

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1481 of 2001

New Delhi, this the 6th day of July, 2001

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

V.K. Sabharwal
S/o Late Shri O.P. Sabharwal
R/o Sector 33/418, NPTI Complex,
Faridabad.

APPLICANT

(By Advocate: Shri U.K. Chaudhari, Sr. Counsel with
Ms. Anamika Ghai, Counsel)

Versus

1. National Power Training Institute
through its Director General,
NR Sector-33, Faridabad.
2. Executive Director,
NPTI, Badarpur.
3. Director (Maintenance)
NPTI, Badarpur.
4. Union of India, Ministry of Energy,
Government of India, New Delhi
through its Secretary. ..Respondents

(By Advocate: Shri K.L. Bhandula and Sh. M.L. Ohri)

O R D E R

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

The applicant in this case has challenged an order passed by the respondents whereby the applicant has been transferred from Delhi to Neyveli, Tamil Naidu.

2. Facts in brief are that the applicant was appointed as Maintenance Instructor Trainee vide order dated 1.7.83 and as per his appointment terms for the first year he was to be paid in the scale of Rs.425-700 and after completion of one year he was to be paid in the pay scale of Rs.700-1300 as per appointment letter dated Annexure A-2. The applicant

A



alleges that since he had been asking for various service benefits from time to time which has become eye sore for the respondents and his superiors, so the respondents in order to get rid of the applicant at Delhi, has been transferred to Neyveli. To support his contention, the applicant alleges that though he was initially appointed in the pay scale of Rs.425-700 with the condition that after completion of training of one year he would be paid scale of Rs.700-1300, but the same was not paid. Thereafter he made representations and ultimately he was given pay scale of Rs.700-1300 on a much subsequent date without any arrears and the applicant has also not been paid certain other allowances like teaching allowance, foreign training and due promotion etc. whereas all other employees and even the applicant's juniors have been enjoying the benefits and the applicant has been denied and whenever he made representation, he became eye sore for the management so the management has devised a plan and has passed an order of transfer from Delhi in order to see that the family of the applicant suffers since the respondents know that the applicant has grown up daughters who cannot be disturbed because they are pursuing their education in the present place of posting. So in order to harass the applicant, the impugned order of transfer has been passed which is punitive, capricious, discriminatory.

3. On the application of the applicant this court vide order dated 7.6.2001 had stayed the operation of the impugned order.

k

(b)

4. The respondents have filed a short reply and have prayed for vacation of the stay order.

5. The respondents in their pleadings have pleaded that it is an admitted case of the parties that there are no statutory rules nor any policy or guide-lines adopted by the respondents to regulate the transfer of the employees. The respondents pleaded that the organisation in which the applicant is working is a training institute where training is imparted as part of education and at present there are two sections comprising some students who are under training at Neyveli and the applicant who belongs to the Maintenance Engineering discipline is the only available person with the department who is also one of the faculty members to impart training to the trainees at Neyveli, so his transfer order has been passed on functional basis and not with a mala fide intention. The respondents also pleaded that though the applicant had been demanding various service benefits but the same had either been granted because if the applicant had any grievance surviving with regard to his service benefits, he never approached any court of law and it should be taken as if he is satisfied with the service benefits.

6. The respondents further pleaded that within short span of 17 years he has been given two promotions. He was recruited as a Group "C" employee and at present he is working as a Group "A" employee with the department and there is no mala fide or bias

h

(X)

against the applicant which could be said to be the background for the issue of the impugned order of transfer.

7. In this background I have heard the learned counsel for the parties and gone through the record.

8. From a perusal of the pleadings I find that the applicant has not alleged any specific mala fide which may have nexus with the transfer order. The grievance of the applicant that the moment he made a demand for some benefit he had become an eye sore for the management and it is only because of that the applicant is being transferred. I may mention that this plea of the applicant has no merits because the applicant was appointed in the year 1983 and in the year 1984 he started raising demands for higher pay scale in terms of the appointment letter and had made various representations but was granted higher pay scale as long back in the year 1986 itself, which cannot be said to have any nexus with the present transfer order because thereafter he had been transferred to Durgapur and from Durgapur he was brought back to Delhi about 8 years ago. The applicant then alleges that the transfer order has been passed at the instance of Sh.H.M. Prasher, Director, Maintenance because Director, Maintenance had personal grudge since in the year 1995 he had issued a memo regarding some quarrel against the applicant upon which various correspondence and memo were exchanged. But I may mention that after the incident of the year 1995 for 6 years the applicant

ku

had been retained at Delhi, as such that particular incident of 1995 also cannot be said to have any nexus with the present transfer order which is passed in the year 2001.

