

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1675 of 2002
MA 2647/2002

New Delhi; this the 13th day of May, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri G.P. Bhatia
Grade-IV Officer of Central Labour Service
111-A-65 Rachna Vaishali,
PO Saahibabad, District Ghaziabad-201010. -APPLICANT

(By Advocate: In Person)

Versus

1. The Union of India
through the Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110 001.
2. Mrs. Padma Balasubramaniam
Joint Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-1.

-RESPONDENTS

(By Advocate: Shri Adish C. Aggarwal)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has challenged order Annexure A-1 vide which he has been posted as Deputy Labour Welfare Commissioner (Central) at Naval Dockyard Vishakapatnam on his repatriation from deputation to National Biofertiliser Development Centre, Ghaziabad.

2. The facts in brief are that the applicant belongs to Central Labour Service Group 'A' and had been working as Senior Administrative Officer at National Biofertiliser Development Centre (NBDC) on deputation basis. The Central Labour Service which is a organised Group 'A' service is stated to have 5 grades. Grade-I is the highest in the hierarchy. The applicant is Grade-IV

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officer. The applicant allege that there are three distinct streams, i.e., (i) Central Industrial Relations Machinery (hereinafter referred to as CIRM), (ii) Central Pool and (iii) Welfare Wing and the members of the service are interchangeable. The applicant in his OA alleges that in his case he has never been exposed to any other stream and he has been constantly working in the Central Pool.

3. The applicant further alleges that this interchangeability is not based on any intelligible criterion and despite the fact that the applicant had joined the CLS from 1.10.1987 but till date he has not been offered any post in the CIRM or CPWD of the Welfare Wing.

4. The applicant further states that he should have been given posting with CIRM or other group except this Central Pool.

5. The applicant further submits that he has been facing the ire of respondent No.2, who is the General Secretary of the Association of the Officers of CLS and constantly raising the plea with regard to transfer policy and corruption of transfer, thus he has been made factum of bias.

6. He has also levelled certain allegations of corruption against certain officers.

7. He further submitted that there is no settled transfer policy but the officers are getting posting as per the whims of the administration though a transfer committee is there which stipulates how a person has to be transferred but respondents were considering the merit on the price fixed and only who is able to pay, he was

getting transferred at his choice of posting. Thus the applicant alleges that his transfer to Vishakapatnam is actuated with mala fide, perversity, highhandedness and arbitrariness on part of respondent No.2.

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8. The applicant also alleges that it is because of allegations made against respondent No.2, he had made an attempt to punish him so that respondent No.2 can get rid of the applicant. Thus the order in a way is a punitive one.

9. It is further submitted that the applicant's transfer to Ordnance Factory, Chanda was stigmatic as it has eclipsed his aptitude, past conduct and suitability etc. to hold the post.

10. It is further submitted that the transfer order is detrimental to the growth of the applicant's career and his career prospects were adversely affected by this transfer.

11. The next ground taken by the applicant is that his transfer has been issued in violation of the professed norms and established principles as it has become the condition of service so applicant should have been given the posting in the CIRM or in other welfare stream so it is stated that the transfer order has been issued without application of mind.

12. The respondents are contesting the OA. The respondents by filing their counter-affidavit denied the allegations as levelled by the applicant.

13. Respondents further submitted that soon after his repatriation the applicant was transferred to Ordnance Factory, Chanda. The applicant had filed an OA 893/2002 before this court for quashing of the transfer order on similar grounds, which were rejected by the



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Tribunal.

14. However, the Tribunal vide order dated 10.4.2002 directed the respondents to consider the request of the applicant for modifying his transfer from Ghaziabad to Chanda and to adjust him in any other suitable post, keeping in mind his experience, expertise and academic accomplishments. It was specifically observed that the choice for determining suitability for any post remains exclusively with the respondents who are the competent authority and this order was so passed when the applicant had stated at Bar before the court that the applicant is willing to work at any place in India.

