

Central Administrative Tribunal, Principal Bench

Original Application No. 1388/2000

New Delhi, this the 20th day of December, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Shri R.P. Saxena
Office Suptd.
National Vocational Training
Institute for Women,
(DGE&T, Min. of Labour)
Sector-I, Gautam Budh Nagar,
NOIDA (UP)
R/o House No. 27-A, J&K Extension,
(Near J&K School)
Laxmi Nagar,
Delhi-110 092.

Applicant

(By Advocate - Shri M.L. Chawala)

Versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Labour,
Sharma Shakti Bhavan,
Rafi Marg,
New Delhi-110 001.

2. Director General,
Employment & Training,
Sharma Shakti Bhavan,
Rafi Marg,
New Delhi-110 001.

3. Principal/Jt. Director (Training)
National Vocational Training Institute
for Women,
Gautam Budh Nagar, Sector-I,
NOIDA-201 301 (UP)

Respondents

(By Advocate - Shri K.C.D. Gangwani)

ORDER

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

The applicant in this OA has challenged an order passed by the respondents dated 12.7.2000 (Annexure A-1) vide which the applicant had been transferred from the office of the National Vocational Training Institute for Women (hereinafter referred to as NVTI), NOIDA to Regional Vocational Training Institute

(for Short RVTI), Hissar. The applicant claims that this transfer order was passed as a consequence of harassment meted out to him continuously ever-since he had pointed out certain irregularities in the purchases and the harassment had further aggravated consequent on the applicant having met with an accident on the road and having suffered serious body injuries around his shoulder, knees, legs and hip bone for which he was taken to a hospital in a police van but was discharged from the hospital because there was a general strike call given by the doctors which also appeared in the newspaper and thereafter he had taken treatment from the private doctors. After being declared fit, the applicant alleges that he reported for duty with the respondents office presenting a Fitness Certificate along with a medical certificate but the applicant was not allowed to resume duties, though the joining report was received by the office of the respondents.

2. The applicant further claims that he has received salary for the period from 23.11.1998 to 31.12.1998 but when he resumed duty w.e.f. 1.1.1999 his salary was not drawn at the end of the month and as such he has not been paid salary for the month of January followed by February, March, April and upto 16.5.99 and this period had been kept unsettled on the plea by the department that the applicant must resume duty with a proper medical certificate issued by the CGHS authorities together with his fitness certificate, then alone his salary would be drawn after settlement of the period.

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3. The applicant further claims that at the time when he reported for resuming duty on 1.1.1999, he submitted a medical certificate but the same was not accepted. However, subsequently the same was accepted on 24.5.99 but he was allowed duty w.e.f. 17.5.99 which leads a valid ground of mala fide being writ large. Thus, the certificate which was accepted on 24.5.99 could well have been accepted on 1.1.1999 more so when the certificate was with the office of the respondents and the applicant was not permitted to join the duty. It is not understandable why the salary was stopped and for what reason except the reason of personal vendetta. It is also not understandable why the same certificate was being refused. The applicant has been deliberately made to suffer, rather he had been compelled under the circumstances of denial of wages which amounts to unfair practice.

4. The harassment did not stop there because on the one hand the department had even slammed a transfer order on the applicant which had been received by him on 15.10.2000 wherein it has been mentioned that the applicant stands relieved with immediate effect and shall report to the transferee office after handing over charge and availing of joining time, so the applicant alleges that he believed that by this transfer order has been passed with a motive that the moment the applicant joins RVTI, Hisar, (the incumbent who has been transferred to NOIDA would be repatriated, because) then he would be placed under suspension after posting at Hisar and thus the respondents are further planning to aggravate the harassment by contemplating the suspension of the

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applicant which indicates the bias attitude of the respondents. The applicant further alleges that he has also submitted a representation on 13.3.1997 pointing out some irregularities in local purchase and giving details how the bungling is made in local purchases. Thus it is prayed that the transfer order which is actuated with malice is liable to be quashed.

5. The respondents are contesting the OA and stated that the NVTI comprises of NVTI Noida, RVTIs Hisar, Jaipur & Indore having common seniority of Group 'C' Ministerial and Group 'D' staff. The applicant, a Group 'C' Non-Gazetted official has been transferred in public interest.

6. The respondents further pleaded that the application for commutation of leave was not sanctioned because it did not meet the requirement of the order issued vide OM No. 13015/2/97-Estt. dated 7.10.1997, Annexure R-I. However, the applicant had been paid salary from 23.11.1998 to 31.12.1998, as acknowledged by the applicant himself.