9. The applicant then refers to certain other memos whereby the Director had asked him about the status report of a particular project but merely asking a status report does not show that there is a mala fide on the part of the Director against the applicant.

10. On the contrary the respondents have submitted that the transfer order of the applicant is in public interest and the order in question has been passed when 17 other transfers have been made and a new course has started at Nayveli and the applicant is required to take part in that training course as a faculty member and since he is the only available person with the Maintenance Engineering discipline to impart training to the batch which is under training at Nayveli, so it cannot be said that he has been arbitrarily transferred.

11. The learned counsel for the respondents has also referred to a judgment reported in 1994 SCC (L&S) 1320 entitled as Union of India & Others Vs. S.L. Abbas wherein it has been held as follows:-

"A. Transfer - Judicial review - Scope
- Unless order is mala fide or is made in violation of statutory provisions Court/Tribunal cannot interfere - Not following instructions/guidelines not sufficient to quash order as being mala fide - Authority not obliged to justify the transfer by adducing the

reasons therefor - Guidelines requiring husband and wife to be posted in same station, not mandatory - On facts, held, transfer of respondent from Shillong to Pauri (U.P.) on administrative grounds was not vitiated merely because his wife was working in Shillong, his children were studying there and his health had suffered a setback some time ago - Fundamental Rules, F.R. 11 and 15 - Couple case - Administrative Tribunals Act, 1985, Ss.14 and 15 - Constitution of India, Article 226 - Government of India OM dated April 3, 1986."

12. On the same lines the counsel for the respondents has also referred to another judgment reported in 1997 SCC (L&S) 643 entitled as Laxmi Narain Mehar VS. Union of India and Others wherein it was held as follows:-

"Transfer - Grounds for -Administrative exigency - Petitioner transferred because there was a need for experienced staff - Transfer, held, valid - Further held, though SC/ST employees are entitled to be considered for posting near their home towns yet this concession was also subject to administrative exigency - Petitioner's plea of transfer being made as a vindictive measure also rejected - He, however, given liberty to make a departmental representation - Reservations and Concessions - SC, STs and OBCs - Transfer near home town".

13. Considering the rival contentions raised by the parties and the law as laid down by the Hon'ble Supreme Court, I find that the applicant has tried to make out a case of personal bias against Shri Parashar but the fact that the applicant was not granted the pay scale of Rs.700-1300 and the second incident which is of the year 1995 altogether cannot be said to have any nexus with the impugned transfer order. Besides that it is a well settled law that transfer is an incident of Government service and who should be transferred where is for the appropriate authority to decide. To assail an order of transfer the applicant


Ku

7

has to establish that the order of transfer is vitiated by mala fide or is made in violation of any statutory provisions, otherwise the court cannot interfere. In this case it is admitted by the parties that there are no statutory provisions governing transfer of the applicant not only the statutory provisions, even there is no policy adopted by the department which may govern the transfer of an employee and the department has been transferring employees on functional basis or on functional needs by the department and now since the department has justified the transfer of the applicant on the basis of functional need as the applicant who is a faculty member with regard to a particular discipline in maintenance engineering for which no other faculty member is available with the department, so on the basis of functional need the applicant has been transferred though some inconvenience may be caused because applicant's daughters who are stated to be grown up and are studying in colleges. But for that reason the transfer order cannot be said to be a mala fide one and principles of judicial review do not permit this Tribunal to interfere with the transfer order.

14. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.

15. The stay order granted by the Tribunal on 7.6.2001 is hereby vacated.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh