

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6902 OF 2018

Dr. R. Solomon Rajkumar & Anr.	...Petitioners
Versus	
The Union of India & Ors.	...Respondents

Mr. Jaydeep Deo for Petitioners
Mr. Neel Helekar with Mr. P. Khosla for Respondent No. 1 –
Union of India.
Mr. M. S. Topkar for Respondent Nos. 2 and 3.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 12 JULY 2018**

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 15th June 2018 made by the Central Administrative Tribunal (CAT) dismissing the petitioners' Original Application No. 334 of 2017 questioning the order dated 20th May 2017, by which, the petitioners who are

husband and wife, have been transferred from ICAR Goa to ICAR Central Institute for Research on Goats (CIRG) at Makhdoom, Uttar Pradesh.

4] Mr. Deo, the learned counsel for the petitioners submits that the impugned transfer order is vitiated on account of several reasons. He submits that in the first place, the petitioners have completed only two and half years at Goa and in terms of the transfer policy or the transfer guidelines, the transfer should take place only after incumbents have completed a period of at least five years at one station. Secondly, Mr. Deo points out that there is a massive exercise of cadre restructuring in process. This is because several distortions have been noticed in the existing situation and such an exercise is necessary to set right said distortions. Mr. Deo points out that under the guise of setting right said distortions, transfers are being effected on arbitrary basis, so as to victimize scientists like the petitioners and to accommodate certain other scientists. Mr. Deo submits that these are good grounds to warrant interference with the transfer order.

5] Mr. Deo also points out that currently the petitioners are manning some important projects at ICAR Old Goa. Such projects, for any meaningful results, would require the petitioners to continue at Old Goa for at least two to three years. Mr. Deo points out that by now the petitioners have only completed about two and half years at Old Goa and even in terms of the transfer policy / guidelines, the routine transfers are to be effected after incumbents complete five years at a station. Mr. Deo points out that even the Director at Old Goa has by his communication dated 21st November 2016, very strongly recommended the retention of the petitioners at Old Goa. Mr. Deo submits that all these are relevant considerations which have been ignored in issuing the impugned transfer order.

6] Mr. Deo submits that for all the aforesaid reasons, the impugned judgment and order made by the CAT warrants interference and the impugned transfer order is required to be set aside.

7] Mr. Helekar and Mr. Topkar, the learned counsel for the respondents submit that this is not a case of transfer of

merely the petitioners. They point out that this is a case where almost 87 to 88 transfers have been effected throughout the entire country. They point out that there are no *mala fides* alleged and in any case, no *mala fides* made out. They point out that there is no statute governing the issues of transfer and therefore, there is no allegation of breach of any statutory provisions. They point out that the transfer policy or the transfer policy guidelines neither create any rights in the petitioners nor is it the legal position that any transfers in slight variation are only and void. Besides they point out that the transfer policy or the transfer policy guidelines themselves permit action in case of service exigencies, which is precisely, the case of the respondents. They point out that the respondents had in fact addressed communication dated 8th November 2016 to the petitioners on the issue of proposed transfers and had not only invited the petitioners to submit their response but to also avail opportunity of personal hearing in case they so desire. They point out that the petitioners despite receipt of the communication dated 8th November 2016, chose not to response. They point out that the response of the Director at Old Goa was taken into consideration but the

respondents were of the *bona fide* opinion that the transfer of the petitioners is necessary in the exigencies as explained in the affidavits filed before the CAT. They reiterate that this is not a case of transfer involving only the petitioners but it is case of transfer involving about 88 scientists country wide. They submit that the CAT has considered the petitioners' grievances in considerable detail and there is no jurisdictional error or perversity involved in the reasoning or the approach of the CAT. For all these reasons, they submit that this petition may be dismissed.

8] Rival contentions now fall for our determination.

9] In several decisions, the Hon'ble Supreme Court has held that transfers made on administrative grounds and in public interest should normally not be interfered with by Courts of Tribunals unless it is established that such transfers are in violation of statutory and rules, if any, or made by the authorities not competent to issue the transfer orders or on ground of mala fides. It has also been held that the terms and conditions contained in transfer policy / guidelines do not vest any enforceable rights in the

employees. (**See : State Bank of India vs. Anjan Sanyal & Ors. (2001) 5 SCC 508, and Union of India & Ors. vs. S. L. Abbas (1993) 4 SCC 357**).

