

(2021) 09 DEL CK 0315

In the Delhi High Court

Case No : Civil Writ Petition No. 503 Of 2021, Civil Miscellaneous No. 1306 Of 2021

Kawaljit Kaur

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 17

Citation : (2021) 09 DEL CK 0315

Hon'ble Judges : Rajiv Shakdher, J; Talwant Singh, J

Bench : Division Bench

Advocate : Anil Kumar Mishra, Mrinal Bharti, Manish Shekhari, Santosh Kumar, P.S. Singh

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

Preface: -

1. This writ petition is directed against the order dated 23.11.2020, passed by the Central Administrative Tribunal (in short 'the Tribunal') in contempt petition (CP) No.195/2020 and Miscellaneous Application (MA) No. 298/2020, which were filed in OA No. 2874/2018.

Background facts: -

2. The backdrop, in which the instant writ petition has been filed, is required to be noticed, in order to adjudicate the same.

2.1. On 22.12.1988, the petitioner was appointed as Junior Scientific Assistant - II (in short "JSA-II") in Senior Quality Assurance Establishment (General Stores), New Delhi [in short "SQAE (GS)"] under the aegis of Directorate General of Quality Assurance (in short "DGQA"), which works under the administrative control of Department of Defence Production, Ministry of Defence, Government of

India.

2.2. The petitioner was promoted to the post of Scientific Assistant - II (in short "SA-II") and was posted to Controllerate Quality Assurance (Textile & Clothing) [in short "CQA (T&C)"], Kanpur, on 16.10.2002.

2.3. The record shows that, thereafter, the petitioner, on compassionate grounds, was posted to the Directorate of Standardisation, Badarpur, New Delhi on 06.08.2005. It appears that [and qua which there is no dispute], after a tenure of one year and eight months at Badarpur, Delhi, she was side-stepped to SQAE(GS), New Delhi on 23.04.2007.

2.4. Furthermore, the record also shows that, the petitioner was granted in situ promotion which entailed her moving from SA-II to Junior Technical Officer (Scientific) [in short "JTO(S)"], on 03.12.2012.

2.5. The record shows that, on 19.07.2017, a transfer order was passed by the competent authority under the Rotational Transfer Policy-2017 (in short "RTP-2017"), directing, inter alia, the petitioner to move from Anand Parbat, New Delhi to Kanpur. The petitioner was asked to report to CQA (T & C) in Kanpur.

2.6. Being aggrieved, it appears that, the petitioner made a representation to respondent no.3 qua the transfer order dated 19.07.2017. This representation was made on 14.08.2017. The ground given was, that, her mother was not well and, therefore, her presence was required in Delhi.

2.7. Although, the petitioner avers that, her representation dated 14.08.2017 was rejected, no such order is placed on record.

2.7.(a). On being queried, Mr. Anil Kumar Mishra, who appears for the petitioner, says that, the petitioner was orally informed that, her representation was rejected.

2.8. A movement order was issued qua the petitioner on 15.11.2017 by respondent no.1. This order relieved the petitioner from her services w.e.f. 30.11.2017, and required the petitioner to report to Kanpur, on or before 11.12.2017.

2.9. Given this position, the petitioner made a second representation to respondent no.3, on 30.11.2017.

3. Since, the petitioner did not receive any response to her representation dated 30.11.2017, she was constrained to move the Tribunal. Accordingly, an original application (OA) was filed with the Tribunal, which was numbered as OA No. 4531/2017. This OA was disposed of by the Tribunal, on 20.12.2017, which, inter alia, required respondent no.3 to pass a reasoned and speaking order qua the petitioner's representation dated 30.11.2017, within 2 months, commencing from the date of the receipt of the order of the Tribunal.

