

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2842/2002
MA No.144/2003

6

New Delhi this the 21st day of January, 2003.

HON^{BLE} MR. SHANKER RAJU, MEMBER (JUDICIAL)

K.C. Yadav,
Dy. Director,
National Power Training Institute,
Badarpur, New Delhi.

-Applicant

(By Advocate Ms. Harvinder Oberoi)

-Versus-

Union of India & Others

-Respondents

(By Advocate Shri Puneet Taneja)

1. To be referred to Reporters or not? YES ✓

2. To be circulated to other Benches of
the Tribunal?

NO

S. Raju
(Shanker Raju)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2842/2002

MA No.144/2003

New Delhi this the 21st day of January, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

K.C. Yadav,
Dy. Director,
National Power Training Institute,
Badarpur, New Delhi. -Applicant

(By Advocate Ms. Harvinder Oberoi)

-Versus-

Union of India through:

1. Secretary (Power),
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi.
2. Dr. B.S.K. Naidu,
Director General,
National Power Training Institute,
Sector-33, Faridabad-121 003.
3. Sh. A.V. Chaoji,
Principal Director,
National Power Training Institute (NR),
Badarpur, New Delhi-110 044.
4. Director (Finance & Administration),
National Power Training Institute,
Sector-33, Faridabad-121 003. -Respondents

(By Advocate Shri Puneet Taneja)

O R D E R

By Mr. Shanker Raju, Member (J):

By this OA applicant has put a challenge to his transfer order dated 29.10.2002 as well as relieving order dated 30.10.2002.

2. This court by way of an interim measure stayed the operation of these orders on 1.11.2002.

3. Applicant joined National Power Training Institute (NPTI) as Assistant Director in 1982 and was promoted in 1989 as Deputy Director. He was transferred to

Badarpur, Delhi in January, 1986. A DPC was convened for the post of Director on 28.3.2002 where applicant has been superseded by the respondents, without adhering to DOPT OM dated 8.2.2002. By filing an original application before this court directions have been issued to the respondents to dispose of the appeal of applicant in accordance with OM dated 8.2.2002. Representations made for promotion by applicant have been rejected on 17.6.2002 and 15.8.2002 respectively with a warning not to raise the matter further.

4. Applicant has been transferred, in public interest, from NPTI, Badarpur to NPTI, Neyveli and a relieving order was passed on 30.10.2002, relieving him from 30.10.2002 with a further direction to vacate Government accommodation upto 31.12.2002. Applicant preferred a representation against the transfer but without any response from the respondents, giving rise to the present OA.

5. Ms. Harvinder Oberoi, learned counsel appearing for applicant contended that the impugned order is malafide and has been issued as a punitive measure to victimise applicant. It is stated that when the DPC has been held in complete ignorance and violation of DOPT OM dated 8.2.2002 and when the matter has been brought to the notice of the respondents they started harassing him by issuing several memos, warnings and letters despite the fact that the respondents themselves in the past had issued several commendation letters to applicant praising his outstanding performances. Malafides are apparent from the fact that on frivolous grounds the special allowance

accorded to applicant was withdrawn and his working condition was challenged. Memos have been issued on frivolous grounds. He has been superseded by junior officers.

9

6. Ms. Oberoi further stated that transfer has been effected in the midst of academic session whereas one of the sons of applicant is studying in class XII and daughter in class VIII. Moreover, it is stated that the respondents themselves permitted applicant to pursue Ph.D in Power Management at Jamia Milia and the transfer would cause undue hardship to him in improving upon his career. She further stated that applicant's stay at Badarpur is the shortest whereas senior persons with longer stay have been retained, meeting out a discriminatory treatment to him in violation of Articles 14 and 16 of the Constitution of India.

7. It is vehemently argued that the transfer is neither in public interest nor in administrative exigencies and is rather based on malafides which are apparent on the face of it as despite applicant has been, behind his back, in a vigilance enquiry, held to be guilty of misdemeanour/misconduct, but yet without proceeding further in the disciplinary proceedings his transfer has been resorted to as a short cut for collateral purposes. Ms. Harvinder Oberoi, in order to substantiate her plea of transfer against the Government guidelines and by way of malafides, relied upon the following decisions:

10

- i) N.S. Bhullar and another v. The Punjab State Electricity Board and others, 1991 (1) SLR 378, holding that transfer for collateral purpose by way of punishment can be interfered.
- ii) Director of School Education, Madras and others v. O. Karuppa Theyan and another, 1996 (1) SLR 225, holding that transfer effect during mid-academic session is not sustainable, unless there was an urgency to do so.
- iii) K.K. Jindal v. General Manager, Northern Railway, 1986 (2) (CAT) 27, wherein it has been held that transfer having penal consequences without resorting to the procedure of enquiry is invalid.
- iv) D.R. Sengal v. Chief Postmaster-General and Ors., 1991 (1) ATJ 243, holding that transfer of a person who has not the longest stay at the same station is bad in law.
- v) Manoj V. Kumare v. Union of India & Ors., 2002 (1) (CAT) 139, wherein it has been held that if the object of the transfer is to facilitate investigation transfer should not be ordered after investigation is over.
- vi) Suhas Dinkar Samant v. Union of India & Ors., 2002 (3) (CAT) 233, wherein it has been held that transfer order instead of imposing a penalty in a disciplinary proceeding is a punitive order.

