

(2022) 04 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00516 Of 2020

K. Sajesh

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Citation : (2022) 04 CAT CK 0006

Hon'ble Judges : P. Madhavan, Member, J; K.V. Eapen, Member A

Bench : Division Bench

Advocate : T. C. Govindaswamy, Kala T. Gopi, O. M. Shalina

Final Decision : Disposed Of

Judgement

P. Madhavan, Member J

1. This O.A is filed seeking the following reliefs:

“(i) Call for the records leading to the issue of Annexure A1 and A2 and quash the same to the extent they transfer the applicant on promotion to Naval Dock Yard, Visakhapatnam.

(ii) Direct the 2nd respondent to consider applicant's case for a posting against the existing vacancy of Senior Scientific Assistant at Indian Naval Academy Ezhimala itself, in the light of Annexure A12, 13 and A14 and direct further to grant the applicant all consequential benefits emanating therefrom.

(iii) Award costs of and incidental to this Application.

(iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The applicant in this case is working as Scientific Assistant in the Indian Naval Academy, Ezhimala from 21.12.2009 onwards. The applicant's wife Smt. Indu P. V. is working as MTS in the same Indian Naval Academy, Ezhimala. He also has two children aged 7 years and 8 months respectively. According to him, the

respondents have promoted and transferred him as per Annexure A1 to Naval Dock Yard, Visakhapatnam. Prior to the issuance of transfer order he had given a representation dated 08.07.2019 to the 3rd respondent requesting to retain him in the Academy, if he is promoted.

According to him there existed three vacancies of Senior Scientific Assistant in the Academy. A certificate showing the engagement of the applicant's wife in the said Academy is produced as Annexure A7. Even though there exist a vacancy at Naval Academy, Ezhimala, the respondents had promoted and transferred him to Naval Dockyard Visakhapatnam. Thereupon he gave another representation on 03.07.2020 to the 3rd respondent, requesting to retain him at the available vacancy in the Indian Naval Academy, Ezhimala itself as his spouse is working in the same station. The Commander Instructor of the Faculty had forwarded his representation recommending his retention as per letter marked as Annexure A9. The 5th respondent Commanding Officer also recommended the applicant's case and forwarded the same to the 4th respondent. The 4th respondent had forwarded the representation to the 2nd respondent as per Annexure A11. In spite of the above recommendations, the applicant's case was rejected without giving any reason, on the basis of administrative constraints. The respondents are liable to consider the Policy Guidelines issued for Transfer of Civilian Personnel as per order dated 11.08.2015. The 5th Central Pay Commission had also observed that "while deciding on the request for posting of husband and wife at the same station, and should ensure that such posting is invariably done especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence". So, according to him, his children are below the age of 10 years, and the respondents are expected to retain him in the same station. His promotion and transfer to Visakhapatnam is highly arbitrary, discriminatory and ultra-vires to the Constitution. Applicant submits that the said Annexure A2 order was issued without the application of mind, without speaking regarding the reasons for the transfer. Annexure A2 is not issued in public interest. The respondents are bound to post the applicant at Indian Naval Academy, Ezhimala as the post is vacant in the same station. Hence he seeks the above reliefs.

3. The respondents filed reply statement admitting the service particulars of the applicant and denying the allegations made in the O.A. According to them, the applicant has completed more than 10 years at the Academy and he is due for transfer. There exists critical manpower shortage at Naval Dockyard Visakhapatnam and it is because of that the applicant was posted at Visakhapatnam. It also gives the Scientific Assistant more experience by working in different units for meeting the requirements of Navy. The applicant in this case has all India transfer liability but the wife of the applicant is only an MTS who cannot be transferred outside the Naval Command. The respondents had sympathetically considered the facts brought out in the representation that his wife is working in the same department as MTS and the said fact was recorded

and a note was made that the applicant will be considered for transfer to INA Ezhimala as and when administrative feasibility arises. The representation dated 03.07.2020 was forwarded for orders to competent authority and the competent authority has not acceded to it. It was also mentioned that the applicant in this case has not stated the age of the children in his representation and hence it was not considered by the competent authority.

4. We have heard both sides. Counsel for the applicant submits that there existed sufficient number of vacancies at Ezhimala and it is arbitrary to promote the applicant and giving a posting outside. The applicant's wife is working in the same unit and he should have been retained at the same place considering the guidelines issued by the Government for postings at the same station. On the other hand, counsel for the respondents submit that the applicant in this case is an officer having all India transfer liability and it will be difficult to retain him in the same station throughout his service. The age of the applicant is only 39 years and he had worked at Ezhimala for a period of more than 10 years. The applicant has no right to object to the promotion and transfer since it was done on administrative exigencies. According to the respondents there existed a shortage of Scientific Assistants at Naval Dockyard Visakhapatnam and it is only because of that fact that the applicant was transferred.

5. We have gone through the pleadings and records produced in this case. On a perusal of the Annexure A1 transfer order it can be seen that the applicant was transferred along with others on promotion and the applicant was posted at Naval Dockyard Visakhapatnam. As per pleadings of the respondents, the applicant was promoted and posted at Visakhapatnam as that station had a critical deficiency of Scientific Assistants. So the posting at Visakhapatnam has to be considered as an administrative necessity of the respondents. The guidelines issued normally does not control the administrative transfers or transfers made on administrative ground. It has more application in cases where tenure transfer is implemented. It is true that the Government has issued O.Ms stating that the spouses should be retained in the same station as far as possible. The applicant in this case also contends that he had two children aged below 10 years and the respondents had also admitted that they were not aware of the age of the children and the representation of the applicant did not contain the details of the children as stated by him in the O.A. So, that aspect was not considered by the competent authority when the representation was disposed of.

6. On a careful reading of pleadings and hearing the arguments of the respondents, we could not find any arbitrariness or illegality or any malafides in the transfer made in this case. The transfer in this case is mainly done on the basis of administrative exigencies. But we find that the applicant has two children below the age of 10 years and this aspect was not considered by the respondents when his representation was disposed of. The impugned order at Annexure A2 is not a speaking order and it is a very cryptic order stating that authority is not acceding to the representation made by the applicant due to administrative

constraints. In the above circumstances, we deem it appropriate to direct the applicant to give a fresh representation stating all these facts to the competent authority within a week and the competent authority is directed to consider and pass a speaking order regarding the existence of vacancies and regarding the possibility to retain him at Ezhimala and whether he is entitled to get a retention on the basis of the tender age of the children and pass an order within a period of one month and dispose of the same. In the alternative, the competent authority may also consider the declination of promotion in the event of transfer to the applicant. Interim order will continue till the representation is considered and disposed of.

7. The O.A is disposed of with the above reservations. No costs.