3.1. Once again, there was no movement in the matter, which compelled the

petitioner to file a contempt petition qua the order dated 20.12.2017. This contempt petition, we are told, was numbered as CP No.298/2018. According to the petitioner, under the threat of the contempt proceedings, respondents no.1 and 2 passed a speaking order on 21.05.2018. By virtue of the said order, the petitioner's representation dated 30.11.2017 was rejected. The operative part of the said order reads as under: -

"WHEREAS, this Order is issued in compliance of Judgement Order dated 20 Dec 2017; (received on 04 May 2018) passed by the Hon'ble Central Administrative Tribunal (CAT), Principle Bench (PB), New Delhi in OA No. 4531/2017, filed by Smt Kawaljit Kaur, Junior Technical Officer (Scientific), titled Kawaljit Kaur Versus Ministry of Defence and others, WHEREIN Additional DGQA (Stores) has been made the Respondent No.3 and DGQA as Respondent No.2.

xxx xxx xxx

AND WHEREAS it is evident that the condition laid down for retention on Compassionate ground is not clearly being met based on the facts brought out as above. And accordingly, request of 8mt Kawaljit Kaur, JTO(8) cannot be acceded [sic acceded] to being not permissible [sic permissible] as per the Rotational Transfer Policy issued vide MoD OM No.AI96995/RTP/DGQAAdm-7B/D9QA)/2016 dated 24 Nov 2016."

3.2. It is against the aforesaid order i.e., 21.05.2018 that, the petitioner approached the Tribunal, once again, for necessary relief. In this behalf, the petitioner filed an OA. This OA was numbered as OA No. 2874/2018. Via this OA, the petitioner sought quashing of not only the transfer order dated 19.07.2017 but also the movement order dated 15.11.2017. The challenge to these orders was made on several grounds, including the fact that, the said transfer order should not be effected, having regard to the petitioner's circumstances.

4. While the petitioner's OA No. 2874/2018 was pending consideration before the Tribunal, another set of employees moved the Tribunal against their transfer orders. The OA instituted by these employees with the Tribunal was numbered, as: OA No.2791/2017. This application was filed by three persons i.e., Mrs. Alka Chauhan, Ms. Renu Ahuja and Mr. Sandeep Khatri.

4.1. Ms. Alka Chauhan assailed the transfer order dated 20.07.2017 issued in her case, while Ms. Renu Ahuja, assailed the transfer order dated 19.07.2017. 4.2. The principal ground of challenge, which was raised by Ms. Alka Chauhan and Ms. Renu Ahuja, was that, the RTP, which was, in force during the relevant period, inter alia, provided that, employees who would superannuate within 3 years were exempted from being transferred.

4.3. There is no dispute that, the Tribunal in OA No. 2791/2017, vide order dated 17.12.2018, granted relief to the applicants i.e., Ms. Alka Chauhan, Ms. Renu Ahuja and Mr. Sandeep Khatri.

4.4. We may note that, the Tribunal, after noticing the fact that the said

applicants i.e., Ms. Alka Chauhan and Ms. Renu Ahuja, were nearing the date of their superannuation, which was little more than 3 years [when the transfer orders were issued], set aside the transfer orders. Insofar as Mr. Sandeep Khatri was concerned, the Tribunal observed that, since he had applied for Voluntary Retirement Scheme (VRS), his case stood on different footing and therefore did not merit intervention.

4.5. The relevant observations made by the Tribunal, in this behalf, in its order dated 17.12.2018 in OA No.2791/2017, are extracted hereinafter, for the sake of convenience: -

"2.7 It has been submitted that applicant nos. 1 & 2 are already reaching the age of 57 years and so otherwise also could not be transferred to an outstation. The applicant no.3 has sought VRS and requested for deferment of his posting/transfer accordingly.

xxx xxx xxx

3.4 It has also been submitted that the applicants have been serving in their respective stations of present posting as per the following details:

S

No.

