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IN THE HIGH COURT OF JUDICATURE OF MADRAS

Dated :03.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

W.P.No. 27994 of 2021
and
W.M.P.Nos.29564 and 29565 of 2021

M.L.Aruldass

...Petitioner

Vs

- 1.The Central Administrative Tribunal,
Chennai Bench,
Rep. By its Registrar.
- 2.Union of India, rep. By its Secretary,
Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001.
- 3.The Director General Quality Assurance,
Directorate General of Quality Assurance (Stores)
Department of Defence Production,
Ministry of Defence,
Room No.308-A, D-1 Wing,
Sena Bhavan, New Delhi-110 011
4. The Additional Director General of Quality,
Assurance (Stores),
Directorate of Quality Assurance (Stores)
Directorate General of Quality Assurance (DGQA)
Department of Defence Production,
Ministry of Defence,
G' Block, Nirman Bhavan PO,
New Delhi-110 011.
5. The Senior Quality Assurance Officer,
Senior Quality Assurance Establishment (General Store),
DGQA Complex, Nanganallur PO,
Chennai- 600 061.

...Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant of the order passed by the 1st respondent Tribunal in OA. No.305 of 2020 dated 07.12.2021 and quash the same, consequently direct the 3rd and 4th respondent to consider the case of the petitioner in the light of the Office Memorandum dated 08.10.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personal and Training, and the Transfer Guidelines issued by the 3rd respondent dated 07.01.2020, and exempt the petitioner from the rotational transfer.

For Petitioner : Mr.Paul and Paul

For R2 to R5 : Mr.C.Kuzhanthaivel

O R D E R

V.SIVAGNANAM, J.

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records in pursuant to the order passed by the 1st respondent Tribunal in OA. No.305 of 2020 dated 07.12.2021 and quash the same, consequently direct the 3rd and 4th respondents to consider the case of the petitioner in the light of the Office Memorandum dated 08.10.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personal and Training, and the Transfer Guidelines issued by the 3rd respondent dated 07.01.2020, and exempt the petitioner from the rotational transfer.

2.The learned counsel for the petitioner contended that the petitioner is working as Assistant Engineer (QA) in the respondent organisation. The 4th respondent/ the Additional Director General of Quality Assurance transferred the petitioner by its order dated 30.05.2019 to Kanpur against which, the petitioner had made a representation on 17.06.2019 to the 4th respondent and requested to defer the transfer as he has to take care of age old father but, the respondent directed to implement the transfer order with immediate effect. Therefore, the petitioner filed an application in O.A.No.88 of 2020 to consider his representation dated 10.01.2020 to the 3rd respondent/ The Director General Quality Assurance and also seeking to set aside the order passed by the 3rd respondent. The Tribunal, by its order dated 27.01.2020, allowed O.A.No.88 of 2020 and directed to consider his representation and its order within two months with a direction to keep the transfer order in abeyance. Thereafter, the 3rd respondent considered his representation and rejected the same by its order dated 25.02.2020. Aggrieved by the said order, petitioner filed the impugned O.A.No.305 of



2020, which was also dismissed without properly considering the petitioner's case. Hence, he filed this writ petition.

3. It is the case of the petitioner that the petitioner's mother died in the year 2013. His father is living with him, who is aged about 83 and suffering from 'Parkinson's with demintia coupled with diabetics and memory disturbance. Only, the petitioner is taking care of his father and his medical treatment. His wife is working as a Teacher in a Corporation Middle School at Perambur and his daughter is studying 3rd year B.Sc in Skoda Ikeda College at Madhanang Kuppam. The 4th respondent, without considering his request, implemented the posting order dated 30.05.2019 and not followed the DO P&T OM in F.No.42011/3/2014-Estt.(res) dated 08.10.2018. The 1st respondent failed to consider the guidelines for transfer on compassionate ground in letter No.A/90600/Police/DGQA /Adm-7A dated 25.04.2013 as per Rotational Transfer Policy dated 24.11.2016 and the station tenure is seven years. But, the name of the petitioner was included in the Rotational Transfer for the year 2019, at that time, he had completed only five years, which is illegal one. The Tribunal did not consider the aspect as per the office memorandum in F.C.No.42011/3/2014-Estt.(Res) dated 08.10.2018, that an employee is eligible for seeking exemption from routine exercise of transfer/ Rotational Transfer. The petitioner is entitled for the exemption mentioned in the memorandum. The 1st respondent failed to consider the petitioner's representation in proper manner. Therefore, the order dated 07.12.2021 passed by the 1st respondent is unsustainable and is liable to be set aside. The 3rd respondent failed to implement the office memorandum in F.C.No.42011/3/2014-Estt.(Res) dated 08.10.2018 issued by the Department of Personal Training, and the Rights of Persons with Disability Act, 2016, provides for exemption of employee from routine exercise of transfer. Therefore, the posting order issued by the 3rd respondent is unsustainable. The Tribunal failed to consider this aspect and reiterated other grounds raised in the grounds of writ petition and thus, pleaded to set aside the order of the Tribunal in O.A.No.305 of 2020 dated 07.12.2021.

