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2-11-2000

Item No 10

GA 10/10/2000

Present: Sen G D Bhambhani, Counsel for the Applicant  
Sen Madhav Pawar, Counsel for R 1 to 2  
Dr. Sarabjit Sharma, Counsel for R 3

Arguments heard. Orders reserved  
by Honble Sen S A T Pigeon, Member (A)

So

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Co (CV)

13-11-2000

Order has been dismissed by Honble  
Sen S A T Pigeon Member (A). Separate  
order placed on record.

CV

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1010/2000

New Delhi, this the 13th day of November, 2000

Hon'ble Sh. S.A.T. Rizvi, Member (A)

Sh. V.B.Gupta, S/O Sh. K.L.Gupta,  
Asstt. Depot Manager (CGHS), Medical  
Store Depot, CGHS M.S.Koliwada,  
Mumbai-400 037.

Residential Address

V.B.Gupta, D-112, Lajpat Nagar-I, New  
Delhi-24.

...Applicant

(By Advocate: Sh. G.D.Bhandari)

VERSUS

Union of India through

1. The director General Health  
Services, Nirman Bhawan, New  
Delhi-11.
2. The Director, Central Govt.  
Health Scheme, Nirman Bhawan, New  
Delhi-11.
3. Dr. Mrs. A.K.Bhasin, Addl.  
Director, CGHS, United India  
Building, 2nd Floor, Sir P.M.  
Road, Fort, Mumbai 400 001.

...Respondents.

(By Advocate: Sh. Madhav Panikar for respondents-1 & 2  
Sh. Sarabjit Sharma for respondent-3)

O R D E R

The applicant in this OA, who is an Asstt. Depot  
Manager (for short ADM), is aggrieved by the order of the  
respondents dated 12.5.2000 transferring him from Mumbai  
to Hyderabad. He has alleged that the transfer order is  
malafide and motivated. He has alleged irregularities on  
the part of the Additional Director at Mumbai  
(Respondent-3) in the purchase of medicines etc. and has  
contended that that is why he has been transferred, out  
of vendetta and only in order to shield the respondent  
No.3. The respondents contest this OA on the ground that

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the applicant has been transferred in public interest and the allegations made against respondent No.3 have not influenced the decision regarding applicant's transfer which has been made by respondent Nos.2/1.

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. To begin with, my attention has been drawn to the order passed by this Tribunal on 10.7.2000 by which the interim relief sought by the applicant has been rejected. In that order, this Tribunal has already held that the applicant has not been able to establish with any supporting material the alleged non-existence of the post of ADM at Hyderabad.

4. It is not disputed that the applicant has been working as ADM at Mumbai for six years or so which period is much longer than permitted under the transfer policy. As a matter of fact, there are some instructions of the Ministry of Health and Family Welfare in force which require that the persons working in medical stores for more than two years at a time should be rotated. A reference to these instructions dated 23.12.96 has been made in respondent No.3's letter dated 29.3.2000 placed on record. Quite obviously, therefore, the applicant needed to be shifted from Mumbai to some other place, inter alia, on this main ground.

5. The applicant's contention that the order of his transfer and the order relieving him, both dated

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12.5.2000, were served on him simultaneously on 15.5.2000, has been denied by the respondents. The applicant's argument that because of the simultaneous service of the aforesaid two orders on 15.5.2000, he could not get enough time to make necessary arrangements concerning his transfer and for handing over the charge of his post in a proper manner, is in the circumstances not convincing. Insofar as the question of sanction of transfer grant etc. is concerned, the respondents have stated that for this purpose he should have made a proper application to the correct authority at Mumbai but he failed to do so. On this basis, the respondents have argued that the applicant was in a position to hand over his charge and also to proceed on transfer as directed and his plea that he could not do so due to unavoidable reasons mentioned in the OA, is not acceptable. I am inclined to agree with the respondents.

6. The applicant has filed a number of letters making allegations directly or indirectly against the respondent No.3 in the matter of mis-management of the CGHS at Mumbai. He has also addressed the Chief Vigilance Commissioner (CVC) on 17.4.2000 on the same subject. The respondents have not denied the existence of the complaints and have stated that the matter has been properly investigated and appropriate action against those found guilty is under consideration. There is little or no force thus in the applicant's contention that an effort is being made to shield the respondent No.3 or that he has been transferred out because of the allegations he had made. The respondents have also

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clarified that while the respondent No.3 is located at Mumbai, the transfer has been made not by the respondent No.3 but by the other two respondents located at New Delhi and they have transferred him in the public interest.