8. On the other hand, respondents' counsel Shri Punjeet Taneja denied the contentions and took a preliminary objection that the transfer has been resorted to as per the guiding principles for suspension and instead of placing applicant under suspension and the fact that a disciplinary proceeding is contemplated, to avoid tempering of evidence applicant presence in the same region is prejudicial to the enquiry, in public interest, to ensure fair conduct of the disciplinary proceedings he has been transferred in the same capacity.

9. Moreover, it is stated that applicant has an all India transfer liability. In so far as promotion is concerned, as per the seniority list applicant was at serial No.3 and in any event even after following the DOPT OM he could not have been promoted.

10. Shri Tanjea further stated that during the last few months applicant after his promotion has vigorously engaging himself in anti-management activities inspite of repeated advices and warnings from his superior authorities and thereby committed acts of gross misdemeanour having deleterious effect on the disciplinary of the organization. Few of the instances include issuance of letters, failure to carry out written orders of the higher authorities, levelling false allegations against the functionaries of NPTI, out-circuiting official channels in his representations inspite of repeated warnings and using arrogant and abusive language in his communications addressed to the higher/superior officials.

11. It is also stated that the vigilance enquiry conducted against applicant has prima facie resulted in establishment of the fact that applicant has permitted officialisation of his personal telephone concealing the fact of having STD and his building a house during 1994 in the vicinity of the NPTI Complex by drawing HBA and has failed to produced the rent receipt etc. It is further stated that applicant in connivance with another officer of the NPTI in furtherance of their common cause of representing against losing their promotion as Director tampered with an entry in the Log Book to mislead regarding holding of DPC.

12. In the light of the findings as per provisions of CCS (CCA) Rules, 1965 applicable to the NPTI employees normally for an act of misdemeanour a person is to be placed under suspension. Suspension is also called for where continuance of an official in office is likely to prejudice any investigation or inquiry, e.g. apprehended tampering with witnesses or documents and also in case where his continuance in office is likely to seriously subvert discipline in office in which he is working. However, since suspension would have caused damage to his reputation in the academic circle and that his salary would be reduced to subsistence allowance, it was considered appropriate to transfer him. He further stated that as applicant has been found to be highly instrumental to the interest of the young students of B. Tech (Power Engineering) course, as serious complaints were received from students as well as their parents he was re-allocated

his duties and facilities have been taken of. Moreover, in so far as allowance is concerned, that has been stopped not only for applicant but as a policy decision.

13

13. In a nut shell it is stated by citing the following decisions that transfer is in public interest and in administrative exigencies without any malafides and is neither collateral nor resorted to circumvent the disciplinary proceedings:

- i) Abani Kanta Ray v. State of Orissa & Ors., 1995 Supp. (4) SCC 169, wherein it has been held that when the transfer is in public interest the same cannot be interfered with by the Tribunal.
- ii) Chief General Manager (Telecom) N.E. Telecom Circle and Anr. v. Rajendra Ch. Bhattacharjee and Ors., (1995) 2 SCC 532, wherein it has been held that in a judicial review in absence of strong and compelling grounds rendering the transfer order improper or unjustified and in the wake of complaint against an employee transfer cannot be treated as punitive or illegal.
- iii) State of M.P. and Anr. v. S.S. Kourav and Others., (1995) 3 SCC 270, wherein it is held that the Tribunal should restrain from assuming the role of appellate authority and the hardship is not a valid ground to interfere.

iv) Union of India & Ors. v. Ganesh Dass Singh, 1995 Supp. (3) SCC 214, where the transfer is observed to be malafide without attributing any allegation against a particular officer transfer cannot be in colourable exercise of the power.

14

14. By further placing reliance on a decision of the High Court in Ramesh & Others v. M.C.D., 2000 LLR 297 it is contended that MCD workers against whom complaints have been substantiated and a contemplated disciplinary proceedings the decision to put them out of their place of posting to give an opportunity to behave properly has not been held to be a malafide exercise.

15. In the backdrop of the aforesaid rulings it is contended that as the decision of the Apex Court the transfer of applicant is in administrative exigencies as per rules and cannot be interfered with. Moreover, it is stated that applicant has his own house at Faridabad and the respondents were reasonable in giving him two months' time to enable his family to shift to their residence.

