was considered at appropriate level and not accorded to, and she was stand relieved for transfer to EZ, Kolkata vide order dated 5.7.2018.

...

8. The representation of Ms. Dimple Chandel has been considered by the undersigned in the light of her earlier representation dated 25.04.2018, her service condition, functional requirement of the department and other connected documents of the case. Ms. Dimple Chandel was prematurely transferred from CEC, Mumbai to Hqrs, New Delhi for posting on special assignment, which she refused by citing family reasons. The special assignment posting which is mandatory in nature is not of personal choice. It cannot be opted to be withdrawn prematurely during service period, except in the extreme genuine

conditions, with the approval of the competent authority.

9. As per Para 5 of Transfer Policy dated 01.06.2005, all employees of R&AW, in terms of their conditions of service are liable for transfer anywhere in India subject to the exigencies of service. Further, Rule 11 of Transfer Policy states that all the principles laid down below are subject to operational/administrative requirements of the Organisation. This will outweigh all other considerations. The transfer of Ms. Dimple Chandel, PA to Eastern Zone, Kolkata was ordered purely based on operational/administrative requirement of the Organisation.

11. Ms. Dimple Chandel was accorded every opportunity to represent against the orders. She was also allowed to submit appeals as permissible under the existing rules and regulations of Department. In addition, her father also met with Secretary regarding cancellation of her transfer and thus she tried to bring outside influence in her transfer/posting matter, which is violation of Rule 20 of CCS (Conduct) Rules, 1964.

12. Now, after considering all facts connected to the case administrative requirement of the office, the undersigned does not find any reason to interfere with the transfer order dated 19.04.2018 issued by Joint Secretary (Pers.). The request of Ms. Dimple Chandel, Personal Assistant for cancellation of her transfer from Hqrs, New Delhi to EZ, Kolkata, therefore, is rejected."

2.3 Feeling aggrieved by the said orders, the applicant has filed this OA challenging on various grounds.

3. Counsel for the applicant submitted that impugned transfer order as well as order dated 25.7.2018 has been passed in violation of transfer policy; the respondents have rejected the representation/appeal of the applicant against the transfer order by taking a stand regarding operational/administrative requirement which is not correct as the applicant was transferred from Kolkata to Hqrs. New Delhi prematurely; the action of the respondents is discriminatory and arbitrary; the respondents have failed to consider that applicant's 12 years old daughter is studying in class 8th and the applicant has the responsibility of ailing grandmother-in-law who is suffering from Urinary Bladder Cancer and undergoing multiple Chemotherapy sessions and has also undergone Angioplasty.

3.1 Counsel for the applicant further submitted that her earlier request for transfer from Kolkata to Delhi had been rejected by the respondents. However, the respondents on their own transferred the applicant to Delhi from Amritsar in November 2008 and from Mumbai to Delhi in April 2017 and now they have not allowed the applicant to complete tenure even in Delhi. If the respondents did not want the applicant in Delhi, they should not have transferred the applicant to Delhi in April 2017.

3.2 Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of Directorate of School Education Madras and others vs. O. Karuppa Thevan & Ors. (1994) Supplementary (2) SCC 666 that the transfer

should not be made effective during academic session and children of an employee studying should be given due weight while effecting transfer. Counsel further submitted that principles of natural justice have not been followed by the respondents.

4. Counsel for the respondents submitted that the Organisation, in which the applicant is working, is a very important organisation in the security of the nation and after considering all the administrative exigencies and public interest only, the orders of transfer have been passed and also that, not only the applicant, certain others were also transferred under the same transfer order, keeping in view the public interest at large. He further submitted that no public servant is having any Indefeasible right to continue in a particular place for a particular period and the transfer being an incident of service, this Tribunal cannot interfere with the impugned transfer order.

5. We have perused the impugned orders and we have already quoted the relevant paras of the order dated 225.7.2018, which was passed by the respondents in pursuance of the directions of this Tribunal in OA No.2511/2018 dated 10.7.2018. We find that the applicant was transferred from Mumbai to Delhi vide Office Order No.133/Pers/8/2017 issued under endorsement No.24/04/2017/Pers.8 dated 10.3.2017 for further posting on special assignment, which was mandatory in nature and pursuant to this order, the applicant was relieved from Mumbai and joined at Delhi on 24.4.2017. However, after becoming aware of her place of posting, she submitted representation dated 8.5.2017, expressing her inability to move on special assignment, citing family reasons. Her representation was considered at appropriate level and it was decided to revert her to general strength immediately. Since, she was transferred from Mumbai to New Delhi prematurely, which was necessitated on account of her selection for special assignment posting, which she refused after learned about her place of posting, it was decided to transfer her out of Delhi during next-DTAC. Accordingly, she was transferred from New Delhi to Chennai vide order dated 19.4.2018.

6. We further find that all the grounds raised by the applicant in his representation/appeal have been duly considered by the respondents and so far as the plea of the applicant that the respondents have violated the provisions of transfer policy is concerned, it is admitted fact that applicant had been transferred from Mumbai to Delhi by the respondents on account of her selection for special assignment posting prematurely. However, after joining at Delhi, the applicant made representation against the said special assignment posting citing her personal difficulties, which was duly considered by the respondents and it was decided at that point of time to transfer her out of Delhi during next-DTAC. We do not find any arbitrary or mala fide action on the part of the respondents while issuing the impugned orders.

7. In the case of Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors., as reported in (2004) 12 SCC 299, the Apex Court held that unless an order

is clearly arbitrary or vitiated by mala fide or infraction of any prescribed norms of principles governing the transfer, such transfer order must not be interfered with. The Apex Court in an earlier case between State Bank of India Vs. Anjan Sanyal & Ors., as reported in (2001) 5 SCC 508, observed that unless mala fide, or prohibited by service rules, or passed by an incompetent authority, the order of transfer should not be lightly interfered with in exercise of a Court's discretionary jurisdiction. In the case of Shilpi Bose Vs. State of Bihar, as reported in AIR 1991 SC 532, it was held that a government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. 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. In the case of Union of India Vs. S.L. Abbas, as reported in AIR 1993 SC 2444, the Apex Court observed that unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. It was further observed that the departmental guidelines cannot even confer upon the government employee a legally enforceable right.

8. Further in the case of S.C. Saxena Vs. Union of India & Ors., as reported in (2006) 9 SCC 583, submitted that a government servant cannot disobey a transfer order by not reporting at the place of posting. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems.

9. It is further relevant to mention that while deciding the earlier OA 2511/2018 filed by the applicant, this Tribunal specifically observed that if the applicant joins at the new place of posting and applied for any kind of admissible leave, the respondents shall consider the same sympathetically, in accordance with rules and law. Since the applicant has approached this Tribunal immediately after disposal of her appeal and chosen not to join at the place of transfer, we do not incline to interfere in the matter.

10. So far as judgment relied upon by the applicant in the case of Directorate of School Education Madras and others vs. O. Karuppa Thevan & Ors. (supra) is concerned, the same is not applicable in the present case as transfer order has been passed on 19.4.2018 and the applicant knew very well that as per the decision of the respondents, she would be transferred in next-DTAC.

11. In the result, for the reasons stated above, the present OA being devoid of merit is dismissed at the admission stage itself. There shall be no order as to costs.