
(2018) 07 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 2201 Of 2015

Mukesh Soni

APPELLANT

Vs

National Technical Research Organization And Ors

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 07 CAT CK 0031

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

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main relief:-

" a) quash and set aside the impugned orders placed at Annexure A/1, Annexure A/2, Annexure A/3 and Annexure A/4 with all consequential benefits."

2. Brief facts of the case are that the applicant has sought quashing of the impugned orders dated 25.11.2014 (Annexure A-1), vide which the applicant was transferred from S&CI, Aya Nagar, New Delhi to S&CI, Project Office, Avn Base, Bhilai/Nandini, order dated 19.03.2015 (Annexure A-2), vide which the order dated 18.03.2015 was withdrawn, order dated 12.06.2015 (Annexure A-3), vide which the applicant was relieved from Security Division, Aya Nagar with immediate effect and directed to take further instructions from Security Division, National Technical Research Organization (NTRO), Headquarters and order dated 15.06.2015 (Annexure A-4), vide which the applicant was relieved of his duties with effect from 15.06.2015 (A/N) with a direction to report to the OIC, NTRO, Aviation Base, Bhilai/Nandini on permanent posting for future duties.

3. In brief, the grounds put forward by the applicant in this OA for seeking the reliefs mentioned above, are as follows:

a) That the impugned orders are illegal, arbitrary, invalid, unjustified and unreasonable.

b) That the applicant is the only one in the organization who has been frequently transferred and sent on temporary duties from one location to another indiscreetly and that in seven years he has been moved on at least 10 occasions.

c) That there is no post of Assistant Security Officer (ASO) at Bhilai and hence he cannot be posted without a post in existence.

d) That as per his knowledge there is no transfer policy in the respondent-organization.

e) That frequent transfers are unjustifiable and cannot be countenanced in law.

f) That the impugned transfer orders are vindictive, punitive and issued with prejudicial mind with the intention to punish the applicant.

g) That from the fact that the transfer order dated 25.11.14 was cancelled by the order of 18.3.15, it can safely be inferred that no public interest is involved in the impugned orders though why the cancellation order was later withdrawn is not known. Even otherwise if public interest is sought to be advanced as reason for transfer posting of the employee it is incumbent upon the authorities to prove the "public interest" leading to transfer.

h) That the respondents should not have relieved the applicant when there is a representation pending consideration for which he was heard on 12.06.2015 without disposing of the representation through a reasoned order and communicating it to him and this amounts to violation of principles of natural justice.

i) That the applicant has compelling family circumstances and his own medical ailments requiring him to compulsorily stay at Delhi.

4. The applicant has sought by way of an Interim Relief to stay the relieving orders and to direct the respondents to maintain status quo "ante" by way of an ex-parte ad-interim order.

5. The Tribunal vide order dated 23.06.2015 had declined to stay the transfer order and had passed the following orders:-

"Having considered the arguments made, I am not inclined to stay the transfer order as the applicant has spent almost 7 years in the Delhi; transfer cannot be claimed as a matter of right; and no malafide is made out. As regards the objection of the applicant that there is no post of ASO at Bhilai, the learned counsel for the respondents vehemently opposed this contention. Be that as it may, this is a matter which the Tribunal need not go into and I trust that the Chairman, NTRO is in a position to sort out this small technical matter, if it at all

exists. "

6. The respondents have filed their counter-affidavit dated 17.07.2015 and advanced the following preliminary objections:

i) That the applicant already stands relieved from the post in Delhi and hence the OA is liable to be dismissed and the applicant is not entitled to any interim relief.

ii) That the prayer for setting aside the order dated 19.03.2015 is not maintainable since the order dated 18.03.2015 had been inadvertently issued and that the applicant on that date was still serving in Delhi and had not been relieved for Bhilai.