16. In the rejoinder, learned counsel for applicant, re-iterated her pleas and tried to distinguish the rulings cited by the learned counsel for respondents.

17. I have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by the Apex Court in N.K. Singh v. Union of India & Ors., 1994 (28) ATC 246:

"The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, cannot go into the expediency of posting an officer at a particular place."

15

18. This court is aware of the limitation as to interference with transfer, which can be permissible only if the order is malafide, in violation of rules, issued by an incompetent authority or is punitive in nature.

19. I find that performance of applicant right from 1986 has been appreciated by CPTI with issuance of scroll of honour presented to him on 5.9.2001. He has been, from time to time, appreciated by the respondents for his excellent performance. Accordingly DPC was held by the respondents where applicant was superseded and the DOPT guidelines have not been adhered to. On 28.3.2002 applicant put a resistance and questioned the promotion by way of preferring a representation. This has led to wrath of respondents upon applicant and in this furtherance he has been served with several memos which are issued in September, 2002, more particularly, on 6.9.2002 and thereafter as well. The situation aggravated when applicant has approached this court and got a direction to respondents to dispose of his appeal, which has been rejected with a warning to not to adhere to unnecessary communications. This has continued unabated and ultimately a vigilance enquiry was conducted which led to a finding where few allegations of misdemeanour have been found

(16)

against applicant. Instead of placing him under suspension or initiating a disciplinary proceeding respondents rather chose not to suspend him which could have caused damage to his reputation in the academic circle and reduction of salary to subsistence allowance, as stated in reply, took resort to transfer to ensure that the disciplinary proceedings contemplated are proceeded in a just and fair manner and as being on a higher post it was apprehended that applicant would tamper with the investigation and try to win over witnesses as per the guiding principles of suspension resorted to transfer. This, on the face of it, shows malafides of respondents, as without affording an opportunity to applicant to have his say on what has been gathered and concluded in the vigilance enquiry as a collateral purpose and alternate measure transfer has been resorted to. In fact, if the enquiry, which has established allegedly certain misdemeanour against applicant on the basis of material and evidence available at Delhi, holding an enquiry at Neyveli would not be reasonably practicable. Respondents have miserably failed to produce any material to indicate that either the enquiry has been initiated or any material in their possession to indicate that their apprehension that applicant will tamper with the investigation or influence the witnesses has any leg to stand. As held in Bhullar's case (supra) by the Punjab & Haryana High Court, transfer is not to be resorted to as an alternate to disciplinary proceedings and this power cannot be allowed to be misused by the administration. The administrative action should be fair and apparent. As held by this Bench of the Tribunal in S. Hariharan v. Union of India & Ors., 2002 (2) (CAT) AISLJ 253 a transfer order issued instead of holding an enquiry

or imposing penalty in a disciplinary proceeding would be a penal order. A decision based on extraneous elements is bad in law.

20. Moreover, the Bench of this Tribunal in Manoj V. Kumare's case (supra) has clearly laid down that if the object of the transfer is to facilitate investigation the transfer should not be resorted to unless the same is over.

21. From the material on record, the irresistible conclusion which can be derived is that as a retaliation to action of applicant to question his supersession and on a vigilance enquiry he has been subjected to the transfer, which cannot, by no stretch of imagination, be transfer on administrative exigencies or in public interest. Legal malafides have been established and can be ^{read in} between the lines taking into account the attendant circumstances.

22. Another illegality, which vitiates the transfer is that despite request of applicant and the fact that his children are studying and in the midst of the academic session he has been transferred, cannot be countenanced in view of the decision of the Apex Court in Itheyan's case (supra). We do not find any urgency with the respondents to effect the aforesaid transfer in the midst of the academic session. The contemplated enquiry against applicant could have been very well held at Delhi and in absence of any material to show that applicant in any manner would be instrumental in tampering with the evidence or investigation. The aforesaid conclusion derived at by

18

the respondents is unfounded and is not based on any reasonable ground. Apart from this, there is no material to justify the transfer of applicant. The rulings cited by the respondents are distinguishable in the light of the facts and circumstances of the present case and would not apply to the present case.

23. Another illegality which vitiates the transfer order is that despite senior persons having longer stay are retained at the same station, applicant has been singled out and has been subjected to transfer, which is contrary to the policy laid down by Government and also smacks of arbitrariness, which cannot be countenanced in view of Articles 14 and 16 of the Constitution of India.

24. In the result and for the foregoing reasons, the I find that the transfer resorted to by the respondents is not legally sustainable as well as the relieving order. The same are quashed and set aside.

25. The OA is allowed, as above. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."