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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 738/2024

Sanjiv s/o Sadashiv Gajbhiye Vs. The Directorate General (Pers), Military Engineer Services, New Delhi and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P S.Sahare, Advocate for petitioner.

Mr. Nandesh Deshpande, Deputy Solicitor General of India, for respondent nos.1 to 4.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATED : FEBRUARY 2, 2024.

1. The petitioner is presently working with the respondents in the capacity of Assistant Audit Officer.

2. The prayer in the petition is, challenge to the order dated January 18, 2024 passed by the Central Administrative Tribunal, Mumbai, Bench at Nagpur, whereby the application questioning the transfer order dated March 23, 2023 transferring the petitioner from Nagpur to Campbell-Bay is rejected.

3. The facts necessary for deciding the petition as under:

The petitioner initially was appointed as Clerk on January 5, 1995 with the respondents and was posted at Nagpur.

After his promotion on the post of Assistant Audit Officer from December 29, 2006 to March 12, 2009, the petitioner was posted at Nagpur. Subsequent to which, from March 23, 2009 to August 29, 2011, the petitioner was transferred to Amla Station, which is also located nearby Nagpur.

From August 30, 2011, the petitioner was again brought back to Nagpur where he continued till April 27, 2016 at Ambazari and subsequent thereto he was transferred from May 9, 2016 to 23.10.2018 at Pulgaon, which also comes in the revenue division of Nagpur. The petitioner thereafter again

brought back on October 24, 2018 and he is informed to be serving till this date at Nagpur.

4. Pursuant to the petitioner's transfer order dated March 23, 2023, since the petitioner was not inclined to join the said place of transfer, he approached the Central Administrative Tribunal, vide Original Application No.587 of 2023, which is dismissed by the impugned order dated March 23, 2023. As such, this petition.

5. Amongst other, the grounds which are canvassed by Mr. Sahare, learned counsel appearing for the petitioner are that the Central Administrative Tribunal has committed an error in failing to consider the hardship suffered by the petitioner on both counts: (a) the health condition of the petitioner being diabetic and already suffered a fracture to the shoulder and (b) that nearby Nagpur there are hard stations, where the vacancies still exist for the post of Assistant Audit Officer.

6. So as to substantiate the aforesaid grounds, Mr. Sahare has relied on the medical documents so as to substantiate the claim that the petitioner is suffering from diabetes and also he had fractured shoulder some time back.

7. Mr. Sahare would claim that the petitioner is required to take care of his aged mother, who is in her advance age so also of an dependent unmarried sister. These family obligations also claimed to substantiate his claim that of causing hardship in case if he is required to join at the transferred place. According to him, travel time of seventy five hours is required to reach the place of transfer i.e. Campbell-Bay to native place Nagpur. Mr. Sahare would also urge that the place of transfer is not having sufficient medical facilities and that being so, the transfer order ought to have been interfered with by this Court, if not interfered with by the Tribunal considering the hardship.

8. Mr. Nandesh Deshpande, learned Deputy Solicitor General of India would oppose the prayer. According to him, the perusal of the posting orders, as reflected in the tenures as stated at Annexure-II at Page 35, would depict

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that the petitioner has spent his entire service period in and around Nagpur town and that being so, the transfer of the petitioner cannot be faulted with. He would claim that for administrative reasons, the services of the petitioner are more required at the place of transfer i.e. Campbell-Bay. He would further urge that the transfer is an incident of service and the petitioner from day one was knowing that his services are transferable through out the country. As such, he would claim that in absence of there being any malafides, the present petition is liable to be rejected.

9. We have appreciated rival claims.

10. The postings, which are enjoyed by the petitioner from date of inception in the service can be summarised as under:-

S. No.	Office	From	To	Type of posting
(a)	CWE Nagpur	5.1.1995	28.12.2006	Initial Appointment
(b)	ACE (L) MC, IAF Nagpur	29.12.2006	12.3.2009	Promotion cum posting
(c)	GE (I) (AF) Amla	23.3.2009	29.8.2011	Tenure Station
(d)	GE (I) (FY) Ambajhari	30.8.2011	27.4.2016	Repatriation
(e)	GE Pulgaon	9.5.2016	23.10.2018	Tenure Station
(f)	ACE (L) MC, IAF Nagpur	24.10.2008	31.7.2019	Repatriation
(g)	CWE Nagpur	1.8.2019	Till date	

11. The perusal of the aforesaid chart depicts that the petitioner has spent entire tenure of his service either in Nagpur or the adjoining places of Nagpur. Even the respondents are not disputing that the petitioner has covered hard stations but, the service condition contemplates that in entire tenure, the petitioner must complete posting at three hard stations.

12. No doubt, the place of transfer is Campbell-Bay is termed as one of the hard stations. As such, the petitioner after having completed two hard

stations is posted at the third hard station. The order of transfer cannot be faulted with for want of authority to transfer. The grounds of hardship, which are canvassed by Mr. Sahare by substantiating the same from the available material cannot be said to be sufficient enough to infer that transfer is effected with bias or malafide. The order of transfer or the order of the Tribunal dismissing the Original Application wherein the order of transfer is questioned. As such, it appears to be not suffering from malafide or otherwise.

13. Apart from the above, the posting of the petitioner at the transfer place is within the ambit and discretion of the employer. The employer is the best judge in a given situation as to ascertain the requirement of services of its employee at a particular place having regard to the administrative exigencies. Unless, it is demonstrated that the transfer is malafide, the same cannot be interfered with.

14. All these considerations rightly so prevailed before the Tribunal so also before this Court not to cause interference in the transfer order of the petitioner. Since the petition lacks merits, no case is made out for causing interference in extraordinary writ jurisdiction. As such, writ petition fails and it is dismissed. No cost.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Ambulkar