

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO. 643/96

New Delhi, this 14th day of November 1996.

Ashok Kumar
s/o Shri Bachan Lal Singla
r/o Flat No.264, Pocket-G-5
Sector 16, Rohini
Delhi - 85.

... Applicant

(Applicant in person)

Vs.

1. Union of India
through the Secretary
Ministry of Labour
Shram Shakti Bhawan
New Delhi.
2. The Director General
Employees State Insurance Corporation
Kotla Road
New Delhi - 110002.
3. The Director of Administration
Employees State Insurance Corp.
Kotla Road, New Delhi - .
4. Dr. (Mrs.) Harmohinder
Director (Medical) Delhi
ESI Scheme
ESI Hospital, Complex
Basaidara pur,
New Delhi - 15.
5. Shri M.K. Sharma
Deputy Director (Admn.
Directorate (Medical Delhi
ESI Scheme, ESI Hospital Complex
Basaidarapur
New Delhi - 15.

... Respondents

(By Advocate - Shri G.R. Nayyar)

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ORDER

The Applicant who is an Upper Division Clerk (UDC) in the ESI alleges that he has been harassed by withholding of several increments, frequent transfers, recording of adverse remarks and imposition of illegal penalties. Against this, he had to approach the Press, the police and this Tribunal in O.A. No.482/95 where he sought the payment of his dues. Another OA 1757/95 against adverse remarks in his ACRs also is pending consideration. The applicant is now aggrieved that in vengeance of the aforesaid cases, the respondents have transferred him from the ESI Dispensary, Inderlok, to a far off station from his ^{home} at ESI Dispensary, Okhla. The applicant submits that this is the third transfer in 24 days and sixth transfer in a short spell of one year. The Applicant states that he submitted a number of representations but the same have neither been considered nor have been acknowledged. Based on these allegations, the applicant prays for quashing of OM No.12 dated 19.1.96 insofar as it concerns his transfer from Inderlok to Okhla.

2. The Respondents controvert the aforesaid allegations. They submit that a number of complaints with regard to the applicant have been received. They admit that the applicant has been frequently transferred

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but they submit that this is because he is unable to get along with his superiors and colleagues resulting in serious complaints about his work and conduct.

3. I have heard the applicant who appeared in person and the counsel for respondents. The applicant pointed out that the respondents in their reply have clearly stated that he had been transferred frequently because he could not get along with his superiors and colleagues resulting in serious complaints about his work and conduct. In other words, the transfer is on account of the alleged complaints against him and the impugned transfer is thus a punitive measure casting a stigma. The applicant submitted that in such a situation when misconduct is the reason behind the transfer, the same cannot be ordered without observing principles of natural justice, as has been held by this Tribunal in M.E. Rajaram Vs. Union of India and Others O.A. No.275/93 (1993 Swamy's CL Digest 605 page 943). Similarly where allegations of malafide are not rebutted, transfer order is liable to be struck down as vindictive and arbitrary as laid down in Pradeep Kumar Banerjee Vs. Union of India, O.A. No.1319/92 (608 - Swamy's CL Digest 1993 page 947).

4. The 1d. counsel for the respondents on the other hand submitted that they had been lenient with the applicant and they were willing to post him anywhere in an office or a big establishment so that the frequent absence of the applicant did not adversely affect the work of the office.

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5. I have carefully considered the arguments and have gone through the record. It is an admitted fact that the applicant has been frequently transferred from place to place and in fact has been transferred so not less than six times during the last one year. The respondents have also stated in their reply that the frequent transfers are because of the inability of the applicant to get along with his superiors and colleagues. The question therefore is whether the transfers are vindictive in nature and cast a stigma on the applicant. The applicant alleges malafide on the part of the respondents, actuated, as he says, due to the frequent requests he has made to this Tribunal and other forums for the redressal of his grievances. I find no basis for this allegation. The mere effect of frequent transfers cannot give rise to an inference of malafide. In fact, it is only now that the applicant has been transferred for the sixth time to a far off place, away from his home, that he has chosen to agitate the matter before this Tribunal. I also do not consider that the statement of the respondents that the applicant had to be frequently transferred because he is unable to get along well with his colleagues and superiors tantamounts to causing stigma on the applicant through the means of his frequent transfers, and that the same cannot be done without giving him proper opportunity to explain in the interest of natural justice. A disharmony of attitudes and acerbity in one's character

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resulting in interpersonal difficulties is not unknown in government offices and it is part of the administrative design to separate employees through such transfers to maintain official decorum and harmony. When five transfers had not impelled the applicant to allege malafide or vindictiveness on the part of the respondents a sixth transfer cannot acquire a different colour mainly because it is at some distance from his home. Each case has to be seen in the perspective of its own facts and circumstances. In the present case, I do not consider that the impugned order of transfer calls for an intervention by this Tribunal.

The application is accordingly disposed of as dismissed. No order as to costs.

/avi/

R. K. Ahuja
(R.K. AHUJA)
MEMBER (A)