
(2019) 12 CAT CK 0004

In the Central Administrative Tribunal

Case No : Original Application No. 2379 Of 2018

D.V. Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Citation : (2019) 12 CAT CK 0004

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

Bench : Division Bench

Advocate : Ajay Loria, Rajeev Kumar

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J

1. The applicant, by means of present OA, has challenged the legality and correctness of communication dated 01.06.2018 (his transfer order) issued by Respondent No.1/Union of India through Secretary, Ministry of External Affairs (hereinafter referred to as "MEA"), whereby the applicant, who was working as Consul, Consulate General of India (hereinafter referred to as "CGI") at Atlanta, USA, was transferred to Headquarters India.

2. The brief facts giving rise to the controversy involved in this case are that the applicant joined the MEA in 1979 as a Stenographer (Grade-III). Later on he was inducted into Indian Foreign Service and was allotted 2003 Batch. The applicant, after serving in different countries like Suva, Port Louis, Berne, Phnom Penh, New York, Kandahar, Santiago and Baghdad, joined as a Consul, CGI at Atlanta, USA on 28. 5.2015. During his posting at Atlanta, USA, the applicant was also assigned the work of Head of Chancery. The team of MEA officers visited the CGI at Atlanta and noticed certain irregularities in the expenses incurred and reported as such to the MEA. Acting up on the report, the MEA decided to recall the applicant and accordingly he was recalled to the Headquarters of MEA, New Delhi, vide order dated 10.1.2018. Aggrieved by his recall order, the applicant

filed an Original Application, being OA No.341/2018 before the Central Administrative Tribunal, Principal Bench at New Delhi and also prayed for an interim relief.

3. On 25.01.2018, when the said OA was taken up for admission, the Central Administrative Tribunal passed an interim order directing to maintain status quo qua the applicant. Meanwhile in a meeting of Foreign Service Board, it was decided to post another person as a Consul, CGI at Atlanta, USA in place of the applicant. In view of this development, the applicant filed a Contempt Petition, being CP No.240/2018, alleging that the status quo order of the Tribunal dated 25.01.2018 is being disturbed. When the said O.A. together with the C.P. was taken up for hearing on 22. 05.2018, Mr. Rajeev Kumar, learned counsel for respondents informed the Tribunal that the respondents have decided to allow the applicant to complete his 3 years' tenure ending on 27.05.2018. In view of the above, the said O.A. and C.P. both were dismissed as infructuous.

4. The applicant completed 3 years of his tenure at Atlanta, USA on 27th May 2018. Therefore, on 1st June 2018, he was relieved of his duties and was directed to join the Headquarters of MEA at New Delhi.

5. The aforesaid transfer order dated 01.06.2018 has been challenged by the applicant in this OA mainly on the following grounds:-

(i) The impugned transfer order has been passed by the Respondent No.1 in a haste and predetermined manner without giving any proper opportunity to the applicant for winding up his establishment before his departure, with malafide intention to harass and humiliate the applicant.

(ii) The impugned transfer order has been passed against the principles of natural justice in flagrant violation of Constitution of India and, therefore, it is liable to be set aside.

(iii) The impugned transfer order has been passed without considering the representation dated 15.5.2018 made by the applicant for extension of time of his posting at CGI at Atlanta, USA. No reasons have been stated by the Respondent No.1 either in the orders passed on various representations made by the applicant, while rejecting the same, or in the impugned order itself.

(iv) The Respondent No.1 did not consider that the daughter of the applicant had completed her graduation in Medicine and her "School of Medicine Graduation Ceremony" was going to be held on June 9th and 10th at New York and son of the applicant was also undergoing last semester of Master Degree in Social Journalism, therefore, it was difficult for the applicant to move immediately from Atlanta, USA and as such the applicant sought substantial time to stay at Atlanta, USA, but the Respondent No.1, without considering about the career of children of the applicant, arbitrarily transferred him.

6. On the aforesaid grounds, it has been prayed that impugned transfer order be quashed.

7. The Respondent No.1 has filed counter reply in which it has been stated that on completion of stipulated tenure of 3 years at CGI at Atlanta, USA, the applicant was transferred back to Headquarters of MEA at New Delhi vide Order dated 1.6.2018. The applicant earlier was recalled to the Headquarters of MEA because his presence was required to expedite the process of examination of several irregularities committed by him during his posting at Embassy of India, Baghdad and CGI at Atlanta, USA. The said order had been issued after preliminary inquiry against the applicant which revealed evidence of prima facie misconduct on the part of the applicant. His explanation was also needed with regard to various procedural irregularities that were noted by the MEA during his tenure as Head of Chancery, in CGI at Atlanta, USA and Embassy of India, Baghdad.

8. The applicant was holding a transferable post and he has no vested right to remain posted at one place or the other. He was on continuous foreign postings since January 2004 and was fully aware that on completion of his stipulated tenure, he will have to complete all formalities before departing. Therefore, he should have been fully prepared for that. Insofar as his family members are concerned, it was open for him to leave them at the place of his posting with prior approval of the Ministry, but no such request was received by the respondent from the applicant.

9. The allegations made by the applicant against the respondents are baseless. He never made any representation seeking permission to leave behind his children at USA. In the last para of the counter reply, it has been stated that the applicant alongwith his family member has returned to India on June 30, 2018.

10. On the aforesaid grounds, learned counsel for the respondents has prayed that OA being devoid of merit is liable to be dismissed.

11. We have given our thoughtful consideration to the submissions of learned counsel for the parties and have gone through the records.

12. It is pertinent to mention at the very outset that the applicant has not filed any rejoinder affidavit against the counter affidavit filed by Respondent No.1 despite ample time and opportunity. Therefore, there is no denial of the fact that he never made any representation to the MEA seeking permission to leave his family members including his son and daughter at Atlanta, USA.

13. A perusal of the documents available on record shows that the applicant had completed 3 years at Atlanta which is the stipulated period of a posting at a place in Indian Foreign Service.

14. The law regarding transfer has been well settled by the Hon'ble Supreme Court through a catena of judgments, that the transfer of an employee is an essential condition of service. No employee has a vested right to be posted at a particular place/station and the courts or Tribunals should refrain from interfering in transfer orders.

15. 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."

16. In *Shilpi Bose (Mrs.) and others vs. State of Bihar and others*, 1991 Supp (2) SCC 659, the Apex Court has reiterated that,

"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."

17. In *Addisons Paints & Chemicals Ltd. Vs. Work man*, AIR 2001 SC 436, it has been held that,

"refusal to report for duty upon transfer amounts to misconduct. Even if the transfer order is bad for some reason, the employee must ensure compliance of the order first and then raise the issue with the employer for redressal of his grievance."

18. In *Gujarat Electricity Board vs. Atma Ram Sungomal Poshani*, AIR 1989 SC 1433, it has been held that,

"Transfer cannot be evaded merely on the ground of pendency of representation or difficulties. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. He has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules."

19. Considering the facts and circumstances of the present case in wake of a well settled legal position, there does not appear any substance in the present OA, which is liable to be dismissed. The applicant has since retired the OA has now also become infructuous as such.

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