

(2024) 05 CAT CK 0013

In the Central Administrative Tribunal

Case No : Original Application No. 1695 Of 2024

Raja Singh S/O Late Shri Upendra Narayan Singh

APPELLANT

Vs

Union Of India Through Its Secretary Ministry Of Defence
104, South Block New Delhi-110011 & Ors.

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Citation : (2024) 05 CAT CK 0013

Hon'ble Judges : Dr. Anand S. Khati, Member (A)

Bench : Single Bench

Advocate : Jatin Parashar, Ashish Rai

Final Decision : Dismissed

Judgement

Dr. Anand S. Khati, Member (A)

1. The present O.A. has been filed by the applicant, who is working as Assistant Accounts Officer under CDA (IDS) i.e., respondent No.3 herein, challenging the order dated 09.04.2024, whereby he has been transferred from New Delhi to PCDA (Navy) Mumbai and also relieved vide order dated 19.04.2024. He has filed the present O.A. seeking the following relief(s):

"a. call for the records of the case

b. quash and set aside the impugned order dated 09/04/2024 (placed at Annexure A/1), relieving order dated 19/04/2024 (Annexure A/2) and

c. Direct the respondents to adhere to their transfer policy and allow the applicant to continue the applicant's posting at the present station.

d. Direct the respondents to consider and post the applicant at Delhi or any other station nearer to Delhi

e. Accord all consequential benefits.

f. Award costs of the proceedings; and

g. Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant.”

2. It is submitted by the learned counsel for the applicant that after serving for 7 years in Mumbai, which is termed as Deficient Station Posting, the applicant was transferred to CGDA Delhi on 22.04.2022 and only after 3 months, he was again transferred from CGDA Delhi to CDA (IDS) Delhi in July, 2022. Thereafter, while he was working at CDA (IDS) Delhi, the applicant has now again transferred to Mumbai vide the impugned order dated 09.04.2024, which is in violation of Transfer Policy dated 28.03.2024. He also pointed out that as per Clause 2.3 of the said Policy, the normal tenure at a particular station shall be three years. Further, as per para 11 of the Policy, the periodicity of transfers shall be effected in a manner so as to coincide with the end/beginning of academic year, except transfer on request.

3. The learned counsel for the applicant further submitted that applicant's wife is a home-maker and he has two minor sons of age 10 and 8 years. His frequent transfer has not only affected his life but also hampered the studies of his children due to change of schools in very short span and had to bear unnecessary expenses and/lot of difficulties in admission process. It is also pointed out that his dependent family requires his personal presence and support at all times and getting admission of his son again at Mumbai will be extremely hard task. He also reiterated that the transfer of the applicant is a punitive exercise done by the respondents just to punish him.

4. Per contra, the learned counsel for the respondents vehemently opposed the submission made by the applicant's counsel, and submitted that the periodical unauthorized absence, poor performance and careless behaviour of the applicant had adversely affected the functioning of the office. Even his present office has surrendered him without substitute. Accordingly, his case was referred to Defence Accounts Placement Board (DAPB) and on the recommendation of the DAPB and after the approval of the Competent Authority, his transfer has been executed by the respondents, not to punish him but only due to administrative exigencies. He further submitted that due process has been adopted by the respondents while transferring the applicant and, hence, there is no mala fide on their part. To strengthen his arguments, the learned counsel referred to various guidelines of the CGDA Transfer Policy dated 28.03.2014 and clarified that Clause 2.3 itself provides that an officer can be considered for transfer in administrative exigency. Further, as per para 1.1, transfer ordered on administrative/disciplinary or compassionate grounds and that of new recruits will be outside the purview of the Transfer Policy and paras (3) and (4) are general guidelines regarding transfer/posting of Special Category Stations/Deficient Stations.

5. To buttress his arguments, the learned counsel for the respondents has relied upon the Decision of this Tribunal in an identical matter, bearing OA

No.2135/2015 titled Dharmender vs. Union of India & Ors., dated 08.09.2015 wherein no relief was granted to the applicant therein. He also pointed out that the applicant has already been relieved on 19.04.2024 but he has not joined at his new place of posting till date.

6. Learned counsel for the applicant strenuously opposed the same and submitted that the facts and circumstances of the aforesaid O.A. are not identical to those in the present case. Opposing the aforesaid contentions, the learned counsel for the applicant placed reliance on the following judgments:

(i) Judgment dated 02.03.2015 of the Hon'ble Madras High Court in W.P.(C) No.31396/2014 titled Dr. P. Santhi vs The Government of Tamilnadu & Ors., which was passed relying upon the Judgment in Somesh Tiwari vs Union of India & Ors., (2009) 2 SCC 592. The relevant portion of the same reads as under:-

"26. In P. Pushpakaran v. Coir Board and another 1979 (1) LLJ 139 (Kerala) V. Khalid, J (as His Lordship then was) observed that a transfer can uproot a family, cause irreparable harm to an employee and drive him to desperation. The learned Judge further said:

"24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

27. The Supreme Court in Somesh Tiwari v. Union of India, (2009) 2 SCC 592, held that judicial review would lie in case of punitive transfer. The Supreme Court said:

"16. 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. Mala fide is of two kinds one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

Conclusion:

28. The materials available on record very clearly shows that only as a measure of punishment, the petitioner was transferred from Cuddalore to Kancheepuram. The representation submitted by the ninth respondent to the District Administration and Education Department proceeds as if the petitioner and other faculty members have been disturbing the normal functioning of the College from 2002 onwards. The petitioner is therefore justified in her contention that under the guise of transfer the sixth respondent was actually implementing a hidden agenda. I am therefore of the view that the transfer was made only as a punitive measure and it was not a simple transfer on administrative ground as projected by the sixth respondent.

