

R K. Sharma Vs. Union of India and Another

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-30-2014

Judge : The Honourable Mr. a.K. Bhardwaj, Member (J)

Appeal No. : M.A.No.452 of 2014 M.A.No.1344 of 2014 In O.A.No.749 of 2013

Appellant : R K. Sharma

Respondent : Union of India and Another

Judgement :

MA 452/2014

The applicant filed the Original Application No.749/2013 questioning the Order dated 7.1.2013 whereby he had been transferred from Delhi to Commissioner (Appeal), Kolkata Customs as also the orders dated 30.1.2013 and 20.2.2013 whereby his representations for cancellation of the transfer order were rejected. In the said Original Application, this Tribunal passed order dated 13.3.2013 staying the operation of the impugned order. Finally, the Original Application was disposed of in terms of the order dated 9.5.2013 with the following directions:

20. In the circumstances, OA is disposed of with direction to respondents to pass a fresh order indicating their articulated stand i.e. whether the transfer of the applicant is in deviation of clause 5.5 and 5.6 of the policy being warranted by public interest and administrative exigency or the same is in consonance with the provisions of the policy. Till then the applicant would not be forced to join as

Commissioner (Appeal), Kolkala Customs and would be treated on duty in Delhi with consequential benefits. No costs.

2. The two writ petitions preferred by the respondents against the aforesaid Order dated 9.5.2013 were dismissed as not pressed and on merits. Initially, the Union of India preferred Writ Petition (C) No.3860/2013 but during the course of hearing of the same, learned counsel for petitioner therein conceded that the documents, which were filed before the Tribunal, were not filed along with writ petition and sought to withdraw the same. Having withdrawn the said writ petition, the Union of India filed Writ Petition (C) No.3954/2013, which was dismissed by the Honble High Court in terms of judgment dated 25.10.2013. Paragraphs 11 to 15 of the judgment read as under:-

11. We agree with the conclusion of the Tribunal at page 50, wherein the Tribunal after noting the stand of the petitioners in para No.4.2D concluded as under:

Though, in para 4.2 D of the reply, it could be explained that the transfer was ordered as per para 2.5 of the transfer policy keeping in view the overall human resource requirement and in the interest of the work in the Customs and Central Excise Department, but despite specific order dated 5.03.2013 passed by this Tribunal, it could not be explained why due regard could not be given to Paras 5.5. and 5.6 of the transfer policy. More or less, the stand taken in the reply filed in OA 289/2013 has been reiterated in the reply to the present OA. Though specific stand has been taken in the OA that certain other incumbents in the grade of applicant are not disturbed despite their stay in Delhi for 16-20 years, in the counter reply, no explanation has been put forth for such different treatment meted out to the officer in the same grade. After a specific order passed by this Tribunal, the respondents were obliged either to take specific stand that clauses 5.5. and 5.6 of the policy were not violated or that the same could not be adhered to for weighty reasons. They should not have given a premise and left it to the Tribunal to draw its own assumption from the same. One of the possible assumption which can be drawn from the order dated 20.02.2013 is, since the applicant remained posted in Delhi for quite long, the protection of clause 5.5. of transfer policy could not be made available to him. But in the absence of articulated stand taken on

behalf of the respondents in this regard, it cannot be so presumed. Transfer guidelines cannot be made operative only to ensure a fix tenure for few and uncertain tenure for the others. In the order passed by them, respondents have not even shown confidence to say that irrespective of the fact that by operation of the policy the stay of the applicant at A station turns out 3 years, his transfer is necessary in public interest or in an administrative exigency. The setting up of the premises in the order purportedly passed in compliance of the directions given by this Tribunal and an assumption by this Tribunal from the same would not inspire the confidence of the applicant.

12. The petitioners have produced the relevant record wherein the decision to transfer the respondent and passing of the order dated February 20, 2013 were dealt with. We have perused the same.

13. We are convinced that the order dated February 20, 2013 is not the order as required to be passed by the petitioners in terms of order of the Tribunal dated February 12, 2013 in Original Application NO.289/2013.

14. Suffice it to state that directions of the Tribunal are only a reiteration of its earlier directions in Original Application No.289/2013 dated February 12, 2013 to pass a fresh order indicating articulated stand whether the transfer of the applicant is in deviation of Clauses 5.5 and 5.6 of the Transfer Policy and is warranted by public interest and administrative exigency or the same is in consonance with the transfer policy. We are not inclined to interfere with the impugned order in exercise of our jurisdiction under Article 226 of the Constitution of India.

15. The writ petition is accordingly dismissed. We would counsel to petitioners to pass a proper speaking order.

Thus the applicant filed the present M.A. No.452/2014 for execution of aforesaid Tribunals Orders dated 5.3.2013 in O.A. No.289/2013, dated 9.5.2013 in O.A. No.749/2013 as also the Order passed by the Honble High Court of Delhi in Writ Petition (C) No.3954/2013. According to him, despite repeated directions issued by the Tribunal, the respondents did not pass an appropriate order indicating the proper reasons.

3. During the course of arguments, Mr. Ajesh Luthra, learned counsel for applicant submitted that even though the Tribunal had specifically directed that till the disposal of the representation of the applicant in terms of paragraph 20 of the Order passed in O.A. No.793/2013, the applicant was to be treated on duty in Delhi with consequential benefits, the respondents issued an office order dated 1.3.2013 keeping him on compulsory wait and treating the intervening period as leave. He further submitted that even after the Order passed by the Tribunal, the Directorate of Revenue (Intelligence) viewed that it was not possible to implement the Order of the Tribunal for the reason that he had already been relieved vide order dated 24.1.2013 and the new incumbent had assumed the charge of the post of ADG, DRI, Delhi Unit.