Name and Designation

Place of present posting

Establishment

Tenure in the station

Total number of years

in the station

a

Smt. Alka Chauhan, AE

QA

New Delhi

HQ, Dte

Standardisation, New Delhi

26 years

26 years

b

Smt. Renu Ahuja, JTO(S)

New Delhi

HQ, Dte Standardisation

New Delhi

08 years

08 years

c

Shri Sandeep Kattri, JTO (S)

Dehradun

Dte of Standardisation,

Dehradun

12 years 09

months

22 years

xxx xxx xxx

6. During the course of arguments, learned counsel for the applicants submitted that at the time of filing of the OA applicant nos. 1 and 2 were close to attaining the age of 57 years which could have qualified them under the New RTP also to be given exemption from transfer, and, applicant no.3 has applied for VRS. It is also submitted that as per para 10(b) of the New RTP, officials likely to be promoted within one year can be temporarily exempted from the RTP and that the issue of holding of the DPC becomes relevant in this context. The learned counsel has also referred to the personal difficulties of the applicants and that the transfer order was requested to be stayed on compassionate grounds also.

xxx xxx xxx

16. As regards the prayer of the applicants regarding stay of the transfer orders dated 19.07.2017 and 20.07.2017 it is noted that the dates of birth of Smt. Alka Chauhan, applicant no. 1 and applicant no.2 Ms. Renu Ahuja, are 16.01.1961 and 14.09.1960 respectively, Thus, both the applicants no. 1 & 2 are due to superannuate much before the expiry of the period of three years from now, prescribed under the New RTP, as amended, to qualify for exemption from transfer. When the transfer orders were issued Applicant no. 1, Smt. Alka Chauhan was about three years and six months short of the age of superannuation and applicant no.2, Ms. Renu Ahuja was about three years and two months short of the age of superannuation. Thus, even under the provisions of the new RTP as on date they are covered by the exemption from RTP and were

fairly close to the prescribed period when the transfer orders were issued.

17. Thus, taking a holistic view, incorporating the letter and spirit of the RTF, in the facts and circumstances of the case it would be in the interest of justice if the impugned transfer orders dated 20.07.2017 with respect to applicant no.1 and dated 19.07.2017 with respect to applicant no.2 and are set aside. As regards applicant no.3, it has been informed by the learned counsel for the applicants, at the time of arguments, that he has taken VRS. Even otherwise, looking at his age, his case is on a different footing from that of applicants 1 and 2 and merits no intervention".

[Emphasis is ours]

4.6. Given this position, the petitioner moved the Tribunal by way of an interlocutory application i.e., MA 1912/2019 in OA No. 2874/2018. This application was filed in and about May 2019. Via this MA, the petitioner sought parity and thus sought the same directions which were issued by the Tribunal, vide order dated 17.12.2018 in OA No. 2791/2017 qua Ms. Alka Chauhan and Ms. Renu Ahuja's case, by seeking early hearing in the main OA.

4.7. The Tribunal, vide order dated 31.05.2019, passed a brief order in MA No. 1912/2019, which, being the main edifice of the petitioner's case, requires to be noticed: -.

"MA.1912/2019.

The instant MA is filed seeking preponement of the hearing in the O.A. No.2874/2018. With the consent of both the counsel, the MA is allowed and the, main O.A. itself is taken up for hearing.

O.A. No.2874/2018

Heard both the sides.

2. When this matter is taken up for hearing, learned counsel for the applicant submitted that the applicant is identically placed like the applicants No.1 and 2 in O.A. No:2791/2017- Mrs. Alka Chauhan and Others vs. Union of India and Others, decided on 17.12.2018 and that she is retiring within 3 years from today, and she would be satisfied if the O.A. is disposed of in terms of the said judgment.

3. In the circumstances, without going into the merits of the case, the O.A. is disposed of, in terms of the judgment dated 17.12.2018 in O.A. No.2791/2017 - Mrs. Alka Chauhan and Others vs. Union of India and Others. No order as to costs".