15. Respondents further pleaded that in compliance of the order the respondents did consider the possibility of change of stream of the applicant but submitted that though there are three wings, namely, (i) Labour Welfare (previously Central Pool of Labour Officers) (ii) Central Industrial Relations Machinery (CIRM) and (iii) Welfare Stream and as such submitted that with a view to give adequate exposure to the officers in all the streams in the last few years the Cadre Controlling Authority has tried to rotate the officers in all the three streams. However, complete interchangeability was not possible because of disparity in sanctioned posts in various streams. It is also submitted that there are 84 posts at Grade-IV level (to which the applicant belongs), 22 are in CIRM and 62 are in the Labour Welfare side and there is no post at this level in the Welfare stream. Thus the applicant could not be posted in the Welfare Stream because there was no sanctioned post at Grade-IV level.

16. The respondents further submitted that the Government has a right to transfer and utilise the

services of the applicant in any part of India and as such applicant is liable to serve anywhere in the country.

17. The respondents further stated that the allegations of corruption was made in the earlier OA also and after considering the same, the court observed that "under normal circumstances the Tribunal is reluctant to interfere in the transfer of Government servants, which falls within the exclusive domain of the executive, unless the transfer have been ordered mala fide and are against the accepted and notified guide-lines." The court also observed that "the allegation have been made by the applicant in the written pleadings and reiterated in the oral submission. I am not convinced that any mala fide has worked against the applicant leading to his transfer. In fact the respondents had given him normal one year after the initial deputation period of 3 years was over and, therefore, he cannot have any legitimate grievance against his transfer."

18. Thus the respondents submit that after the dismissal of the said allegations the applicant cannot raise the same again.

19. The respondents further submitted that they had been adjusting the applicant when his repatriation was made earlier and had pleaded before the department that since it was in the mid of the academic session so the period of posting be extended so in the case of the applicant it was further extended.

20. As regards the allegation of corruption etc. is concerned, the same should not be taken note of.

21. I have heard the learned counsel for the parties and gone through the records of the case.

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22. It will not be out of place to mention that at the request of applicant through MA 2647/2002 the department has produced the record pertaining to transfer of various officers were also summoned which have been perused by me.

23. As regards the allegations of bias and corruption are concerned, these appear to have been levelled out of frustration. Because earlier he has been given posting after his repatriation from NBDC, Ghaziabad to Ordnance Factory, Chanda earlier which was challenged by the applicant in the earlier OA on similar grounds which did not find favour with the Tribunal. However, department was directed to reconsider his case and if possible to adjust him in some other stream.

24. As the allegations with regard to corruption or bias did not find favour with the court in his earlier OA so the same cannot be entertained again.

25. Besides that respondents have considered his case of possibility of interchangeability of the streams and were not found feasible because of non-availability of vacancies in the particular stream as vacancies in other streams were not available for being given to the applicant.

26. As regards the applicant's posting to Ordnance Factory Chanda was alleged to be stigmatic is concerned, since the applicant is now posted to Naval Dockyard so this ground is no more available though he again states that the principle of interchangeability has not been applied but since the respondents have stated that it is not possible to apply so the applicant cannot term his transfer either as stigmatic or otherwise having been issued in a biased or mala fide manner against him.

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27. As regards the ground of applicant that this transfer order is detrimental to the growth of his career is concerned, the reasons given by the same are also not convincing because again here the applicant is alleging that since he has not been given chance to serve in other two streams so his career is being ruined because the officers working under the respondents under any other stream have equal status and have equal chances of promotion so it cannot effect his career adversely at all and whatever post is available or where the department can utilise the services best of the applicant is within the domain of the department and applicant cannot chose to be posted at a particular place.

28. The applicant has also alleged that this change of stream is a professed norm of the department as per the rules so he should be given posting in CIRM of the Welfare Stream. To my mind also the applicant cannot compel the respondents to give him posting in any of the stream and in this case when the post is not available so this ground has no merits.

29. As regards, the ground taken up by the applicant that the transfer order has been passed without application of mind I may mention that after perusing the departmental files relating to posting /transfer it has been considered by the transfer committee to consider the persons according to the norms so fixed, the applicant cannot say that the transfer order had been passed without application of mind.

30. None of the grounds taken by the applicant has any merits so the OA does not call for any interference and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)