

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17.02.2022

Date of decision: 07.03.2022

+ W.P.(C) 6311/2020 & CMs 22412/2020, 23078/2020

AMARJEET SINGH DAGAR Petitioner
Through Ms.Tamali Wad, Adv.

versus

UNION OF INDIA AND OTHERS Respondents
Through Mr.Sanjeev Uniyal with Mr.Sachin
Chandela and Mr.Dhawal Uniyal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

1. The present petition has been filed seeking setting aside of the order dated 04.09.2020 (hereinafter referred to as the 'impugned order') passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (in short, the learned 'CAT') in OA No. 1230 of 2020, dismissing the petition filed by the petitioner. The petitioner further prays for quashing and setting aside of the Office Order No. 21(19)/2020/Coord unit/C.E(W CUMTLQA)/EE-C II dated 09.04.2020 (hereinafter referred to as the 'impugned Office Order') issued by the respondent no. 2, transferring the petitioner from New Delhi to Jaipur.

I. FACTS

2. It is the case of the petitioner that the petitioner, in June 1992, joined as a Section Officer in the Horticulture Wing of the respondent no.2. While in service, during the year 2016, the hearing impairment of the petitioner became quite severe, following which a duly-constituted Medical Board examined him at Dr. Ram Manohar Lohia Hospital, New Delhi (hereinafter referred to as 'Dr. RML Hospital'). The petitioner, vide Disability Certificate dated 14.06.2016, was found suffering from '*bilateral moderately severe mixed hearing loss with amputation left finger*' and was assessed as having permanent disability of 65%, that is, 63% for hearing and 2% for locomotor disability of left upper limb.

3. The respondent no.2, vide letter dated 29.12.2016, sought verification from the respondent no.3 Dr.RML Hospital as to the genuineness of the disability certificate issued by the Hospital to the petitioner. In response to the above letter, Dr. RML Hospital, on 09.01.2017, confirmed the veracity of the Disability Certificate, whereafter, the respondent no. 2 issued an order dated 31.01.2017 directing the incorporation of the petitioner's disability in his service record.

4. The petitioner asserts that the respondent no. 2, vide order dated 13.08.2018, invited options from Section Officers (Horticulture) for positing at certain stations. The petitioner gave his willingness to be posted to Guwahati and was accordingly transferred to Guwahati vide

order dated 24.08.2018. The petitioner joined his new posting only on 18.02.2019.

5. The petitioner states that he opted for his transfer to the North-Eastern Region as he had expected that he shall be able to manage his affairs independently without assistance, however, soon after joining his place of posting, in the absence of his wife, who was unable to join him at Guwahati due to her permanent job as a teacher in a school in Delhi-NCR, the petitioner started facing a lot of difficulty in managing his day-to-day activities, which made it quite impossible for him to live alone in Assam. The petitioner, therefore, made a representation to the Director General, Central Public Works Department, on 18.03.2019, seeking a transfer back to New Delhi. The same was followed up with subsequent representations dated 16.08.2019 and 19.11.2018.

6. Vide order dated 16.12.2019, the petitioner along with five other Section Officers was promoted to the post of Assistant Director (Horticulture) [hereinafter referred to as 'AD(H)']. Despite representations made seeking transfer to New Delhi, the petitioner was retained in the Eastern Region and vide order dated 17.12.2019, the petitioner was posted to DD (Horticulture), Guwahati HQ: Shillong.

7. Aggrieved by the said transfer, the petitioner made representations to the respondents as well as to the Department of Empowerment of Persons with Disabilities (*Divyangjan*) under the Ministry of Social Justice and Empowerment, Government of India (in short, 'DEPWD').

8. The Chief Commissioner of the DEPWD, vide letter dated 09.01.2020, requested the respondents to consider the representation of the petitioner by placing reliance on Clause (H) of the Office Memorandum issued by the Department of Personnel and Training (in short, 'DOP&T') dated 31.03.2014 (hereinafter referred to as 'DOP&T OM') which provides for preference in transfer and posting to Persons with Disabilities who are employed with the Government of India.

9. The recommendations were considered by the respondents and vide order dated 04.03.2020, the petitioner was directed to be posted in the office of DD (Horticulture) under CE (NDZ-II) at New Delhi with effect from 27.02.2020.

10. However, within thirty-five days of his transfer, vide impugned Office Order, the respondent no. 2 transferred the petitioner from the office of DD (Horticulture) under CE (NDZ-II) at New Delhi to the office of DD (Horticulture) under CE Jaipur in Rajasthan.