Disposal:

29. In the result, the order dated 26 November 2014 is set aside. However, I make it clear that this order would not stand in the way of taking appropriate action by Pachiappa's Trust to re-open the College, to ensure orderliness and to enforce discipline inside the campus.

30. In the upshot, I allow the writ petition. Consequently, the connected MPs are closed. No costs."

(ii) Judgment dated 27.03.2008 of the Hon'ble High Court of Andhra Pradesh at Hyderabad in Writ Petition No.24523/2007 titled Bakarupanda Padmavathi vs Bank of India & Ors., wherein it has been held as under:

"10.The facts and circumstances of the case clearly disclose that the transfer of the petitioner is punitive in nature. If the respondents are of the view that it is not at all possible to continue the petitioner in the Overseas branch, posting in another branch in the same town, or in the branch, where the husband of the petitioner is working, ought to have been examined....."

7. Heard Mr. Jatin Parashar, learned counsel for the applicant and Mr. Ashish Rai, learned counsel appearing on behalf of the respondents at length and also perused the pleadings/judgments placed on record.

8. As per the direction of this Tribunal vide order dated 10.05.2024, the learned counsel for the respondents produced before this Court the documents regarding recommendations of the Defence Accounts Placement Board (DAPB) for transfer of the applicant and its approval by the Competent Authority. From a perusal of the same, it is evident that vide DAPB recommendations dated 08.04.2024, the transfer of the applicant has been recommended to Mumbai under PCDA (Navy) on administrative grounds, because at that place against the sanctioned strength of AAOs being 93, the actual placement is 78.

9. From a perusal of Clause 2.3 of the Transfer Policy circulated by the office of the C.G.D.A to all PCsDA/CsDA/Pr. IFAs/IFAs/PCA (Fys)/CsFA (Fys) dated 28.03.2014, it is evident that though the normal tenure at a station is three

years, however, the competent authority will have the discretion to reduce the period but not below two years in exceptional cases, with due regard to all relevant factors, such as, degree of un-popularity of the station, difficulty in finding suitable replacement etc. or on compassionate grounds or administrative exigency. The same reads as under:

"2.3. The normal tenure in other offices/stations shall be three years. However, PCsDA/CsDA will have the discretion to reduce the period but not below two years in exceptional cases, with due regard to all relevant factors, such as degree of the unpopularity of the station, difficulty in finding suitable replacement etc. or on compassionate grounds or administrative exigency. The period for rotation of staff in other stations need not be fixed or inelastic. Continuance of an individual at these stations beyond three years is subject to the overriding conditions that (a) it is not necessary to immediately transfer him/her to meet a requirement elsewhere and (b) there is no legitimate claimant for the station where he is serving."

10. Indubitably, the applicant is working in an important organisation under the Ministry of Defence, having all India transfer liability, and can be transferred to any station in exigencies of service. The applicant's contention that the impugned transfer order passed by the respondents is a punitive one to punish him, cannot be accepted because as it is evident from the documents produced by the respondents' counsel that the applicant was transferred to PCDA (Navy), Mumbai in view of administrative exigencies, based on the recommendations of DAPB and subsequent approval by the Competent Authority vide order dated 09.04.2024, due to shortage of staff, i.e. against sanctioned strength of 93 of AAO, the actual placement is 78. It is also noticed that pursuant to the transfer order dated 09.04.2024, the applicant has also been relieved on 19.04.2024, but he has not yet joined at the new place of posting.

11. As per the settled position of law, the Executives retains the absolute right to transfer a public servant in administrative exigencies or in public interest and the same should not be interfered with by the Courts/Tribunals unless there are strong and pressing grounds rendering the transfer order illegal, on the ground of violation of statutory rules or on the ground of mala fides. Besides that, it is also well settled that a Government servant cannot disobey a transfer order and he should first join at the place of posting and then only can question the transfer order, if aggrieved, in accordance with law. In view of the settled position of law, I find no good ground for interfering with the applicant's transfer order, more particularly, when he has already been relieved.

12. In the facts and circumstances and for the reasons stated hereinabove, the O.A. is dismissed being devoid of any merit. The applicant shall join at the new place of posting within two weeks from the date of receipt of a copy of this order, till then he can avail leave of any kind available to his credit. Thereafter, he is at liberty to make appropriate representation for transfer ventilating his grievances/ personal reasons, if he so desires, and if such a representation is made by him,

the respondents are directed to consider and dispose of the same, in accordance with law, within a period of three months therefrom.

However, there shall be no order as to costs.