4. The learned counsel appearing for the Department supported the order of the Tribunal and further contended that the petitioner's post is a transferable post and he was transferred on Rotational Transfer. Whenever, there were no irregularities in the rotational transfer, the duty of the Government servant is to comply with the transfer order. Further, the Hon'ble Apex Court has clearly held that transfer is a routine one and it need not be interfered by the Court unless it is shown to be clearly arbitrary or vitiated by malafides. Therefore, the Tribunal rightly dismissed the O.A.305



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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, SCC p. 406, para 7).

9. 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 Shilpi Bose v. State of Bihar [1991 Supp (2) SCC 659 : 1992 SCC (L&S) 127 : AIR 1991 SC 532] this Court held: (SCC p. 661, para 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."

10. In N.K. Singh v. Union of India [(1994) 6 SCC 98 : 1994 SCC (L&S) 1304 : (1994) 28 ATC 246] this Court reiterated that: (SCC p. 103, para 6). the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision...."

16. In this context, it is necessary to refer to the decision of the Supreme Court in State of U.P. v. Siya Ram and another, [2004] 7 SCC 405. In paragraph [5], it was observed as follows:



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5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide 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, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd.v.Shri Bhagwan [(2001) 8 SCC 574.

17. Further, the Supreme Court in yet another decision reported in State of U.P. v. Gobardhan Lal, [2004] 11 SCC 402 in paragraph [7] observed as follows:

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



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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.

18. The parameters for conducting judicial review of transfer order came to be considered by the Supreme Court in Union of India and others v. H.N.Kirtania [1989] 3 SCC 445. It was held that unless a transfer order is mala fide, illegal or in violation of statutory rules, the High Court should not interfere with the order of the transfer. In paragraph [5], it was held as follows:

'5. After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer.

19. The Supreme Court, subsequently, in Abani Kanta Ray v. State



of Orissa, 1995 Supp [4] SCC 169, has held that a transfer, which is an incident of service, is not to be interfered with by Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In paragraph [10], it was observed as follows:

'10. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fide or infraction of any professed norm or principle governing the transfer (See N.K.Singh v. Union of India, [1994]6 SCC 98).'

20. In the case of State of Bihar v. Kaushal Kishore Singh and Ors. Reported in 1999(1) PLJR (SC) 5 wherein the Apex Court has held as under:

'Even if option were called for and given, it is not mandatory for the Government to accept options of the condidates and make appointment to the post. Asking for option of candidates is essentially a discretionary matter and the Government is not bound to select the candidate on the basis thereof. Under these circumstances the candidate who applied for, though opted for, have not acquired right, muchless indefeasible or absolute right for selection or appointment to a particular posts.'

9. On perusal of transfer order dated 30.05.2019, which indicates that the petitioner was transferred along with 22 persons. The petitioner's name was in S.No.10 and it is a rotational transfer. There is no malafide intention attributed with the Transferring Authority. The learned counsel for the petitioner, contended that the guidelines was not followed by the Authorities.

10. We have considered the submissions of the learned counsel for the petitioner. While ordering the transfer, there is no doubt, the authority must keep in mind, the guidelines issued by the Government on the subject. The Notifications and G.O's in the matter of regulating transfers are made in the nature of guidelines to the officers to order transfers in the exigency of administration than vesting of any immunity from transfer of the Government servant.

11. It is a settled principle that no Government servant has any legal right to insist for being posted at any particular place, he owes duty to comply with transfer orders. In this case, the petitioner contended that his father is suffering from 'Parkinson's with demintia. He has to take care of his father.



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The hardship of an employee is considered by the Hon'ble Supreme Court in Rajendra Roy Vs. Union of India and Another reported in [1993 1 SCC 148] and observed as follows:

The order of transfer often causes a lot of difficulties and dislocation in the family set-up of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer''.

12. Therefore, in matters of transfer, the scope of interference by the Court is far more limited and narrow. As the transfer order was found not mala-fide, the transfer order was not interfered by the Tribunal. We find no illegality in the impugned order and no merit in the writ petition.

13. In the result, this Writ Petition is dismissed and the impugned order is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

vsn

To

1. The Registrar.

The Central Administrative Tribunal,
Chennai Bench,

2. The Secretary,

Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001.

3. The Director General Quality Assurance,

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Room No.308-A, d-1 Wing,
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Senior Quality Assurance Establishment (General Store),
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Chennai- 600 061.

+1cc to M/s.C.Kulanthaivel, Advocate, S.R.No.300
+1cc to M/s.Paul & Paul, Advocate, S.R.No.522

W.P.No.27994 of 2021

PMK(CO)
SB(09/03/2022)