

D. Sathiyar Vs. the Union of India, Rep. by Its Secretary to Govt. Ministry of Environment and Forests, Paryavaran Bhawan and Others

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Court : Central Administrative Tribunal CAT Madras

Decided On : Jun-22-2012

Judge : The Honourable Mr. G. Shanthappa, Judicial Member & the Honourable Mrs. O.P. Sosamma, Administrative Member

Appeal No. : Original Application No.316 of 2012 & Misc. application no. 233/2012

Appellant : D. Sathiyar

Respondent : The Union of India, Rep. by Its Secretary to Govt. Ministry of Environment and Forests, Paryavaran B

Advocate for Pet/Ap. : For the Applicants: M/s M. Ravi, Priya Ravi, T. Dharani, Advocates. For the Respondent : S.M. Deenadayalan, Advocate.

Judgement :

G. Shanthappa, Judicial Member

The above application is filed under Sec. 19 of the Administrative Tribunals Act, 1985, seeking the relief, to call for the records on the file of respondent Nos. 2 and 3 in connection with the impugned office order No.17016/1/2010/IFS.I dated 27.02.2012 and No. 804/2012/CASFOS/E.1/AIS (3) dated 28.02.2012 and quash the same, further relief of direction to the respondents to transfer the applicant permanently to Kerala cadre.

2. We have heard the learned counsel for the respective parties.

3. It is admitted from either side that the applicant belongs to 1996 batch of Indian Forest Service of Assam Meghalaya cadre (AM-96). His native State is Tamil Nadu. The applicant had submitted his representation dated 30.09.2004 for deputation under CSS of MOEF, in which he had informed the authorities that he was kidnapped by some militants in Meghalaya and held in captivity w.e.f. 18.06.2004 to 01.07.2004, which was a highly traumatic experience both physically as well as mentally. His contention is that he suffered from cerebral malaria. Accordingly, the applicant was selected for appointment on deputation to the post of Lecturer, State Forest Service College Coimbatore vide order dated 27.12.2004. The said order of deputation was only for a period of 4 years w.e.f. 10th May 2005. In the meanwhile the Government of Kerala has issued No Objection Certificate dated 14.06.2009 for the cadre transfer of the applicant from Meghalaya cadre to Kerala Cadre. Vide their letter dated 19.12.2008, the Government of Meghalaya has also stated that there is no objection for the cadre transfer from Meghalaya to Kerala in accordance with the policy laid down by the Ministry of Personnel, Public Grievances and Pension, DOP and T. The 1st respondent had issued an order dated 27.04.2010/4-5-2010 in which the request of the applicant for inter cadre transfer from Meghalaya segment of Assam-Meghalaya joint cadre to Kerala cadre was rejected. The applicant was granted extension of deputation vide order dated 22.02.2011 for a period of one year beyond 20.02.2011 and upto 19.02.2012. The applicant filed O.A. No. 548/2011 challenging the said order of rejection. The said O.A was disposed off vide order dated 03.02.2012 and a direction was issued to the respondents to follow the DOPandT OM No. 13017/16/2003 - AIS (I) dated 08.11.2004. The 2nd respondent issued an order dated 27.02.2012, that is challenged in the present O.A The period of deputation was further extended upto 29.04.2012.

4. It is the grievance of the applicant, in the year 2004, there was a threat to his life. Hence he had submitted his representation dated 09.04.2008 stating that while he was posted as Divisional Forest officer, Balapakhram National Park Division at Baghmara, he was kidnapped by insurgents in June 2004 and was released only on 01.07.2004 after repeated pleadings and negotiations by Forest

Department Officials. He had suffered extreme trauma. The applicant submitted his representation dated 09.05.2008, for change of cadre from Meghalaya to Kerala, on the reasons, he suffered both physically and mentally. During the stay with kidnappers under captivity in the jungles, the kidnappers threatened to kill the applicant. He was down with frequent bouts of wheezing and breathlessness but he had no access to medical help and was even denied the bare necessities. Due to rains, mosquitoes and leeches, he suffered cerebral malaria, a life threatening illness. Immediately, the applicant was admitted to Ernakulam Medical Centre Hospital in a serious condition. Though both the governments i.e. Meghalaya and Kerala have no objection for change of cadre, without proper application of DOPT OM dated 08.11.2004, without assessing the genuineness of the request assessed by an independent central agency or group of at least two independent experts and without assessing the 'extreme hardship' of severe health problems to the applicant, the respondent i.e. UOI rejected the claim of the applicant. The direction of this Tribunal in O.A. No. 548/2011 dated 03.02.2012 has not been complied with. The impugned order is illegal, after quashing the impugned order, there shall be a direction as prayed for.

