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Central Administrative Tribunal
Principal Bench

O.A.No.2176/2002

Hon'ble Shri Shanker Raju, Member(J)

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

Ramesh Chand Sai
Upper Division Clerk
National Institute of Science Communication
Dr. K.S.Krishnan Marg
New Delhi - 110 012. ... Applicant

(By Advocate: Sh. S.M.Garg)

Vs.

1. Council for Scientific & Industrial
Research, through its
Director-General
Anusandhan Bhawan
Rafi Marg
New Delhi - 110 001.
2. Shri V.K.Gupta
Director
National Institute of Science
Communication
Dr. K.S.Krishnan Marg
New Delhi - 110 012.
3. Controller of Administration
National Institute of Science
Communication
Dr. K.S.Krishnan Marg
New Delhi - 110 012. ... Respondents

(By Advocate: Sh. A.K.Bhardwaj)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, in this OA, impugns transfer order dated 9.8.2002 whereby he has been transferred from National Institute of Science Communication (hereinafter called as "NISCOM") to INSDOC. He has sought quashment of the aforesaid order with further prayer to accord him salary of 25 days which is still to be paid by respondents.

2. Applicant was working as UDC in NISCOM and belonging to General and Administration Section but was posted in Stores & Purchase Section of the NISCOM.

On the recommendations by the Senior Stores & Purchase Officer, Director (Personnel) approved the transfer of applicant in public interest. Against which representation has been filed but was not responded.

3. By an order dated 21.8.2002 of this Court status-quo was maintained but later on the applicant joined the transferred place at INSDOC subject to the out come of the OA, the salary withheld has already been paid to applicant except for 25 days.

4. Shri S.M.Garg, learned counsel contended that in the transfer order the only administrative exigency reflected is that the transfer has been affected on the recommendations of Senior Stores & Purchase Officer (hereinafter called as "SSPO"). Whereas by drawing my attention to the notings on the order dated 9.8.2002, it is contended that the Senior Stores & Purchase Officer in NISCOM vide his noting dated 10.8.2002 recorded that he has not recommended the transfer of applicant and the same is factually incorrect for which necessary remedial action was requested. Further drawing my attention to the notings by the Director, it is contended that after having gone through the aforesaid noting and discussion with Senior Stores & Purchase Officer, Director agreed and recommended that no further action is needed on the transfer order.

5. In view of the above submissions, it is contended that only administrative exigency was on the basis of recommendation by a SSPO, is proved to be wrong, the present order is punitive and cannot be

sustained. Another argument of applicant is that the transfer has been actuated with personal mala fides on Director (Shri V.K.Gupta) who desired to have the rent of his house recovered through the applicant at Noida on refusal by the applicant, aforesaid transfer order has been issued.

6. However, referring to the official record, it is stated that the notings regarding transfer and recommendations of SSPO, are fabricated.

7. Sh. S.M.Garg further stated that as despite impleading Shri V.K.Gupta as Respondent No.2 in person, he has not filed his reply and in absence of any specific rebuttal, the mala fides against Respondent No.2 are established.

8. It is further stated that on a meeting held on 14.3.2002, with the Director of NISCOM, one Mrs. Shakuntla and Mrs. Rajni Puri, UDCs though have been spared but are still working in INSDOC as per the administrative staff strength recruitment on 1.10.2002 as such the contention put forth by the respondents that applicant is required in exigency of service, as UDCs are not available, is proved wrong on the face of it.

9. Lastly, it is contended that as the order is vitiated by mala fides and is punitive the same is liable to be set-aside.

10. On the other hand, respondents' counsel Shri A.K.Bhardwaj, contended that by an order dated 28.3.2002, issued by CSIR whereby INSDOC and NISCOM have been merged these two laboratories are working as a single entity.

11. Moreover, relying upon the decision of Apex Court in Chief General Manager (Telecom), N.E. Telecom Circle & Anr. v. Shri Rajendra Ch. Bhattarcharjee & Others, 1995(1) ATJ 303, it is contended that no Government servant has a legal right to insist for being posted at a particular place.

12. Shri A.K.Bhardwaj further stated that applicant, who is an active member of Scientific Workers Association and Joint Action Committee, was suspended and disciplinary proceedings were initiated in March, 1997, the same was withdrawn. By referring to the previous record of the applicant, it is contended that before the agitation, applicant threatened the then management that he would immolate himself if his colleagues were not allowed to play cricket during official working hours..

13. It is stated that Shri V.K.Gupta is posted as Director both for INSDOC and NISCOM. As the Institute continued to face problems due to Union activities, they had shown disrespect to the Director. Applicant has been transferred on a routine administrative decision in public interest and as a rule of inter laboratory transfer of the staff at junior level is done after being approved by the Director.