11. The petitioner, aggrieved by this sudden transfer, made a representation dated 13.04.2020 to the Special Director General (NR), Central Public Works Department, requesting for cancellation of his transfer order on the ground that the same is in contravention of the provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the 'RPD Act') as well as the DOP&T OM and the Posting Guidelines of the respondent no. 2 dated 11.12.2018 (hereinafter referred to as the 'Posting Guidelines'), whereby the normal period of continuous stay of all officials was fixed at three years at any

station. The petitioner, however, did not receive not any response from the respondent no. 2.

12. As the functioning of the learned CAT had been suspended till 03.05.2020 in light of the nation-wide lockdown imposed due to the COVID-19 pandemic, the petitioner approached this Court by way of a writ petition, being W.P.(C) 3011 of 2020. This Court, vide order dated 28.04.2020, directed '*status quo*' to be maintained with respect to the petitioner's posting. The petitioner, vide same order, had been granted the liberty to approach the learned CAT upon it resuming its functioning.

13. Upon resumption of the functioning of the learned CAT, the petitioner filed the Original Application, being OA No. 1230 of 2020, which has been dismissed by the learned CAT vide the impugned order, however, granting liberty to the petitioner to make a representation to the respondents after joining at Jaipur with respect to his transfer.

II. PETITIONER'S SUBMISSIONS

14. Ms. Tamali Wad, the learned counsel for the petitioner, submits that the learned CAT failed to appreciate that the respondents, apart from stating that the impugned Office Order has been passed on account of '*exigencies in service*' and in the '*public interest*', have not disclosed the reason for transferring the petitioner from New Delhi within only thirty-five days of his posting and that too in the peak of the COVID-19 pandemic.

15. The learned counsel for the petitioner further submits that the impugned order is not sustainable in law as the same is arbitrary, discriminatory and in gross violation of the provisions of the RPD Act as well as the DOP&T OM and the Posting Guidelines. She contends that the transfer order is also in violation of the Declaration on the Rights of Disabled Persons, 1975, as well as the Human Rights Act, 1993, as adopted by the General Assembly of the United Nations Organization.

16. Ms. Wad, the learned counsel for the petitioner, submits that on account of the COVID-19 pandemic, an Office Memorandum dated 11.05.2020 was issued by the respondent no. 1, whereby it was directed that '*no rotational transfer of officers/officials in different groups to be carried out till 30.04.2021*', except for on the ground of administrative reasons, that is, to fill up the vacancies due to promotion/retirement/resignation/death of incumbent; closure of units due to less workload; creation of new units; punishment and vigilance angle; compassionate grounds, that is, medical emergency for the self or the family members; or any other ground with specific approval of the Ministry. She submits that in spite of such clear directions, the respondents have sought to enforce the impugned Office Order against the petitioner.

17. The learned counsel for the petitioner finally places reliance on certain office orders issued by the respondent no. 2 to contend that the respondent no. 2 has, in fact, in the recent past, retained certain personnel at New Delhi for a period beyond three years as prescribed under the Posting Guidelines. She submits that the same is discriminatory as the

petitioner had been transferred without taking into consideration his disability status and the fact that he had served as an AD(H) in New Delhi only for a period of thirty-five days on his transfer.

III. RESPONDENT'S SUBMISSIONS

18. Mr. Sanjeev Uniyal, the learned counsel for the respondents, on the other hand, places reliance on the impugned order passed by the learned CAT, wherein the transfer order dated 09.04.2020 was upheld. He contends that prior to transfer to Guwahati, the petitioner had been allowed to be posted in New Delhi since the time of joining the respondent no. 2, that is, 15.06.1992 to 16.02.2019, which is a period of twenty-six years. He submits that the transfer of the petitioner from New Delhi to Jaipur vide the impugned Office Order had been done in compliance with directions received from the Competent Authority.

19. The learned counsel for the respondents further submits that merely because other officers have been allowed to remain in New Delhi for more than three years, does not give a right to the petitioner to also seek continuation of his posting in Delhi.

20. He submits that the Office Memorandum dated 11.05.2020, relied upon by the petitioner, does not direct cancellation of the transfer orders already issued.

21. He finally submits that in compliance with the order dated 11.09.2020 passed by this Court, a speaking order dated 19.10.2020 has been passed by the Competent Authority of the respondent no. 2, rejecting the representations dated 13.04.2020 and 13.05.2020 of the petitioner.

IV. FINDINGS OF THE COURT

22. We have considered the submissions made by the learned counsels for the parties.

23. At the outset, it must be emphasised that an employee in a transferable job has no vested right to remain posted at one place. The Courts should not readily interfere with the transfer order which is made in the public interest and for administrative reasons, unless the transfer order is made in violation of any mandatory statutory rule or on the ground of *mala fide*. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead, the affected party should approach the higher authorities in the concerned department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and/or its subordinate Authorities, there will be complete chaos in the administration which would not be conducive to the public interest. Interference under Article 226 of the Constitution of India is permitted only where the Court finds either the transfer order is *mala fide* or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that

transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation. The Courts must maintain judicial restraint in such matters. {Refer: *Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors.*, 1991 Supp. (2) SCC 659; *Mohd. Masood Ahmad vs. State of Uttar Pradesh & Ors.*, (2007) 8 SCC 150; *State of Haryana vs. Kashmir Singh & Anr.*, (2010) 13 SCC 306; and *Major Amod Kumar vs. Union of India*, (2018) 18 SCC 478}.