[Emphasis is ours]

4.8. As would be evident from the reading the extract of the order dated 31.05.2019, the petitioner's application for advancing the date of hearing in OA No. 2874/2018 was allowed, and thereafter, with the consent of the counsel for

the parties, the main OA was taken on board for disposal.

4.9. The Tribunal, after noticing its judgment dated 17.12.2018, passed in OA No. 2791/2017 disposed of the petitioner's OA i.e., OA No.2874/2018, in terms of the said order.

5. On 03.01.2020, the petitioner moved the Tribunal by way of an MA in the main OA, which was numbered as MA No.298/2020, seeking, in effect, implementation of the aforementioned order dated 31.05.2019.

5.1. The record shows that, in January 2020, the respondents filed a review application before the Tribunal qua the order dated 31.05.2019, passed in OA No.2874/2018. The review application was numbered, as RA No.91/2020. Along with the review application, the respondents also filed, on 15.01.2020, an application for condonation of delay. The application filed by the respondents for condonation of delay was numbered, as MA No.201/2020.

5.2. The Tribunal, for the reasons given in the impugned order dated 23.11.2020, dismissed the application for condonation of delay. The Tribunal observed that, in accordance with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, which prescribes the limitation for filing review, it had no power to condone the delay. In this behalf, the Tribunal relied upon judgment of the Supreme Court in K. Ajit Babu us. Union of India (1997) 6 SCC 473 and the judgment of the Andhra Pradesh High Court in G. Narsimha Rao Vs. Regional Joint Director of School 2003 SCC Online AP 1068.

5.3. After dismissing the application for condonation of delay, the Tribunal, as a logical corollary, dismissed the review petition filed by the respondents.

5.4. In the interregnum, since the respondents had not acted in consonance with the order dated 31.05.2019 [although more than one year had passed], the petitioner instituted a contempt petition. The contempt petition was filed by the petitioner on 30.09.2020, and was numbered, as CP No.195/2020.

5.5. The Tribunal, via the impugned order concluded that the respondents had not committed a contempt. In reaching this conclusion, the rationale provided by the Tribunal is that, in OA No.2791/2017, which was finally disposed of by the Tribunal, via order dated 17.12.2018, an interim order had been passed in the favour of the original applicants which was not the position obtaining in the instant case. In other words, the Tribunal was of the view that, since an ad-interim injunction had been issued against the transfer orders concerning Ms. Alka Chauhan and Ms. Renu Ahuja [qua whom the petitioner sought parity], the order passed in their case was distinguishable.

Arguments advanced on behalf of the parties: -

6. Mr. Mishra argues that, there was no difference between the case of the petitioner and the case lodged by Ms. Alka Chauhan and Ms. Renu Ahuja along with Mr. Sandeep Khatri, and it was because of the parity in their circumstances,

insofar as the RTP was concerned, that, the relief was granted by the Tribunal, on 31.05.2019. Mr. Mishra submits that, since a judgment was delivered in the favour of the petitioner, the same ought to have been implemented by the respondents.

7. On the other hand, Mr. P.S. Singh, who appears on behalf of the respondents, reiterates that, the reasons given by the Tribunal for not proceeding against the respondents are valid, and therefore, require no interference.

7.1. Mr. Singh reiterated the rationale provided by the Tribunal, which was that, since an interim order was passed in OA No.2791/2017, the petitioner's case was distinguishable from the case concerning Ms. Alka Chauhan, Ms. Renu Ahuja and Mr. Sandeep Khatri [i.e., the original applicants therein].

7.2. Furthermore, Mr. Singh says that, as noticed in the order dated 21.05.2018, out of the total tenure of 28 years and 4 months of service [as on 07.07.2017], the petitioner had remained in Delhi for 25 years and 7 months.

8. According to Mr. Singh, even though the petitioner had moved an application before the Tribunal in OA No.2874/2018 seeking parity with the applicants i.e., Ms Alka Chauhan and Ms. Renu Ahuja in OA No.2791/2017, the petitioner had more than three years of her service left, when the transfer and movement order was issued to her.