14. In so far as case of two women UDCs is concerned, it is stated that they were only spared but have not been transferred. As transfer of applicant for NISCOM to INSDOC has been in public interest due to immediate support staff due to closure of three out reached centres of NISCOM being informed by the SSPO, applicant was transferred for his suitability for the new job and having worked for more than 7 years in the Purchase Section is within the guide-lines issued by the CSIR.

15. In so far as the personal mala fides levelled against Director is concerned, it is stated that reply filed by the official respondents includes reply by Director (Personnel). Moreover, it is stated that applicant has levelled false and baseless allegations against the Director as applicant acquired acquaintance with the tenant and his family. As regards his possession of the documents relating to the property, it is stated that the personal documents and transfer records such as a salary, PPF details, personal correspondence, etc. are normally kept by the Director in his office and as the applicant could over hear about the difficulties faced by the Director in connection with his house probably used the material against Director, altering securing the said documents. As far as Shri Gupta is concerned, he never solicited any favour from the applicant.

16. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the merger of INSDOC and NISCOM into a single entity w.e.f. 30.9.2000 is concerned,

is not disputed. However, as per the settled position of law, as laid down in various pronouncements by the Apex Court, including State Bank of India v. Anjan Sanyal, 2001(5) SCC 508, this Tribunal cannot lightly interfere in its discretionary jurisdiction, unless the transfer order is actuated with mala fides prohibited by service, rules or passed without jurisdiction by an incompetent authority.

17. Having regard to the aforesaid ratio, from the perusal of the records produced by the respondents it transpires that OM dated 9.8.2002 whereby the applicant has been transferred from NISCOM to INSDOC was on the recommendation of Senior Stores & Purchase Officer, which was the administrative exigency explained by the respondents. From the notings made on the aforesaid order, where the Senior Stores & Purchase Officer clearly denied the aforesaid recommendations being factually incorrect and the same has been agreed upon by the Director by observing that no further action is needed by its noting dated 10.8.2002. Though the transfer has been issued by Controller of Administration, but the legal mala fides cannot be ruled out.

18. Another contention put forth, to justify transfer, is in the exigency of service as that applicant required in emergency on immediate support staff which fell due to closure of three out reached centres of NISCOM keeping in view the suitability of the applicant, is unfounded and factually incorrect on the face of it. This has been reflected from an order passed on 14.3.2002 in a meeting held to strengthen

the activities of NISCOM and INSDOC whereby three UDCs, i.e., Mrs. Shakuntala, Mrs. Ranji Puri and Shri A.M.Susai have been decided to be spared on account of merger of NISCOM and INSDOC whereas as per the strength of INSDOC employees as on 1.10.2002, it is reflected that Mrs. Shakuntala and Mrs. Ranji Puri, were still working which bellies this contention of respondents on the face of it spared.

19. In the matter of transfer mere recital in the order, i.e., it is in the public interest and administrative exigency would not be sufficient unless duly explained and justified in a judicial review. From the perusal of the grounds stated in the reply which are at variance and in contradiction with the official documents, I do not find any administrative exigency or public interest in the transfer ordered by the respondents.

20. In so far as the personal mala fides are concerned, as it is a cardinal principle of law that once a person is impleaded in person against whom mala fides are alleged, i.e., Shri V.K.Gupta, Director as Respondent No.2, though the respondents averred that the reply filed by the official respondents is also be treated as reply filed by Director, i.e., Respondents, is not a valid compliance of the law. In absence of a specific rebuttal of the mala fides by the Director by filing a reply, the same are deemed to be established. Having regard to various documents annexed it is found that though the Director has assigned the task to recover rent of his house to the applicant and on his refusal, Director (P) in retaliation resorted to

transfer. The contention put forth that the documents were accessible to the applicant cannot be countenanced. If the documents were so taken and missing, Respondent No.2 could have lodged a complaint to that affect and could have taken remedial action. In absence of any material to establish the aforesaid, I have no hesitation to observe that in absence of any administrative exigency, transfer order is punitive and the applicant has been victimised.

21. In the result, for the foregoing reasons, I do not find any administrative exigency or public interest in the transfer resorted to, the same is an outcome of mala fides. Accordingly order cannot be sustained in law.

22. OA is accordingly partly allowed. Impugned order of transfer is quashed and set aside. Applicant is entitled to all the consequential benefits. However, this shall not preclude, in view of the merger of INSDOC and NISCOM, the respondents to issue a fresh orders, if so advised, in respect of the posting of applicant in accordance with law. No costs.

S. Raju

(Shanker Raju)
Member(J)

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