

(2019) 05 CAT CK 0055

In the Central Administrative Tribunal

Case No : Original Application No. 1447 Of 2019

Rajesh Kumar (Aged 48 years)

APPELLANT

Vs

Union Of India, The Secretary

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Rights Of Disabilities Act, 2016 — Section 2(r)

Citation : (2019) 05 CAT CK 0055

Hon'ble Judges : V. Ajay Kumar, J; Nita Chowdhury, J

Bench : Division Bench

Advocate : Atul Kumar Singh, Trilok Singh, Subhash Gosai

Final Decision : Disposed Off

Judgement

Nita Chowdhury, J

1. Heard learned counsel for the applicant Shri Atul Kumar Singh and Shri Trilok Singh for Shri Subhash Gosai, learned counsel for the respondent No.1 on receipt of advance notice.

2. By filing this OA, the applicant is seeking the following reliefs:-

"i. Quash and set aside the Order dated 02.04.2019 passed by the Respondents and direct the respondents to withdraw the transfer of the applicant to Punjab Circle.

ii. Pass such further and other order(s) which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. The facts of the case as stated by the applicant are that the applicant was initially appointed in the Bharat Sanchar Nigam Limited (BSNL) on 30.3.1998 and since then he has been working in the said organization. From 1998-2016, he has rendered service in the Haryana Circle for 18 years as per the terms and conditions of the transfer policy of the said organization, i.e., BSNL. Thereafter, in 2016, he was transferred and posted to BSNL Corporate Circle, New Delhi and at

present holding the post of SDE (Telecom). Further on 14. 1.2019, he was again transferred from BSNL Corporate Circle, New Delhi to Inspection and Quality Assurance Circle under Principal General Manager, North New Delhi w.e.f. 14. 1.2019.

3.1 On 18.3.2019, the applicant gave an interview on Punjab Kesri Channel, pointing out that the BSNL is losing their customers only because of the scarcity of 4G network. For this act, he was issued a show cause notice on 20.3.2019 to explain his position in the said matter. He gave his reply to the said show cause notice and thereafter, after considering his reply, the respondent No.2 passed the order dated 2.4.2019 giving him warning to be more careful in future and accordingly an entry is also being made in his memo of services.

3.2 According to the applicant's averment, vide impugned order dated 2.4.2019, without adopting the policy that minimum 18 years is required for the change of circle of any employee, he was again transferred from QA and Inspection Circle to Punjab Circle. The respondents have passed the relieving order dated 3.4.2019 vide which he was relieved from the strength of the O/o DE A/T QA Inspection Circle, Karolbagh New Delhi with instruction to report to his new assignment at Punjab Circle which was communicated to him vide email of the same date.

3.3 Being aggrieved by the same, he has preferred his representation dated 4.4.2019 ventilating his grievances against the impugned transfer order. Thereafter, he filed another representation dated 11.4.2019 requesting for cancellation of his transfer order.

3.4 When the respondents have not given any reply to the aforesaid representations, the applicant was left with no other option but to approach this Tribunal for redressal of his grievances.

4. When this case was taken up for consideration, learned counsel for the applicant submitted that the impugned order is violative of transfer policy as the circle of the applicant cannot be changed before 18 years, despite the fact that respondents changed the circle of the applicant within three months and that too, within a short span of two years and the services of the applicant was transferred to number of posts/circles. He further submitted that general rule of transfer policy is that the employee shall hold his post/circle unless he has completed five years of service in the same cadre. He also submitted that minimum period of three years at a location shall be maintained as far as possible in order to avoid hardship to the employees as per Section B of Transfer Rules and guiding principles (Annexure A-3).

4.1 Counsel also submitted that the applicant is having one 100% mentally retarded, physically handicapped sister, who is solely dependent upon the applicant for her treatment and as such on medical grounds also the impugned order is liable to be set aside, as stipulated in DOP&T OM dated 8.10.2018 wherein it has been held as under:-

"(i) A Government employee who is a care-giver of dependent daughter/son/ parents/spouse/brother/ sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints."

4.2 Learned counsel further submitted that since the applicant is the office bearer in the welfare Association of the organization, namely, Sanchar Nigam Executive Association, (India) and has been transferred only to harass the applicant as it is settled proposition of law that the office bearer of a trade union is considered as a protected work and change in the service condition cannot be done without the prior approval of the labour Tribunal. He further submitted that the applicant has been deployed for election duty on 2.4.2019 and he has been given a responsibility of issuing the postal ballot paper and various misc. duties during LOK SABHA ELECTION-2019 and the fact that he has joined the said duty on 2.4.2019 and hence, prays that the impugned order be quashed.

5. After hearing the learned counsel for the parties and going through the record, we are of the firm view that nobody can claim that he should be remain posted at a particular place throughout his career when a person is having an all India transfer liabilities and the courts should not interfere with a transfer order 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 mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. In this regard, we are guided by the judgment of the Hon'ble Supreme Court in State of U.P. Vs. Gobardhan Lal; (2004) 11 SCC 402, it was held as under:-

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any

career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

Further the Hon'ble Supreme Court in *Rajendra Singh & Others v. State of UP & Others*, (2009) 15 SCC 178, held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see *State of U.P. v. Gobardhan Lal*; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of *Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.* AIR 1991 SC 532, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order 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 mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete

chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In *N.K. Singh v. Union of India & Ors.* (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

6. In view of the above decisions of the Hon'ble Supreme Court, no stay can be granted to the applicant of this OA with regard to the transfer order passed.

7. In the circumstances, the OA is disposed of at the admission stage without going into the merit of the case by directing the applicant to comply with the transfer order and to join at the place of posting as directed by the respondents. Thereafter he is given liberty to file a representation with the respondents, who are directed to pass an appropriate reasoned and speaking order in accordance with law within 90 days of receipt of the said representation.

8. As the matter is being disposed of at the admission stage itself, it is not clear whether the respondents have already passed any order on any representation previously made by the applicant. Hence, if they have previously passed any order, they are directed to give a copy of the same within six weeks to the applicant who may challenge the same, if he so inclined in accordance with law. There shall be no order as to costs.