8.1. Furthermore, Mr. Singh says that the petitioner's mother was not dependent on her. For this purpose, he relied upon 'paragraph 3 of the rejoinder filed by her.

Analysis and Reasons: -

9. Having heard the counsel for the parties and perused the record, what emerges is the following: -

(i) The petitioner sought recall of the transfer order dated 19.07.2017 and the movement order dated 15.11.2017 on the ground that, her mother was dependent on her for medical reasons. Since she did not get any relief from respondent no.3, she moved the Tribunal. The Tribunal directed the respondents to pass a speaking order qua the petitioner's representation dated 30.11.2017. This order was passed on 20.12.2017, in OA No. 4531/2017.

(ii) The respondents rejected the second representation dated 30.11.2017 made by the petitioner, vide order dated 21.05.2018. It is this rejection, that led to the filing of the OA No.2874/2018.

(iii) While the said OA i.e., OA No.2874/2018 was pending consideration, the Tribunal, via order dated 17.12.2018, disposed of the OA concerning Ms. Alka Chauhan and Ms. Renu Ahuja and Mr. Sandeep Khatri, bearing no. 2791/2017. Via this order, relief was granted to the said applicants.

(iv) The petitioner, thereafter, moved the Tribunal for relief, in line with the aforementioned order dated 17.12.2018, and in this behalf, moved an application

for advancing the date of hearing. The Tribunal granted the request of the petitioner for advancing the date of hearing, and with the consent of the counsel for the parties, disposed of the subject OA i.e., OA No.2874/2018, via order dated 31.05.2019.

(v) This order i.e., order dated 31.05.2019, whereby the petitioner was put at par with Ms. Alka Chauhan and Ms. Renu Ahuja was not challenged by the respondents. The order remains intact, to date.

(vi) Since the respondents did not comply with the order dated 31.05.2019, the petitioner was compelled to file contempt petition i.e., CP No.195/2020, preceded by an application for implementation of the said order.

(vii) The respondents had filed a review application qua the order dated 31.05.2019, along with the application for condonation of delay, in January 2020. Via the impugned order dated 23.11.2020, the condonation of delay application was dismissed, which led to the dismissal of the review application.

9.1. Given the foregoing, the position that obtains today is that, the order dated 31.05.2019 is intact. This was also the position that obtained before the Tribunal, on 23.11.2020.

9.2. The Tribunal, therefore, in our view, ought to have taken forward the contempt petition i.e., CP No.195/2020, and not closed it via the impugned order dated 23.11.2020.

9.3. We are told [and this is something which is not disputed] that, the petitioner is superannuating on 30.04.2022. Clearly, the petitioner has a little over 7 months of service tenure, at her disposal, before she retires.

9.4. What is even more disconcerting is that, the respondents have paid no salary to the petitioner, since 30.11.2017.

9.5. As observed above, the respondents ought to have either complied with the order of the Tribunal dated 31.05.2019 or should have taken recourse to an appropriate remedy, as per law, to assail the said order. Instead, the petitioner was left hanging, proverbially, like a "Trishanku"; with respondents, ignoring the order of the Tribunal, dated 31.05.2019.

Conclusion: -

10. Having regard to the aforesaid discussion, we are inclined to allow the writ petition. It is ordered accordingly.

10.1. The impugned order dated 23.11.2020 is set aside. The respondents will implement the order dated 31.05.2019, passed in OA No.2874/2018.

10.2. The petitioner will re-join her post in Delhi on or before 17.09.2021.

10.3. The respondents will also release the salary and allowances payable to the petitioner, subject to due verification. As noted above, it is the petitioner's case

that she has not been paid her salary, since 30.11.2017.

11. The writ petition is disposed of in the aforesaid terms. Consequently, pending application shall stand closed.

12. All concerned will act on a digitally signed copy of the order passed today.