5. The respondents have vehemently opposed the O.A and filed reply statement by supporting their action in accordance with DOPT OM dated 08.11.2004. In pursuance of the direction of this Tribunal, the respondents obtained the opinion of the Ministry of Home Affairs through the Intelligence Bureau. It was opined that the law and order and overall security environment in Meghalaya is better than many States in the region. The State has also seen improvement on a number of fronts (communication transportation etc.) during the last few years. As such the claim/request for an inter cadre transfer on the ground of extreme hardship and threat to the life of the officer does not appear to be tenable. It led to the rejection of applicant's prayer for inter cadre transfer. Even independent assessments by different agencies support the same (Meghalaya Assessment 2011 by the South Asia Terrorism Portal). There is highly significant reduction in the number of militancy related fatalities on civilians and security since 2004. There is increase in the fatalities of militants. Since the MOEF is the cadre controlling authority for the applicant, which after examining the facts as well as after an independent verification decides the same. 'No objection' from concerned two states should not

be construed that Sri Sathiyar can get his cadre change automatically. The Govt. of India has taken a logical stand based on the report submitted by MHA. It appears that the applicant is exaggerating the wrongly perceived perils of going back to Meghalaya. It is clear that the applicant has developed an aversion to work in the State concerned. Since he is sufficiently senior, he is likely to get posted at the Headquarters (i.e. Shillong) where perceived threats are much less unless the applicant has specific issues with the militants. The claim that the applicant shall be exposed to severe hardship and mental agony in Meghalaya is wrong. As per the report of the Intelligence Bureau (MHA) the situation in Meghalaya has already improved. It is further stated that the question of 'extreme' hardship suffered by an individual need not persist for ever because the militants who abducted the applicant need not have anything against the applicant personally. The fear of applicant is self created and unfounded just to create sympathy in his favour. It is also regretted that reference of Home State of the applicant as Kerala is a clerical error. The state of Domicile was not the basis for taking decision rather speaking order was to be passed in the light of guidelines of DOPT issued on 08.11.2004, which were followed and the order was issued with the approval of respondent No. 1. The respondents have produced the Intelligence Bureau (MHA) report dated April 12, 2010, on which the applicant's case was considered and rejected as per the directions of the Tribunal.

6. We have carefully considered the submissions of the learned counsel for the respective parties, perused the pleadings available on record and the DOPT OM dated 08.11.2004 including the report of Intelligence Bureau dated 21.04.2010. After perusal of the pleadings, that the short question that arises for our consideration is

“whether the impugned order dated 27.02.2012 is sustainable in law or not -NO-

7. On the admitted facts narrated above, in the year 2004, the applicant was kidnapped by the militants that appeared in the press on 19.06.2004 (page 20 to 26 (a) of the O.A.). The applicant submitted his representation dated 09.05.2008 for changing the cadre from Meghalaya to Kerala. It is relevant to extract the contents of the representation.

“.. The kidnapping incident has devastated me both physically and emotionally, During my stay under captivity in the jungles, the kidnappers threatened to kill me. I was down with frequent bouts of wheezing and breathlessness, but had not access to medical help and was even denied the bare necessities. Heavy monsoon rains, mosquitoes and leeches made my condition even worse. I contracted cerebral malaria, a life threatening illness, which almost killed me but for the timely medical help after my release. Immediately upon reaching Cochin, I was admitted to Ernakulam Medical Centre Hospital in a serious condition for emergency treatment. I would have fallen prey to the disease had my release from captivity been delayed even by another day. The chain of events of 2004 has totally shattered my confidence to serve in the North east, and has inflicted a permanent scar in my mind with recurrent bouts of fear. The feeling of insecurity has taken a heavy toll on my psyche. For months on I had to undergo post trauma treatment and care to return to a normal routine.

Xxx xxxx xxxxx xxxxxx

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Post abduction, I am suffering from frequent bouts of wheezing breathlessness. My father expired long back, in 1978. My mother, aged and ailing, is presently dependant on me solely for her daily chores, I being her only son. She is also undergoing treatment for a kidney disorder and requires my care and attention all the time. I am her lone support and will not be in a position to leave her side. May I, therefore, pray that the Government be kind enough to consider a change of cadre for me to Kerala or any of the other Southern States, taking into account the prevailing threat to my life and considering the torment already undergone by me while serving in the North East. In view of the extreme hardships detailed above, I once again plead for considering my request for cadre change sympathetically.

8. The Govt. of Meghalaya vide their letter dated 19.12.2008 (Annex. A/5) has expressed 'no objection to the request' of the applicant.