4. The last submission put forth by Mr. Luthra was that though after the Order of the Tribunal the respondents could pass a fresh order but the same is not as per the true letter and spirit of the Tribunals Order. According to him, in the order placed by the respondents on record as enclosure to their counter reply, they have mentioned that the transfer of the applicant has been made on administrative exigencies and in the interest of work and is in consonance with the transfer policy, while as can be seen from the remarks in the recommendation of the Committee the transfer was ordered on administrative grounds against the vacancy. According to him, the administrative exigencies / public interest and administrative grounds could not be confused with each other for the simple reason that there is different scope for such transfer mentioned in paragraphs 2.5 and 10 of the guidelines issued by the respondents in this regard.

5. On the other hand, Mr. R. N. Singh, learned counsel for respondents submitted that the interim order of this Tribunal stood merged in the final order, thus there cannot be a separate plea for execution of the same. Regarding execution of the Order passed in the earlier two Original Applications, he submitted that the same have already been implemented and the applicant never sought execution of the same, rather he accepted the orders of the respondents passed in compliance of Tribunals Orders as fresh cause of action and challenged the same by instituting original proceedings.

6. Regarding the plea of Mr. Luthra about the correctness of the order dated 21.3.2014, Mr. Singh submitted that the only direction issued by the Tribunal was to issue fresh orders indicating articulated reason and the respondents have mentioned such reasons in paragraphs 9 and 10 of the order dated 21.3.2014. According to him, in execution proceedings, the Tribunal cannot go beyond the decree. In support of his contention, he placed reliance upon the judgment of the Honble Supreme Court in following cases:-

State of Punjab and others v. Krishan Dayal Sharma (2011) 11 SCC 212, and Rameshwar Dass Gupta v. State of U.P. and another, (1996) 5 SCC 728.

7. I heard the learned counsels for the parties and perused the record.

8. The Order of stay of operation of the transfer of the applicant was passed by the Tribunal only on 13.3.2013 and before that the applicant had already been relieved from the post of ADG, DRI, Delhi Unit and the new incumbent had assumed the charge, thus consciously the Tribunal had not passed any order to put the applicant back in his position as ADG, DRI, Delhi Unit and had given direction to the respondents to treat him on duty in Delhi with consequential benefits, thus the ramification of either of the Orders passed by the Tribunal referred to in the prayer clause of M.A. seeking execution is not that the applicant was required to be put back as ADG, DRI, Delhi Unit. Accordingly, in the present execution proceedings, no steps can be taken to put the applicant back into position as ADG, Delhi. Nevertheless, the order of transfer of the applicant was stayed on 13.3.2013 and finally while disposing of the Original Application, the Tribunal directed the respondents to treat the applicant on duty in Delhi with all consequential benefits, thus they could not have expected him to apply for leave for the period from 25.2.2013 till 7.6.2013 or from 25.1.2013 to 24.2.2013. It was for the respondents to give work to applicant for such period.

9. As a ramification of the final Order passed in the Original Application, upheld by the Honble High Court (supra), the respondents are liable to treat the applicant on duty in Delhi from 7.1.2013 till 21.3.2014 with all consequential benefits. Once the respondents themselves did not give any work to the applicant, he cannot be blamed for remaining idle. The Order passed in O.A. No.749/2013 is unambiguous

and specific that till the fresh order was passed the applicant was to be treated on duty with all consequential benefits, thus there is no force in the submission put forth by the learned counsel for respondents that even if the applicant was treated to be on duty in Delhi, he would not be entitled to pay and allowances.

10. As far as the issue of going into the correctness of the order dated 21.3.2014 passed by the respondents in implementation of Tribunals Order dated 9.5.2013 is concerned, it is true that in contempt proceedings the correctness of the order cannot be gone into but in execution proceedings the Tribunal may see that the benefit directed to be given to the beneficiary of the judgment accrue to him. The ramification of the Order passed in the Original Application was (i) the respondents were to see whether the applicant was transferred on completion of the maximum tenure mentioned in paragraphs 5.5 and 5.6 of the transfer policy or (ii) his transfer was in public interest or exigencies of service. However, the expression in the order came whether the transfer was in deviation of clauses 5.5 and 5.6 of the transfer policy being warranted in public interest and exigencies of service. Since the tenure mentioned in paragraph 5.6 of the transfer guidelines is not minimum but maximum tenure, the respondents viewed that in transferring the applicant before expiry of the said tenure they did not violate the provisions of paragraph 5.6 and similarly they also viewed that the transfer of the applicant could be ordered in exigencies of service and in the interest of work. In other words, when they emphasized that they had ordered the transfer of the applicant in terms of clause 2.5 they preferred to maintain that in doing so they did not violate the provisions of paragraph 5.6 of the transfer policy. Since there was no clear direction to the respondents to indicate whether the transfer of the applicant was an annual general transfer or in public interest, the respondents could not be expected to take a view in this regard. They are correct in taking a stand that before completing the tenure, they transferred the applicant in exigency of service and in the interest of work and did not violate the transfer policy.

11. As per as to the pleas of the applicant that (i) when the recommendations of the Committee described the transfer of the applicant on administrative grounds, in the speaking order, the same is mentioned in exigencies of service and that when other several others with longest stay could not be disturbed, the applicant is

disturbed out of way, (ii) even in the speaking order also, the respondents could not bring to the fore any reason that why the applicant is picked up to be posted out are concerned, the same cannot be gone into in the execution proceedings. It is open to the applicant to challenge the fresh order by instituting the original proceedings in accordance with law.

12. In the circumstances, the M.A. No.452/2014 is disposed with a direction to the respondents to ensure that the applicant is paid full pay and allowances for the period from 7.1.2013 to 21.3.2014 and no part of said period is commuted / regularized as any kind of leave. No costs.

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