7. The applicant has also contended that he has been requesting time and again for his posting at Delhi. His wife is working in the CGHS, Delhi and his children are receiving education in Delhi. His ailing parents are also living at Delhi. At one stage, according to the applicant, the respondents had agreed to consider his posting at Delhi in place of an incumbent who was then about to superannuate. This was in June, 1994. The promise made by the respondents was to consider his case sympathetically. The respondents have asserted that the promise made to the applicant was kept and his case for posting at Delhi was considered sympathetically in terms of the policy. However, after due consideration, it was decided by the respondents to post someone else at Delhi. According to them, therefore, it is not open to the applicant to contend that his request for posting at Delhi was not considered.

8. The applicant has attempted to make out a case that while no vacancy actually existed at Hyderabad, the respondents have only in order to dislocate him, transferred one post of ADM from Delhi to Hyderabad and that too on 12.5.2000. The applicant has also produced copies of CGHS letters of May, 2000, July, 2000 and September, 2000 to bring home his contention that one, two

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and two vacancies in the rank of ADM existed in the set up in which there are only three ADMs with corresponding posts at Delhi, Mumbai and Hyderabad. The respondents have contended that indeed there was no vacancy at Hyderabad but the reason for the same was the shifting of the incumbent ADM from Hyderabad to Delhi alongwith the post in view of certain allegations of corruption against that incumbent. The post at Hyderabad was, in the circumstances, transferred to Delhi purely temporarily and on administrative ground. The need to retain that post at Delhi had ceased to exist and, therefore, it was reverted back to Hyderabad. According to the respondents, the applicant's contention that this was done only to harass him, is baseless. As regards three letters of May, July and September, 2000, the position is that the notification of vacancies in this manner did not amount to saying that the incumbents also did not exist. It is just that on the relevant dates, these posts were not occupied by anyone and, therefore, were vacant. According to the respondents, three different ADMs, namely, Sharma, Srivastava and the applicant himself are available to fill the aforesaid vacancies. Out of these, Sharma stands posted at Delhi while Srivastava has been transferred to Mumbai and the applicant is to go to Hyderabad. Considering the matter in the overall context of this case, I do find that the applicant's argument that the post at Hyderabad did not exist and, therefore, he could not join at that place, is not tenable. I also do not agree with the learned counsel for the applicant that the order transferring the post from Delhi to Hyderabad has been anti-dated and the same appeared to be a fabricated document.

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9. The respondents have argued that the applicant was not satisfied with his posting at Mumbai and kept on trying for his posting to Delhi through out his stay at Mumbai. It seems that the applicant made a series of request for securing the post at Delhi. His request was forwarded and duly recommended by the respondent No.3 in her letter of 29.3.2000 placed on record. The same letter brings out the fact that his first representation for posting at Delhi was forwarded within six months of his stay at Mumbai and thereafter the respondent No.3 continued to forward his request to the Head Office on a number of occasions. The same respondent went to the extent of saying that in the event of the applicant's transfer to Delhi, she will be able to manage until a suitable substitute is posted. The respondents have also given details of the long spells of leave taken by the applicant during his posting at Mumbai. These details contained in a letter have been placed on record (Annexure-G). According to the respondents, the applicant's average stay at Mumbai taking into account the long spells of leave availed by him worked out to about 11 days or so in a month. Clearly, therefore, the respondents had in the applicant an official who was thoroughly dissatisfied with his posting at Mumbai and who remained away from work for nearly 20 days in a month on an average over six years that he remained posted at Mumbai. Despite this, the respondents sympathised with him and kept on sanctioning leave from time to time without any adverse action. In the circumstances such as these, it is axiomatic that the incumbent will need to be shifted and more so when he has spent over 6 years at

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Mumbai. Since the respondents could not post him at Delhi, he was transferred to Hyderabad instead. The learned counsel for the respondents has also pointed out during the course of arguments that notwithstanding the performance as above, the respondent No.3 has not recorded any adverse remarks in the ACR of the applicant. All this goes to show that the officers superior to the applicant have generally sympathised with him and notwithstanding the complaints of irregularities etc. made against the respondent No.3, no attempt has been made by the respondents to inflict any undue harm on the applicant against his service interest.

10. The applicant's representation dated 15.5.2000 against the transfer order was duly considered by the respondents and a reply was sent to the applicant vide their letter dated 9.6.2000 which states clearly that the transfer has been made keeping in view the guide-lines issued by the Ministry of Health and F.W. in the public interest. The applicant's apprehension that he had been transferred on account of the complaints made by him against the respondent No.3 has been dispelled in the said letter. It has also been clarified that the superior officer complained against by him has had no role in the posting/transfer of the ADM.

11. In the background of the above discussion, I have no difficulty in reaching the conclusion that there is no malafide on the part of the respondents and there is no evidence of arbitrariness either in the matter of the

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applicant's transfer which has been made, as argued by the respondents, in the public interest.

12. In the result, the OA fails and is dismissed without any order as to costs.

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*S.A.T. Rizvi*

(S.A.T. Rizvi)  
Member (A)

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