7. Respondents while referring to the facts of the case contended that the grounds, as stated, are wrong and denied. They have further stated that NTRO is a Premier Technical Intelligence Organization having a crucial mandate relating to security of the nation and the officers of NTRO can be posted anywhere in India in exigencies arising out of operational and functional requirements. The applicant was working in Security & Counter Intelligence Division at New Delhi. He belongs to Security Cadre of the respondent-organization and cannot be compared with the other cadre. The applicant, since the date of his appointment with NTRO has remained posted at Delhi and this was his first transfer out of Delhi, for which the order was passed on 25.11.2014 and upon his representation regarding the ailments of the family the transfer was deferred initially till February, 2015 and again on his another representation till June, 2015. The said deferment cannot be continued indefinitely. The respondent-organization has already considered enough to accommodate the applicant and deferred the transfer by almost seven months looking at the condition of his family. It is further stated that the applicant was given a personal hearing by the Chairman of the respondent-organization on 12.06.2015 as regards the transfer order and since no justification was found to cancel the said transfer order, he was relieved to carry out his transfer as per the order dated 25.11.2014. The applicant did not raise any fresh ground to cancel the transfer order.

8. Heard the learned counsel for both the parties and perused the material available on record.

9. The learned counsel for the applicant cited the decision of the Hon"ble High Court of Delhi in WP. (C) No.5401/2013 - Jannat Digal v. Union of India & Ors., dated 29.08.2013, in which it has been held as under:

"Prima facie, a person cannot be posted to a post not commensurate in rank to the one held by a person".

10. The only point of determination, which emerges for our consideration, is whether the order transferring the applicant dated 25.11.2014 and subsequent relieving order dated 12.06.2015 are valid in the eyes of law.

11. The applicant has basically tried to claim that the said orders are bad in law

on the ground that they are illegal, arbitrary and issued with prejudicial mind and there is no public interest involved as claimed by the respondents.

12. During the course of arguments, learned counsel for the applicant emphasized the point that the applicant has been posted at Bhilai despite the fact that there is no post of ASO exists there and hence the posting order is unjustified.

13. We take note of the fact that the NTRO is a Premier Technical Intelligence Organization working for the security of the nation. The officers of NTRO have substantial responsibility for which there is undeniable need for operational and functional flexibility and the Competent Authority decided that an experienced officer in the grade of ASO would be appropriate for looking after the security arrangements at Bhilai. Thus, the contention of the applicant that the transfer order is bad in law because as per his claim no post of ASO exists in Bhilai, cannot be accepted. We, further, observe that while the argument of non-existence of post is being advanced by the learned counsel for the applicant for challenging the applicant's transfer to Bhilai, the fact that there is nothing to demonstrate that such a post exists even in Delhi, where the applicant was posted, has been glossed over.

14. It has, also, not been contended by the applicant that by his transfer to Bhilai he has been put to any disadvantage in terms of pay, allowances and other compensation etc. As regards in Janak Digal case (supra), we find that the said order has no application in the instant case since it is nowhere claimed nor established that the applicant had been posted to a post not commensurate in rank.

15. The contention of the applicant that he has been frequently transferred has been clearly rebutted by the respondent in their reply where it is clearly stated that this is the first transfer of the applicant out of Delhi.

16. In normal circumstances, intervention of the court would be only confined to such cases where either mala fide is alleged and proved or there is a violation of some statute or where the laws of natural justice have not been respected. It is fully considered that the courts are not to go into the issue like justification of the administrative orders.

In Somesh Tiwari Vs. Union of India & Others [AIR 2009 SC 1399], the Hon"ble Supreme Court has held as under:-

"19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved..."

17. From the facts presented before us there is no reason to conclude that in the transfer of the applicant there has been any element of malafide, arbitrariness, violation of any law or principles of natural justice. There is also absolutely no

reason to believe that any extraneous consideration was involved.

18. It is also to be noted that the applicant has already joined at his new place of posting in Bhilai and has been working w.e.f. 01.07.2015. At this stage any interference could also have the consequence of adversely affecting the operational requirements in the respondents' organization.

19. Hence, in view of the law settled by the Hon'ble Supreme Court as well as the facts of this case, we find absolutely no merit in the applicant's plea and this OA is, therefore, dismissed. No order as to costs.