

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.893/2002

New Delhi dated this the 10th day of April, 2002.

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

G.P. Bhatia,
Sr. Administrative Officer (on deputation)
National Biofertiliser Development Centre,
CGO Complex-II, Kamla Nehru Nagar,
Ghaziabad-201002.
(Applicant in person) ... Applicant

Versus

1. The Union of India through
The Secretary,
Ministry of Labour,
Shram shakti Bhawan,
Rafi Marg, New Delhi-110001.
2. Mrs. Padma Balasubramaniam,
Joint Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-1
3. The Director General (Labour Welfare),
Ministry of Labour
Jaisalmer House, New Delhi-110011.
4. The Chief Labour Commissioner (Central)
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001
5. The Secretary,
Dept. of Agriculture & Cooperation
Ministry of Agriculture
Krishi Bhawan,
New Delhi-1. ... Respondents
(By Advocate: Sh. Adish C. Aggarwala with
Sh. Neeraj Goyal)

ORDER (ORAL)

By Hon'ble Sh. Govindan S. Tampi, M(A)

This OA seeks to challenge the transfer of the applicant to Ordnance Factory, Chanda (Maharashtra) as Dy. Labour Welfare Commissioner.

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2. Heard Shri G.P. Bhatia, the applicant in person and Shri Adish C. Aggarwala, Sr. counsel along with Sh. Neeraj Goyal. Applicant's request for interim relief was fixed for hearing today for which the short reply was filed by the respondents. Request for interim relief and the OA is being disposed of today, on the submission - both oral and written - are complete.

3. Applicant Sh. G.P. Bhatia, belongs to Central Labour Service (Gr. 'A') and ^{is} working as Sr. Administrative Officer in National Biofertiliser Development Centre, on deputation since 22.1.98. CLS ^{on 15} ₂ organised Group 'A' Service with five grades - Grade V to Grade I - with postings in three streams - Central Industrial Relations Machinery (CIRM), Central Pool and Welfare Wing - with interchangeability, reiterated in Ministry's OM No.12034/1/87-CLS-I dated 14.4.88. However, interchangeability is almost always a myth and the posts are given to favourites who are generally rotated between CIRM and CPWD. The applicant, who holds Masters degree in Pol. Science & Law with P.G. Diploma in Business Management & Personnel Management and who had been acting as a ^{guest} ₂ finest faculty in Labour Laws had only been posted in the Central Pool Board and he had been considered as person non grata on account of his ^{role} _{role} in collective bargaining for the service as Joint Secretary, Gen. Secretary and presently as President of the Association. Though there exists a transfer and posting Committee chaired by Jt. Secretary, Labour along with D.G. Labour Welfare and Chief Labour Commissioner, ^{but} the same functioned only as a formality and certain persons in

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the Ministry have been taking undue advantage of their proximity to the higher authorities in the Labour Ministry. Applicant's request for posting as Chief Administrative Officer, Govt. of India, ^{Mint, Noida} ~~which~~ was filed on 10.8.2001 but nothing is known thereon. Besides, he was selected to the post of Dy.Registrar, CEGAT by UPSC but he has not been relieved holding that he cannot be posted ^{from the} ~~on~~ deputation to another though the cadre controlling authority had the power to waive the cooling off period. Similar was the fate of ^{his} ~~of~~ request for being posted as Regional Labour Commissioner in Delhi, Chandigarh, Kanpur & Ajmer as has been granted to others. He had made a number of representations but none of them has been heeded to and by the latest order No. A-22012/1/2002- CLS I dated 18.2.2002 he has been posted as Dy.Labour Commissioner (C) in Ordnance Factory, Chanda with immediate effect. He has also referred to a few cases wherein other officers of the same service have been accommodated ^{which} ~~and~~ ^{has been} benefit ~~denied~~ to him. Hence this OA.

4. The grounds raised in the application are that the ^{transfer} ~~same~~ is malafide, perverse and arbitrary; the same was punitive as the post at Chanda had been kept vacant for posting him to that seat; it was stigmatic as it marred his reputation and suitability to hold a responsible post in the service; it was detrimental to the growth of his career and career prospects, it has been issued in violation of the accepted guide-lines and lastly the transfer order had been ^{issued} ~~directed~~ without any application of mind.

