

(2019) 02 CAT CK 0057

In the Central Administrative Tribunal

Case No : Original Application No. 331, 01267 Of 2018

Mahendra Singh Rana

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Recruitment Rules, 2016 — Rule 6

Citation : (2019) 02 CAT CK 0057

Hon'ble Judges : Ajanta Dayalan, J; Rakesh Sagar Jain, J

Bench : Division Bench

Advocate : Udyog Shukla, L.K. Tiwari

Final Decision : Dismissed

Judgement

Ajanta Dayalan, J

1. This is an OA filed by the applicant Mahendra Singh Rana seeking quashing of his transfer order dated 22.10.2018 (Annexure A-1) transferring him from Sub Office, Haldwani to S.O. Jammu.

2. The case of the applicant is that the applicant is working as Executive, Khadi and Village Industries Commission, which is a non-gazetted post. In June 2018, he was transferred from Sub Office, Haldwani to State Office, Dehradun with immediate effect vide transfer order dated 12.06.2018. Accordingly, he joined his duty at Dehradun on 23.07.2018 and has been continuously working there since then and there has been no complaint against him. However, just after four months the applicant has been further transferred vide impugned order dated 22.10.2018 from Sub Office, Haldwani to Jammu. This is despite transfer policy of the respondents department dated 30.08.2007 (Annexure A-7) laying down normal tenure of Group A officers to be three to five years and that of non-gazetted officials to be five to seven years. The applicant made a representation to respondent no. 3 vide letter dated 13.11.2018 (Annexure A-8) requesting for cancellation of the impugned transfer order; but there was no fruitful result.

Hence the OA.

3. Learned counsel for the applicant has pleaded that the impugned order is bad in law being against the transfer policy of the respondents department. Against the normal tenure of five to seven years in the case of the applicant, he has been shifted barely four month after his transfer in June 2018 from Haldwani to Dehradun. Learned counsel for the applicant further submitted that the applicant has settled his family members in Dehradun and has 87 years old mother living with him. Learned counsel for the applicant also pleaded that there is a mistake in the impugned order as the same was showing his 'Present place of posting' as Haldwani whereas he had already joined at Dehradun in July 2018. This mistake was corrected by the department over 20 days later by issuing a corrigendum. He also stated that Deputy Director In-charge had recommended for continuing him at Dehradun vide his letter dated 23.10.2018 (Annexure A-4).

4. The learned counsel for the applicant further stated that as per the transfer policy filed by the respondents alongwith the counter (Annexure II to the CA), the applicant could be transferred on administrative grounds but the impugned order does not show any such ground. Learned counsel for the applicant also stated that the counter filed by the respondents further states that the transfer was made 'looking to the need of development under Village Industries particularly Honey Mission' (reference para 7 of the counter). However, the allocation of duties made to the applicant vide order dated 23.01.2019 (Annexure RA-1) does not state any such work. The counsel for the applicant stated that as per this order, the applicant is only in-charge of Prime Minister's Employment Guarantee Programme (PMEGP) which basically relates to facilitating credit facility and does not involve any specialized work related to Honey Mission at all. Such work could be done by anyone and does not require specialized knowledge of Honey Mission. The counsel, therefore, pleaded that the transfer order dated 22.10.2018 is bad in law and needs to be quashed.

5. On the other hand, the learned counsel for the respondents has contested the claim of the applicant. He stated that the order dated 22.10.2018 is purely on administrative grounds. Learned counsel for the respondents also stated that the transfer policy of the department is only a guideline and is not mandatory. In fact, he stated that the complete guidelines on Transfer of Officials (both gazetted and non-gazetted) is dated 29.10.1999 and is placed at Annexure-II to the counter affidavit filed by the respondents. He further stated that this policy itself clearly states at clause XVI General (a) that 'These guidelines on transfers in KVIC does not confer any right, and no employee shall therefore seek any particular place of posting or a particular post as a matter of right'. Learned counsel for the respondents further pleaded that these guidelines under clause XVII further state that ' These guidelines are a broad statement of transfer policy for KVIC officer/ staff. Administration has the right to transfer any employee at any time on administrative ground'. He therefore, concluded that the guidelines are only by way of broad statement of transfer policy and do not confer any right

on the employees. He also stated that any person appointed to KVIC is liable to serve anywhere in India as per Rule 6 of Recruitment Rules of 2016 (Annexure - 1 of counter affidavit).

6. Learned counsel for the respondents further stated that the statement of postings of the applicant since his initial appointment has been given at Annexure-V to the counter affidavit which shows that after induction of the applicant in service in December 1984, he served till July 1990 in Pune / Vijayarai. Thereafter, he served in Haldwani for about one and half years till December 1991; in DO, Meerut till November 2000; in Sub Office Haldwani from November 2000 to July 2009; in S.O., Dehradun from July 2009 till August 2013 and then in Sub Office, Haldwani from August 2013 till July 2018. As such, the counsel for the respondents argued that the applicant has been in Uttarakhand State right from November 2000 onwards and as such his transfer out of the State is not unusual and does not deserve interference by the Tribunal.