10] In **State of Madhya Pradesh & Ors. vs. S. S. Kourav & Ors. (1995) 3 SCC 270**, the Hon'ble Supreme Court has held that Courts of Tribunals are not appellate fora as to decide on transfer of officers on administrative grounds. The wheels of administration must be allowed to run smoothly and the Courts of Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer order came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

11] In **N. K. Singh vs. Union of India & Ors. (1994) 6 SCC 98**, it has been held that scope of judicial review in

matters of transfer is extremely limited. In the absence of any *mala fides* or infraction of statutory provisions, there is no question of interference with the transfer orders. Further, where the career prospects of the government servant remained unaffected and no detriment is caused accepting perhaps some personal inconvenience, general challenge to transfer orders must be eschewed. Even where, transfer orders are challenged on the ground of *mala fides*, the Courts or Tribunals are not expected to enter into some roving inquiry but will focus on the records as far as possible.

12] In ***State of UP vs. Gobardhan Lal AIR 2004 SC 2165***, the Hon'ble Supreme Court has held that the Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of the competent authority. If *mala fides* are alleged then they must be of such order, as to inspire the confidence of the Court or based upon a concrete materials. Mere allegations of *mala fides* are not sufficient to hold in favour of an employee.

13] Various contentions raised by and on behalf of the

petitioners have to be examined in the light of the aforesaid principles laid down by the Hon'ble Supreme Court and reiterated from time to time.

14] The transfer policy guidelines indeed provide that the normal tenure at a station must be of five years. However, the very policy / guidelines make provisions for deviations in case of exigencies. Again, it is settled position that the terms and conditions of such transfer policy / guidelines create of no vested right in the employees. In the present case, the respondents have explained that this is All India transfer involving most 88 scientists. They have explained that as far as possible they have tried to ensure that there is no disturbance of tenure. However, they have given cogent reasons to explain as to why it is not possible to accommodate petitioners at Old Goa.

15] We also note that the respondents, in accordance with their own policy, have taken care to ensure that both the petitioners, where, husband and wife are posted at one and the same station. The petitioners children are aged 5 years and 7 months respectively. Therefore, though some

inconvenience is inevitable, this is not a case where their academic year is likely to be seriously disrupted. The transfer order was in fact issued before the commencement of the academic year. In any case, it is not as if the academic year of the 5 year old child is likely to be disturbed in any serious manner.

16] In so far as setting right the distortions are concerned, we are afraid, in the light of the various rulings of the Apex Court, it is really not within our province to hold such roving inquiry and to substitute our opinion in place of the opinion of the competent authorities in such matters. On the basis of material placed before us, we are not prepared to accept that this is a case of some hostile discrimination against the petitioners. The allegations of *mala fides* inspire no much confidence and in any case there is no material in support of such allegations.

17] It is possible that transfer could have been affected in a better way. It is also possible that the recommendations of the Director at Old Goa for retention of the petitioners could have been considered. However, this is not an area in

which we should ordinarily enter. In this case, the respondents, had addressed a detailed communication to the petitioners on 8th November 2016. In this communication, the respondents had explained that a cadre review is being undertaken and as a result, transfers are inevitable. The petitioners were offered opportunity to not only indicate the place of their choice in case of transfers, but further, the petitioners, were also offered opportunity to present their case before a Committee especially appointed for the purposes of looking into individual hardships and making out private recommendations. The petitioners, for reasons best known, chose not to respond to this communication dated 8th November 2016.

18] Mr. Deo, the learned counsel for the petitioners however submits that the Director of ICAR at Old Goa had responded to the communication dated 8th November 2016, in which, he had strongly recommended the retention of both the petitioners at Goa. From the perusal of the Director's response dated 21st November 2016, this does appear to be correct. However, the record indicates the response of the Director has been considered by the

respondents. Obviously, recommendation of the Director is not binding on the competent authorities. This is also not a case where the decision is in breach of any statutory rules or that transfer order has been issued by some authority not competent to issue the same.

19] The CAT, has examined all the petitioners contentions and in substantial details, no doubt, keeping in mind, the limited scope of its jurisdiction in such matters. Accordingly, we see no good ground to take any different view in the matter.

20] Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

21] In the peculiar facts and circumstances of the case, however, we grant the petitioners four weeks from today to join at the transferred postings in Uttar Pradesh.

22] All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA

Sunita
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