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5. During the oral submissions, the applicant, Sh. Bhatia forcefully reiterated all the points raised above and pointed out that instead of acting as a model employer, concerned about the Welfare of its employees, Labour Ministry which controls Central Labour Service (respondent) has been acting as a brutal and inconsiderate master, seeking to wreak vengeance for ^{his activities} ~~inactivities~~, in pursuance of his action for safeguarding the interest of his service. He therefore seeks the urgent intervention of the Tribunal for modifying the order posting him to Chanda and to post him to any one of the other streams of service keeping in mind his experience & expertise and suitability. He also submitted at the bar of the Court that he was not seeking posting in any specific station and that he was prepared to work anywhere in India.

6. Replying on behalf of the respondent and reiterating the written submissions made by them, Sh. Adish C. Agarwal, learned ^{Sr.} _^ counsel for the respondents states that the applicant, a grade IV officer of CLS has been working as Sr. Admn. Officer in NBDC from 22.1.88, originally for a period of 3 years, which was extended by further six months w.e.f. 22.1.2001. Keeping in mind his request against any transfer during mid-academic session, he was granted extension upto 21.2.2002 as a special case. It is true that the applicant had applied to CEGAT for appointment as Dy. Registrar and was interviewed for the same, ^{but} _^ the offer was withdrawn by the Finance Ministry as he was already nearing completion of 4th year of his earlier deputation. He had on 7.12.2001 indicated that he did

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not want any extension at NBDC, Gaziabad and that he be considered for being posted as Regional Labour Commissioner (Central) at Delhi, Chandigarh, Kanpur or Ajmer. Respondents point out that as the Ministry of Agriculture under whom he is presently working did not approach them for his continued deputation, he was posted as DLWC (C) at Ordnance Factory, Chanda being the only vacancy available at the relevant time, no vacancy in other stream was available and this was only post to which he could be posted. They further point out that though instructions provide for change of officer from one stream to another, there is no specific prescription that the shift has to be from one stream to another as is being attempted to be shown by the applicant. When the transfer order was served on him, he did not accept the same but had made unsavoury remarks about the organisation. He is continuing in the post only on account of the interim stay granted. Sh. Agarwal points out that it was not for an employee to select the nature of his posting and along with his place of choice. In a job where there is all India transferability the applicants should be prepared to be moved from one post to the other and from one station to another. It was for the competent authority to decide as to where to accommodate any individual keeping in mind his suitability. The respondents had acted correctly and in proper exercise of the powers vested in them and therefore the transfer orders issued should not be interfered with. Having said so, Sh. Agarwal fairly agreed that the respondents ^{would} ~~should~~ be prepared to consider the applicant's case for modification of the order as general transfers in CLS are in the offing

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during April 2002, at the same time retaining with themselves the right to determine the suitability or otherwise of the applicant for any particular posting.

7. I have carefully considered the matter. In this OA, while the applicant seeks to assail the order transferring him from the post of Chief Admn. Officer, NBDC, Gaziabad, as DLWC(C), Chanda and prays for its modification, the respondents stoutly deny that any malafide has occurred and the transfer was correctly done. They have however, agreed to reconsider the issue.

8. Under normal circumstances the Tribunal is reluctant to interfere in the transfer of Govt. servants, which fall within the exclusive domain of the execution, unless the transfers have been ordered malafide and are against the accepted and notified guide-lines. In this OA, though allegation have been made by the applicant in the written pleadings and reiterated in the oral submission, I am not convinced that any malafide has worked against the applicant leading to his transfer. In fact the respondents had given him nearly one year after the initial deputation period of 3 years was over and therefore he cannot have any legitimate grievance against his transfer. The fact however remains that the CLS to which the applicant belongs has three distinct streams, i.e. CIRM, Central Pool Welfare Wing and the applicant had been only in the Central Pool and not in the other two streams. Ministry of Labour OM No. A-12034/1/87-CLSI dated 14.4.88 had specified that the posting of the officers of CLS shall, be made keeping in view the

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need to expose individual officers to all different kinds of work entrusted to the CLS". This apparently, has not been done in the case of the applicant as his record of posting shows and therefore, his request for a change would merit consideration more so as he has made a specific mention at the Bar of the Court that he was prepared to work anywhere in the country. Respondents, as model and fair employees have to consider the same both in the interest of the individual and the collective interest of the organisation.

9. In the above view of the matter, I dispose of this OA by directing the respondents to consider the request of the applicant for modifying his transfer from Gaziabad to Chanda and to adjust him in any other suitable post, keeping in mind his experience, expertise and academic accomplishments. The choice however, for determining his suitability for any post, remains exclusively with the respondents who are the competent authority in this regard. The modification of the order shall be done within one month from the date of receipt of a copy of this order. Till such time the interim stay against his relief ordered on 27.3.2002 shall continue. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/.