
(2019) 02 CAT CK 0143

In the Central Administrative Tribunal

Case No : Original Application No. 4534 Of 2018

Ram Dulesh Meena

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0143

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Ajesh Luthra, Gyanendra Singh

Final Decision : Disposed Off

Judgement

1. The applicant, Shri Ram Dulesh Meena, a DANIPS Officer of 2012 batch, being an entry grade officer of NCT of Delhi, was transferred from Delhi to Union Territory of Lakshadweep vide order No.14020/02/2018-UTS-II dated 26.10.2018. He has filed this O.A requesting to set aside the said order.

2. The applicant has taken grounds that his daughter is suffering from Childhood Nephrotic Syndrome and is undergoing treatment in Delhi. He has also contended that the said order has been passed by Under Secretary, Government of India, who is not the competent authority. As per transfer policy, officers senior to the applicant should be transferred first out of Delhi and then only the applicant should be transferred. Also there is only one post at SG/EG Grade in Lakshadweep while, as per additional affidavit filed Shri Gaurav Gupta and Shri Rajnikant Awadhiya have also been transferred to Lakshadweep vide order dated 21.01.2018.

3. The respondents have denied the claim of the applicant. They have clearly stated that the approval of the competent authority, i.e., the Additional Secretary (UT) was taken before the issuance of orders. Further, the applicant has been relieved vide order dated 05.12.2018 and he has concealed this from this Tribunal and obtained interim relief / stay on 11.12.2018. They have replied to

the issue of certain seniors not being sent to Lakshadweep stating that officers of 2009 batch are to be promoted to selection grade by December, 2018, officers of 2010 batch are to be promoted by February, 2019 and officers of 2011 batch are to be promoted by July, 2019. Therefore, transfers to the outlying segments will only be for few months and will not serve the purpose besides being a burden on the ex-chequer.

4. Two cases are quoted by the applicant where orders were cancelled. These are those of Sh. Manish Kumar and Shri Avnish Kumar, working in the offices of Hon?ble President and Vice President. Their appointments were cancelled since they were at par with co-terminus appointments.

5. Respondents have cited cases of Uttar Pradesh Vs. Gobardhan Lal, 2004 (11) SCC 402 and Rajendra Singh Vs. State of Uttar Pradesh, 2010 (1) SCC (L&S) 503, by the Hon?ble Apex Court to strengthen their contention that a Government servant has no vested right to remain posted at a place of choice and he can be transferred wherever the appropriate authority decides in public interest. The relevant portion reads as under :-

"A Government servant has no vested right to remain posted at a place of his choice nor can 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."

6. Rulings have also been cited to bring out that limited scope exists for judicial scrutiny of transfer orders. The cases quoted are State Bank of India Vs. Anjan Sanyal & Ors. (2001) 5 SCC 508 and National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and another (2001) 8 SCC 574.

7. They have also cited the decision in the matter of Union of India & Ors. vs. S.L. Abas [1983 (4) SCC 357] wherein the Hon?ble Apex Court has observed as follows:-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right."

8. They have also stated that an order of transfer is an incident of Government service. They have quoted Fundamental Rules 11 and 15 to substantiate their claim that a Government Servant is at the disposal of the Government and can be transferred from one post to another. Rulings of Shilpi Bose and Ors. Vs. State

of Bihar & Ors has also provided the following :-

"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 over looked these aspects in interfering with the transfer Orders."

9. The respondents have stated that public interest is foremost which has to be taken into consideration and non-joining of the applicant would hamper the functioning of the Government at Lakshadweep/station. They have gone on to say that if the required staff is not posted to carry out the functions of the Government, then the whole purpose to establish Administrative Unit gets frustrated.

10. The respondents have further, stated that the rules, guidelines for a transfer / posting of a DANIPS officer must be read in entirety and para 2 (xv) provides the following :-

"Notwithstanding anything contained in the policy, Ministry of Home Affairs has the absolute right, if necessary, to transfer or post any officer to any constituent at any time on administrative grounds/in public interest."

11. The respondents have also informed that the applicant met the Additional Secretary (UT) on 07.12.2018 at 5.30 P.M. for cancellation of orders of his transfer and after according him a patient hearing the Additional Secretary (UT) informed him that the grounds for cancellation of the transfer are not sustainable and his transfer will not be cancelled. He has also informed the applicant as to why EG officers of 2009, 2010 and 2011 batches were not being transferred to outlying segments for just a few months. After filing of additional affidavit by the applicant during final hearing on 31.01.2019, which annexed copies of transfer order of Sh. Gaurav Gupta and Shri Rajnikant Awadhiya to Lakshadweep, the respondents informed that due to certain law and order and foreign policy developments near Lakshadweep, at the request of the Security Commission, Government of India has had to transfer several police officers to cope with the situation.

12. Heard Sh. Ajesh Luthra, learned counsel for the applicant and Shri Gyanendra Singh, learned counsel for the respondents.

13. From the averments made, it cannot be said that the said transfer orders have not been approved by the competent authority. Sufficient reasons have been given for not transferring the senior batches out of Delhi since they are due

for promotion within the next few months, so no purpose will be served by transferring them twice in a year. Security considerations and administrative exigencies require more DANIPS officers to be posted to Lakshdweep for which Para 2 (xv) of the guidelines authorize MHA to transfer/post any officer to any constituency at any time on administrative grounds/in public interest.

14. However, at the time of final hearing, the applicant has filed a request letter dated 18.12.2018 by Sh. Vipul Anekant, DANIPS, who is posted as SDPO, Daman, UT of Daman & Diu in which he has indicated his willingness to be posted at UT of Andaman & Nicobar Islands or UT of Lakshadweep. The respondents may examine this representation and consider whether in view of the illness of the daughter of the applicant, they can take up the representation of Sh. Vipul Anekant, DANIPS provided it is within their transfer policy and guidelines. This exercise shall be completed within four weeks and till then the interim order of ?status quo? shall be in force.

15. With the above directions, the instant OA stands disposed of. There shall be no order as to costs.