

(2013) 07 MAD CK 0266

In the Madras High Court

Case No : Writ Petition No. 8165 of 2012 and M.P. No's. 1 of 2012 and 1 of 2013

P.R. Anand Kumar

APPELLANT

Vs

The Union of India, The Chief Engineer (Navy), The
Commander Works Engineers (Navy) and The Registrar
Central administrative Tribunal

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 MAD CK 0266

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

Advocate : V. Vijay Shankar, for the Appellant; Seethalakshmi, SCGSC, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi and T.S. Sivagnanam, JJ.—This Writ Petition has been filed challenging the order passed by the Central Administrative Tribunal in O.A. No. 252 of 2012 dated 09.03.2012, by which the Tribunal dismissed the Original Application filed challenging an order dated 10.02.2012, whereunder, the writ petitioner was transferred from Chennai to Hyderabad. The petitioner entered the services of the respondent Organisation (Military Engineering Services) as Surveyor Assistant, Grade-II during 1985. Subsequently, the said post was re-designated as Junior Engineer, in which capacity the petitioner is now working. By order dated 08.11.2011, the petitioner was transferred from Chennai to Vizag. The petitioner requested for retention at Chennai, which request was negatived by the respondents by order dated 21.01.2011. The petitioner filed O.A. No. 83 of 2011, before the Central Administrative Tribunal and challenged the order of transfer on the ground that it violates paragraph 36(b)(c) of the Transfer Guidelines issued by the respondents. The Tribunal by order dated 26.7.2011, allowed the Original Application and set aside the order of transfer giving liberty to the respondents to pass fresh orders, if considered necessary

keeping in view the guidelines prescribed. Pursuant to the order passed by the Tribunal by order dated 29.10.2011, the order of transfer was cancelled. Subsequently, by an order dated 10.2.2012, the petitioner was transferred to Hyderabad. The petitioner made a request after cancelling such transfer and since there were no favourable orders, he once again approached the Tribunal and filed O.A. No. 252 of 2012. The said Original Application was dismissed by the Tribunal by order dated 09.03.2012, which is impugned in this Writ Petition.

2. The learned counsel for the petitioner mainly placed reliance on paragraph No. 36(b) and (c) of the transfer Guidelines issued by the respondents stating that all postings under Command Manning Level (CML) shall be issued by end of March every year keeping in view of academic session of children and will be implemented latest by 15th May of each year. Further, it is submitted that as per paragraph 36(c), the list of affected staff due for posting with tentative station wise post should be circulated by December of each year for giving their choice of Station and no such list was prepared and published and these questions were taken note of by the Tribunal in the earlier Application in O.A. No. 83 of 2011 and the earlier order of transfer transferring the petitioner from Chennai to Vizag, was set aside and without adhering to the directions issued by the Tribunal in the earlier Application, the order of transfer came to be passed and the same is illegal as being violative of the guidelines as well as the direction of the Tribunal.

3. The learned counsel for the respondents submitted the paragraph 36(b) and (c) cannot be read in isolation, but it should be read in conjunction with paragraph 57 of the guidelines and this was not taken note of by the Tribunal while issuing a direction in O.A. No. 83 of 2011. Further, it is submitted that the petitioner had already given his choice of Station for transfer in CML-10, during July 2010 and accordingly, the posting to Hyderabad was made by order dated 10.2.2012. Further, the exercise of calling for choice station and adherence to time schedule cannot be done in isolation as the petitioner was one among others posted under CML-10. Further, it is submitted that the guidelines of transfers are not statutory rules and even if transfer is in violation of any guideline, the Court would not ordinarily interfere unless it is malafide or in violation of statutory rule. Further, it is submitted that the petitioner is in the third place in the tenure turnover posting issued during 2012 and the petitioner has been in Chennai for more than seven years, when a person should not be retained in a particular station for more than three years. It is further submitted that the order of transfer which was impugned before the Tribunal was an administrative order and no malafides have been attributed and the same is valid.

4. We have hear Mr. V. Vijay Shankar, learned counsel appearing for the petitioner and Mrs. S. Seethalakshmi, Senior Panel Counsel for the respondents.

5. It is a settled legal position that Court should not interfere with an order of transfer, which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. The Government servant holding a transferable post has

no vested right to remain posted at one place or other, he is liable to be transferred from one place to other and transfer orders issued by the competent authority do not violate any of the Government servant's legal rights and even if an order of transfer is passed in violation of executive instructions or orders, the Court ordinarily should not interfere with the order. Mrs. Shilpi Bose and others Vs. State of Bihar and others, .

6. The scope of judicial review of orders of transfer is fairly well settled. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India, is not expected to go into the question as to whether the transfer was in the interest of public service as it would essentially require factual adjudication and depend upon the peculiar facts and circumstances of the case. Therefore, unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine. (see National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, & Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, .

7. Bearing the above legal position in mind, we now examine as to whether the Tribunal was right in dismissing the Application filed by the petitioner. It is no doubt true that the Tribunal in an earlier Application in O.A. No. 83 of 2011, quashed an order of transfer passed against the petitioner transferring him to Vizag. In the said case, the Tribunal followed its earlier order and set aside the order of transfer on the ground of violation of paragraph 36(b) and (c) of the transfer guidelines. The respondents were given liberty to pass fresh orders if considered necessary keeping in view the guideline prescribed. The petitioner is working in a defence organisation viz. Military Engineering Service. In 2007, guidelines were framed for managing the existing shortage and making optimum use of the existing manpower.

8. Paragraph No. 35 of the guideline relates to Command Manning Level posting (CML), which involves parity of manning levels between different commands. In terms of paragraph 36, certain procedures have been formulated while drawing up a list of persons to be posted to different stations and certain time frame is also prescribed. Paragraph 57 of the guidelines deals with time of transfer which states that care will be taken ensure that transfers during the middle of the academic year are avoided as far as possible, exceptions will only to meet an emergent requirement in the exigencies of service. However, moves (transfers) on administrative grounds may be ordered giving lesser time. The said provision also gives the general schedule for bulk posting and so far CML posting, the schedule is March/April.

9. In terms of paragraph 62, the earlier guidelines has to be read in conjunction with other posting policies issued by the Headquarters. In terms of paragraph 63, notwithstanding the instructions contained, a posting in the interest of Organisation and in the exigencies of service will always take precedence. In

terms of paragraph 64, CES Command is empowered to hold in abeyance posting orders. Therefore, the guidelines framed by the respondent Organisation cannot be held to a rigid policy, but from the scheme of the guideline, it is evident that it provides for exigencies on the ground of administration.

10. We have noticed paragraph 56 of the guidelines which states that transfers on administrative grounds may be ordered giving lesser time. Therefore, the contention of the petitioner that the time limit prescribed under paragraph 36(b) of the guidelines was not followed cannot be made applicable in cases of administrative transfer. Further more in the instant case, the petitioner had already given his choice of station for transfer under CML-10 in July 2001 and in accordance with which, the posting order has been issued to Hyderabad. Admittedly, there is no challenge to the order of transfer on the ground of any malafide exercise of power or on the ground that order of transfer was passed by an incompetent authority or it violated any statutory rule. In such circumstances, the order of the Tribunal dismissing the Original Application is perfectly justified and calls for no interference. Accordingly, the Writ Petition fails and is dismissed. No costs. Connected Miscellaneous Petitions are closed.