As such Government of Meghalaya has no objection to his request for change of cadre and recommend that cadre of the officer be changed in accordance with the

policy laid down by the Ministry of Personnel Public Grievances, and Pensions Department of Personnel and Training.

The Govt. of Assam has issued a letter dated 14.12.2009 for inter cadre transfer of the applicant.

“In inviting a reference to your letter on the subject cited above, I am directed to convey the ‘no objection’ of the Governor of Assam for Inter cadre transfer of Shri D. Sathiyam IFS (AM -96) to Kerala from Meghalaya segment of Assam Meghalaya cadre.”The 1st respondent, who is competent authority for change of inter cadre of IFS, rejected the request of the applicant for cadre change, vide order dated 27.04.201/04.5.2010. The said order was challenged in O.A. No. 548/2011. While disposing of the O.A, on 03.02.2012, the Tribunal directed the respondents to pass fresh order in accordance with DOPT OM dated 08.11.2004. We have to see whether the respondents have complied the directions of the Tribunal in accordance with DOPT OM dated 08.11.2004. It is relevant to extract para (vi), (viii) and (viii) of the said O.M. It reads as under:

(vi) ‘Extreme Hardship’ for purposes of inter-cadre transfer, should be defined to include (a) threat to the life of the officers or his immediate family and (b) severe health problems to the officer or his immediate due to the climate or environment of the State to which he is allotted.

(vii) In cases of request on grounds of threat or health, the Central Government shall have the genuineness of the request assessed by an independent Central Agency or group of at least two independent experts.

(viii) If a request on grounds of threat or health is found to be genuine the Central Government may initially send the officer on a three years deputation to a State of its choice. The situation may be re-assessed after the three years period. If the situation so warrants, the Central Government may permanently transfer the officer to that State.

9. The learned counsel for the respondents supported the impugned order by referring the independent assessments by different agencies supported by

Meghalaya assessment 2011, by the South Asia Terrorism portal.

There is highly significant reduction in the number of militancy related fatalities on civilians and security since 2004. There is increase in the fatalities of militants. The intelligence report dated 21.04.2010 has been accepted by the Ministry of Environment and Forests, vide their order dated 12/13.04.2010 is enclosed along with the reply statement. The relevant portion reads as under:

“4. Given his experience in captivity, it is natural for him to feel a sense of insecurity. However, in our assessment, there is no ‘Prevailing threat’ to his life on his return to Meghalaya as claimed in his representation. The ANVC has been under Suspension of Operation agreement since July 2004 and insurgent activity by other IIGs operating in Meghalaya against govt. officers is presently at a very low ebb. The law and order and overall security environment in Meghalaya is better than many States in the region. The State has also seen improvement on a number of fronts (communication, transportation etc.) during the last few years. As such the claim/request for an inter cadre transfer on the ground of extreme hardship threat to the life of the officer does not appear tenable.”

10. Based on the admitted facts narrated supra and from the reasons assigned it is clear, before passing the impugned order dated 27.02.2012, the respondents have not called for the report on ‘Extreme Hardship’ on the severe health problems of the applicant, the request of the applicant on the grounds of threat or health has not been assessed by an independent central agency or group of at least two independent experts. The DOPT’s OM dated 08.11.2004 supra is very clear on the subject, while issuing the impugned order dated 27.02.2012 the respondents applied the intelligence report dated 12/13.04.2010, the applicant’s health condition has not been assessed. The respondents have not followed the direction of the Tribunal. Further while issuing the impugned order the native state of the applicant has been considered as Kerala. The applicant declared that his home State is Tamil Nadu. There is no proper application of mind while issuing the impugned order.

11. For the reasons assigned above, the impugned order is not sustainable in the eye of law. Accordingly we answer the issue above in the negative.

12. The applicant has established his case for quashing the impugned order, but the respondents have not justified their action that the impugned order has been issued in accordance with the DOPT OM dated 08.11.2004. Accordingly, we quash and set aside the impugned order dated 27.02.2012. We direct the 1st respondent to follow the ingredients of DOPT OM dated 08.11.2004, after assessing the health condition of the applicant in accordance with paras (vi), (vii) and (viii) of the said OM extracted supra, by obtaining report from the concerned agencies along with the 'No Objection' issued by both Govt. of Meghalaya and Govt. of Kerala and take decision on the request of the applicant for inter cadre transfer to Kerala within a period of three months from the date of receipt of a copy of this order. The relief of direction to the respondents to transfer the applicant permanently to Kerala cadre cannot be considered at this stage. The O.A is allowed to the extent indicated above.

13. In view of the order passed in the main O.A, there is no need to issue any direction with regard the prayer as claimed in M.A. No. 233/2012. M.A. is disposed off. No costs.

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