24. In *Punjab and Sind Bank & Ors. vs. Durgesh Kuwar*, 2020 SCC OnLine SC 774, the Supreme Court summarised the principles applicable to transfer orders, as under:

“17. We must begin our analysis of the rival submissions by adverting to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be malafide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.”

25. In the present case, it is worth noting that the petitioner has been posted in Delhi from 15.06.1992 to 16.02.2019, which is almost twenty-six years before his posting from New Delhi to Guwahati. The petitioner, in his rejoinder affidavit, himself states that the petitioner had given his willingness to be posted to Guwahati and based thereon, the petitioner was transferred to Guwahati vide order dated 24.08.2018, wherein he joined only on 18.02.2019. Within one month of his posting, he made a representation seeking a transfer back to Delhi on the ground of his disability. The petitioner was promoted to the post of AD(H) and posted at DD (Horticulture), Guwahati HQ: Shillong. Pursuant to the recommendations of the Chief Commissioner of the DEPWD, the respondent no. 2 transferred the petitioner to New Delhi vide order dated 04.03.2020. The same was reviewed by the Ministry of Housing and Urban Affairs, Government of India, whereafter the impugned Office Order was passed. Pursuant to the interim order passed in the earlier writ petition, being W.P.(C) 3011 of 2020 and later in this petition, the petitioner has remained in New Delhi in spite of the transfer order. Therefore, in his entire career, barring the period less than one year, the petitioner has, in fact, remained posted in New Delhi for almost 28 years. The petitioner, therefore, cannot be allowed to claim that his transfer is bad merely because he was not allowed to complete a formal tenure posting of three years at New Delhi after his re-transfer from Shillong to New Delhi vide order dated 04.03.2020. His transfer to New Delhi was in itself not a normal posting order and was passed before completion of his tenure at Shillong.

26. The DOP&T OM, relied upon by the learned counsel for the petitioner, states that the Persons with Disabilities may be exempted from rotational transfer or transfer and be allowed to continue in the same job where they would have achieved the desired performance. However, the said DOP&T OM cannot be read as an embargo on the Authorities to transfer the Persons with Disabilities on administrative exigencies. In any event, as held by the Supreme Court in *Shilpi Bose (supra)*, even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the same. Present is one such case where we do not deem it appropriate to interfere with the impugned Officer Order passed by the Authorities, taking into account the earlier posting of the petitioner to New Delhi. In any case, the representation of the petitioner has also been considered by the Competent Authority pursuant to the order dated 11.09.2020 of this Court and the same was rejected.

27. Insofar as the plea of discrimination is concerned, again, the same cannot be a ground to interfere with the impugned Office Order. In fact, we may note that the petitioner himself, having remained in New Delhi for more than twenty-six years at the first instance, has been a beneficiary of such benevolent acts of the respondents and cannot now be heard to complain against the same. The petitioner has also not impleaded the officers, against whom the petition makes allegations of discrimination, as parties to the present petition. We, therefore, do not consider this a fit case to examine the plea of discrimination raised by the petitioner any further.

28. As far as the submission premised on Office Memorandum dated 11.05.2020, in view of the subsequent development in form of interim relief granted to the petitioner and near normalcy due to decline of COVID, the said plea has achieved its purpose and cannot support the case of the petitioner any further to be retained at New Delhi.

29. It is also to be noted that the present petition is against the order passed by the learned CAT. It is a settled law that this Court, in the exercise of its powers under Article 226 of the Constitution of India, does not sit as a Court of Appeal against the orders passed by the learned CAT. The power of judicial review must be exercised restrictively and on limited grounds. [Refer: *Roger Mathew vs. South Indian Bank Ltd.* (2020) 6 SCC 1]. In the present case, we find no such infirmity in the impugned order passed by the learned CAT that warrants any interference from this court in exercise of its extra-ordinary discretionary jurisdiction.

V. Relief

30. In view of the above, we find no merit in the present petition, the same is dismissed.

31. It is, however, clarified that the present order shall not come in the way of the petitioner making further representation(s) to the respondents on the issue of transfer in terms of the order passed by the Learned CAT, which shall be considered by the respondents in accordance with law.

32. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

MARCH 07, 2022
RN/AB/P

HIGH COURT OF DELHI



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