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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1438/98

New Delhi this the 27th day of August, 1998.

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Sohanbir,
S/o Sh. Nanak Chand,
R/o Vill. & P.O. Buhi,
Distt. Ghaziabad(UP). Applicant

(through Shri K.L. Nandwani, advocate)

versus

1. Union of India through
the Director General,
National, Biofertilizer
Development Centre, Deptt.
of Agriculture and Corporation,
Ministry of Agriculture,
CGO Complex, 204-B Block,
Lodhi Road, New Delhi.
2. Joint Director,
Dept. of Agriculture,
Govt. of India,
Krishi Bhawan,
New Delhi.
3. The Director,
National Biofertilizer
Development Centre,
Kamla Nehru Nagar,
Ghaziabad(UP). Respondents

ORDER

Hon'ble Shri S.P. Biswas, Member (A)

The applicant is aggrieved by A-15 transfer order by which he has been transferred to the post of Chowkidar at RBDC, Bangalore. The transfer order mentions the following:-

"....the post of Library Attendant of
this office is abolished and the incumbent
of the said post is hereby adjusted on the
post of Chowkidar at RBDC, Bangalore.

Consequent upon above mentioned adjustment Shri Sohan Bir, Library Attendant of NBDC, Ghaziabad is hereby transferred to RBDC, Bangalore on the post of Chowkidar in the scale of Rs. 750-12-870-EB-14-940." -7-

2. Pursuant to the above order, the applicant approached this Tribunal earlier through OA-1508/96 which was dismissed on 9.10.96 on grounds of jurisdiction. The present O.A., second in the series, was filed on 23.04.98 and could not have been done so by the applicant as it was already dismissed on grounds of jurisdiction since the applicant was working under the respondents at Ghaziabad. An application under Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 for permission to file the application with the Principal Bench has been filed. We are not sure whether the applicant while seeking the aforesaid permission did bring this Tribunal's order dated 9.10.96 to the knowledge of the Hon'ble Chairman with factual position. However, we heard the case since the Hon'ble Chairman has already allowed the P.T. vide orders dated 3.7.98.

3. The applicant has challenged the A-15 order on a variety of grounds. We, however, bring out only those which have legal bearing in the facts and circumstances of the case. As per the applicant the respondents should have taken action under Rule 3 of the Redeployment of the Surplus Staff in the Central Civil Services and posts (supplementary) Rules 1989. The said action for redeployment of surplus employee shall be deemed to have been concluded when an official, like the

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applicant herein, is relieved to join another post when the post where he was working earlier is surrendered/abolished. The applicant claims that the placement of Group-C and Group-D staff for redeployment are regulated by the principles laid down in the rules of 1989 and he was eligible to be considered to be placed under the surplus cell of the DOP&T.

4. The main plank of applicant's attack is that the respondents have not followed the instructions under the Government of India O.M. No.36011/25/89 (SCT) dated 21.8.89. The applicant belongs to the Schedule Caste Community and as per the instructions in the aforesaid said O.M. he should have been adjusted in any place nearer to his residence.

5. It is also the contention of the applicant that he is a Group-D low paid employee and will not be in a position to perform his duties at Bangalore because of low salary and that he has a large family with no other source of income. The transfer order has posed serious family problems and hardship and is clearly arbitrary in terms of the law laid down by the Hon'ble Supreme Court in the case of U.O.I. Vs. D. Mohan reported in 1995(2) SLR 195(SC). It has been held therein that hardships in special circumstances needs to be considered. Yet another plea taken by the applicant relates to the change of the cadre from Library Attendant to Chowkidar. Drawing strength from the decision of the Hon'ble Delhi High Court in the case of

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Prem Parveen Vs. U.O.I. (1973(2) SLR 659), the learned counsel for the applicant argued that a government servant recruited to a particular cadre cannot be compelled to serve outside his cadre.

6. We raised a question that the applicant's case is still hit by limitation since the earlier order of this Tribunal was issued on 9.10.96 and this O.A. has been filed after a gap of 17 months in April 1998. To this, the learned counsel submitted that the applicant should not be made to suffer for the misdemeanour or inaction on the part of his counsel. In this particular case the applicant's former counsel kept him in dark about the earlier application having been dismissed on the point of jurisdiction. He would submit that such a case could not be ignored on grounds of limitation in terms of the law laid down by the Hon'ble Supreme Court in the case of Rafiq and another Vs. Munshilal and another (AIR 1981 SC 1400). That apart, the learned counsel sought to draw strength from the principles enunciated by the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others (AIR 1987 Sc 1353). That was the case wherein the Apex Court held that the Courts/Tribunals are to adopt a liberal attitude in such matters. The standard in applying the principle of "sufficient cause" should be adhered to keeping in view of the circumstances of the case.

Q.P.

7. The basic issue here is one of transfer following the abolition of the post. It is well settled in law that transfer orders cannot be interdicted unless it is vitiated by mala fides or colourable exercise of powers against the statutory provisions. (see Shilpi Bose Vs. State of Bihar (1992 SCC (L&S) 127); N.K. Singh Vs. U.O.I. & Ors. (1994(6) SCC 98). The applicant seeks to get relief through the guidelines in such matters in respect of SC/ST employees. Suffice it to say that such guidelines are not mandatory and cannot stand in way of a transfer order issued in public interest. (See U.O.I. & Ors. Vs. S.L. Abbas AIR 1993 SC 2444). What is not disputed is that the post has been abolished and the applicant has not come out with comparable posts in around Ghaziabad where he could be adjusted. Under these circumstances, we did not find any ground, much less convincing ones, to interfere with the order. It is because of the circumstances aforesaid, we did not consider it necessary to put the respondents on notice and decided the case in limine at the admission stage.

8. In view of the above, the O.A. is dismissed.


(S.P. Biswas)
Member(A)


27.8.92
(T.N. Bhat)
Member (J)