7. The learned counsel for the respondents also stated that the issue of Honey Mission being raised by the applicant's side is a misconception. Firstly, in the counter affidavit, in para 7 itself, which is being referred to by the applicant's side, the respondents have stated that the transfer is 'in the interest of organization and looking to the need of development under Village Industries particularly "HONEY MISSION" in the State of Jammu & Kashmir'. As such, his transfer was not solely for Honey Mission. In fact, this Mission was only one aspect. The larger issue was need for development of Village Industries in the State of Jammu & Kashmir. He further pleaded that as per work allocation relied upon by the applicant himself, the complete allocation of work is as under: -

"Sh. M.S. Rana Executive (V.I) will take over the charge of all work related to FBI and of Distt. Udhampur under PMEGP"

As such all work related to FBI and of District Udampur under PMEGP was allocated to the applicant. He further stated that FBI stands for 'forest based industries' and as such Honey Mission is also a part of it. Accordingly, he stated that the applicant's counsel is reading only part of the order and is, in fact, trying to mislead or at least confuse the Tribunal.

8. Learned counsel for the respondents finally concluded that in view of all the submissions, the order is as per law. There is no malafide. In fact, no such malafide has been alleged even by the applicant. There is no mismatch between reply given in the counter and the work allocation made by the respondents. The slight mistake in the order dated 22.10.2018 was made inadvertently and has been corrected by issuing a corrigendum. Undue advantage of this cannot be granted to the applicant. In any case, Sub Office, Haldwani is under SO, Dehradun and his transfer from Haldwani to Dehradun under the same State Office is not considered as transfer as per the definition of transfer in the Transfer Policy dated 29.10.1999 (Annexure -II of CA) which clearly states that transfer would mean transfer involving change of headquarter and hence

applicant's transfer from Haldwani to Dehradun in June 2018 was not a transfer being within the same State Office at Dehradun. The applicant has completed almost 20 years in the same State and is liable for transfer. Hence the impugned order is perfectly just and needs to be held valid. He also stated that the applicant has already joined at Jammu on 31.12.2018.

9. We have heard the learned counsels for the parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

10. We observe that the applicant is relying on the transfer policy laying the normal tenure for non-gazetted officials to be five to seven years. These guidelines quoted by the applicant are of 2007 and are only modification in the original transfer guidelines dated 29.10.1999. However, the respondents have given complete transfer guidelines on transfer of officers dated 29.10.1999. These clearly state that the guidelines do not confer any right to the employees to seek a particular place of posting. Further, these guidelines also clearly states that these are a broad statement of transfer policy and administration has the right to transfer of any employee at any time on administrative grounds. Further, Rule 6 of Recruitment Rules dated 11.03.2016 clearly provides that 'Any person appointed under the provisions of these rules is liable to serve anywhere in India'. The respondents have also stated that the applicant has served in the same Uttarakhand State for last almost 20 years and as such he was liable for transfer outside the State. The respondents have categorically stated that the transfer was on administrative grounds and was in the interest of organization. The applicant's side has not been able to contest this argument except to say that the specific administrative grounds are not mentioned in the impugned order. We do not accept this argument as the administrative grounds are not required to be mentioned in the transfer orders. The applicant's argument about mismatch between the counter affidavit and the work allocation made to the applicant has been very effectively replied by the respondents. In fact, by the same documents being relied upon by the applicant's side, the respondents have shown that the applicant is only trying to interpret the order in his own manner. Otherwise, the order dated 23.01.2019 is very clear and allocates work relating to forest based industries (FBI) to the applicant. This FBI includes Honey Mission as well. This is besides the work of District Udhampur relating to PMEGP to the applicant. We also note that the applicant has already joined at his new place of posting. There is no malafide in the order and even the applicant's side does not say so.

The applicant's side has also not proved anything to show that the order is not justified beside generally pleading that the earlier order transferring him from Haldwani to Dehradun was issued in June 2018 only. The respondents' side has clearly stated that for administrative reasons and in the interest of organization, they can transfer an employee. Further his earlier transfer from Haldwani to Dehradun was in the same State Office and hence is not covered in the definition

of transfer in the transfer policy of the department. As such, this needs to be disregarded for considering his transfer out of the State of Uttarakhand. We also note that this order needs to be viewed in the light of fact that the applicant has completed almost 19 years in the State of Uttarakhand and another 10 years in the nearby state of UP in his total career of about 35 years of service. We also note that after initial stint of less than six years in Pune / Vijayarai, the applicant has served for last almost 28 years (since July 1990) continuously only in Meerut Division and State of Uttarakhand. He has been continuously in State of Uttarakhand since November 2000.

11. In view of all the above facts, we find that there is no case for us to interfere with the impugned transfer order. Accordingly, the OA is dismissed being devoid of merits. No costs.