7. It is further stated that the applicant did not resume duty on 1.1.1999 and remained absent from 1.1.1999 to 16.5.99 and has resumed duty on 17.5.99 in response to the Office Memo dated 10.5.99. Since the applicant had not submitted his application for the period 1.1.99 to 16.5.99, therefore, salary has not been released.

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8. As regards the representation given by the applicant regarding irregularities in purchase etc, is concerned, it is stated that it was examined by the competent authority and it was applicant who was advised to desist from making such like wild allegations without any documentary support.

9. The applicant had also made a representation for acceptance of his leave application but the same was suitably replied and thereafter the applicant modified his request from commuted leave to Earned Leave vide his joining report dated 17.5.99 and he had modified his leave from 23.1.1998 to 31.12.1998 from commuted leave to Earned Leave.

10. It is further stated that the applicant being a CGHS beneficiary has not given any reason for not seeking the CGHS benefit and has not explained why in his case he wanted to have commuted leave instead of Earned Leave.

11. As regards the transfer order, it is stated that the same is passed in a routine manner and the applicant has been stationed at one station for pretty long period and the transfer order has been made in public interest and there is no mala fide in regard to the passing of the transfer order.

12. We have heard the learned counsel for the parties and have gone through the record.

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13. At the outset we may mention that in this OA the applicant has prayed for plural reliefs which is not permitted as per Rule 10 of the CAT (Procedure) Rules, 1987. Rule 10 provides that the application should be based on a single cause of action and may seek one or more reliefs provided they are consequential to one another whereas in this case though the applicant is ostensibly challenging his transfer order passed on 12.10.2000 but in the OA he is claiming relief with regard to directing the release of salary from 1.1.1999 to 16.5.99 and this relief does not flow from the main relief of quashing of the order of transfer, so on this ground itself the OA is bad and has not been properly tiled.

14. As regards the plea that the applicant had resumed duties on 1.1.1999 and had not been paid salary from 1.1.1999 to 16.5.99 is concerned, we may mention that the applicant himself had signed a joining report dated 17.5.99 and had specifically mentioned therein that "I hereby report for duty in today After-noon, i.e., 17.5.99 as desired by the respondents in their letter No. PF-A-20030/90-Estt. dated 10.5.99". Had the applicant insisted for his having resumed his duty earlier w.e.f. 1.1.1999 then he should have submitted his joining report which is placed at Annexure VI to the counter and the applicant has not also explained as to what were the compelling circumstances which compelled him to send his joining report w.e.f. 17.5.99. There is no plea of coercion, undue favour etc. which may vitiate the signing of joining report by the applicant as that on 17.5.99.

15. As regards challenge to the transfer order is concerned, the learned counsel for the applicant has referred to various judgments one of such judgment is R.C. Dwivedi Vs. State of U.P. and Others reported in 2000 (2) CAT Lucknow page 30, wherein after analysing various judgments of the Apex Court, the Lucknow Bench of the Tribunal held as under:-

" Transfer, Malafide and Arbitrary-Posted at Lucknow on request and again transferred within a few months-Facts shows he has been transferred frequently in 1 1/2 years, was not allowed even joining time, was transferred to a post which was not vacant, had less than 2 years to retire, simultaneously disciplinary proceedings initiated against him, no evidence to show public interest or exigencies of service shown-Held all this shows transfer is malafide and arbitrary-Set aside".

16. But if we apply the present judgment to the present fact of the case we may mention that the applicant has not been subjected to disciplinary proceedings nor his transfer is based on political consideration nor it is in violation of any statutory rules, rather the transfer order suggest that it is made only in public interest. Hence, the judgment in the case of Dwivedi (Supra) will not help the applicant.

17. The counsel for the applicant has also relied upon another judgment reported in 1994 (28) ATC 99 entitled as Director of School Education, Madras and Others Vs. O. Karuppa Thevan and Another wherein the employee's transfer was stayed because his children were studying in school and the transfer order was made in

mid-academic session, but in this case no such like case has been made out. In this case the main plea with regard to the challenge to the transfer order as set up in the OA is that the respondents are contemplating to suspend the applicant when he would be posted at Hisar and Mr. Kailash who had been posted at NOIDA would be repatriated to Hisar. This plea of the applicant is based on surmises and conjectures. There is nothing on record to prove that the respondents are contemplating to suspend the applicant, so the apprehension of the applicant is without any basis and is unfounded, so we find that the OA has no merits.

18. In view of the above, OA is dismissed but without any order as to costs.

S. A. T. Rizvi

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

Kuldip Singh

(Kuldip Singh)
Member (J)

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