

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 646 of 1989

Date of decision: 9.6.89

Dr. S. Thangiah

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Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri B.S. Bindra, counsel for the applicant.

Mrs. Raj Kumari Chopra, counsel for the respondents

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 by Dr. S. Thangiah, Medical Officer, Govt. of India Press, Coimbatore, against impugned order No. CBE/0-11016/3/86/Estt./8585 dated 1.11.1988 (Annex.A-1) passed by the Manager, Govt. of India Press, Coimbatore, transferring the applicant from Coimbatore to C.G.H.S., Bombay.

2. Brief facts of the case, as stated by the applicant, are that the applicant was appointed through U.P.S.C. as a direct recruit Medical Officer and posted at the Govt. of India Press, Coimbatore, w.e.f. 20.1.1986 with Respondent No.4. The applicant successfully completed the probationary period of two years to the entire satisfaction of the authorities. The applicant belongs to a Scheduled Caste category and as soon as Respondent No.4 came to know that the applicant belongs to a S.C. category

~~he started developing ill will and harbouring disliking against the applicant. This was apparent from the hateful behaviour of Respondent No.4 towards the applicant and his regular interference in the applicant's performance of duties in his medical profession. He often threatened the applicant to resign from his job and leave the service. He has cited the instance of Shri M.M. Murugavelu, L.D.O, in the the~~

in the Govt. of India Press and belonging to S.C. category who was not promoted as U.D.C. or Stenographer when the chance came on the ground that he was a S.C. Aggrieved by Respondent No. 4's behaviour in acting beyond his power, jurisdiction and authority that went against the public interest, the applicant filed a petition dated 14.8.88 (Annexure A2) before the authorities concerned as a result of which Respondent No. 4 due to ill-will and being indisposed with the applicant, arbitrarily resorted, not in public interest, but as a punitive measure to transfer the applicant out of Coimbatore to Bombay vide his orders dated 1.11.88 (Annex A1). But the transfer order could not come into operation as the applicant was already on medical leave w.e.f. 28.10.88. Moreover, the transfer order quoted in A1 was not served on him and it still remains unserved and hence has also not been appealed against. Although the applicant happens to be on leave, yet he continues to hold the post of Medical Officer with Respondent No.4 notwithstanding that the post was illegally filled up by another person who has resigned and left the job due to untoward behaviour of Respondent No.4.

3. The applicant has sought the indulgence of the Tribunal on the grounds that the order of transfer dated 21.10.88 quoted in Annexure A1 has never been served on him and the office order dated 1.11.88 intending to relieve the applicant from Coimbatore and arbitrarily directing him to join duty at Bombay not having based on a valid order of transfer has to be treated as illegal, unlawful, unconstitutional, invalid, unfair, unjust and maliciously made by Respondent No.4 and that the movement of the applicant has been tried to be effected on nothing but malafide grounds, extraneous consideration, collateral reasons and colourful exercise of power.

4. The respondents in their reply have stated that the applicant was transferred from Coimbatore to Bombay by the Ministry of Health, being the Cadre Controlling Authority, on the request from the Manager, Government of India Press, Coimbatore, on administrative grounds and public interest. The

orders of transfer were issued on 21.10.88. The applicant was, however, on leave from 28.10.88 to 6.11.88 and since he did not join duty on 7.11.88, he was relieved on 7.11.88 by the Manager, Govt. of India Press, Coimbatore. The applicant was further informed on 18.11.88 by addressing a letter at his residence which was later on pasted at his residence. Since then the applicant is still on leave and, as per records, has not joined duty at Bombay. The vacancy of the applicant at Coimbatore was filled by the Ministry of Health by posting one Dr. P. Kangaraj appointed through UPSC. Dr. Kangaraj joined at Coimbatore on 16.11.88, but subsequently he got the offer from the State Govt. of Tamil Nadu and resigned from the Central Health Service on 22.2.1989. The vacancy caused by the resignation of Dr. Kangaraj at Coimbatore was filled by the Ministry of Health transferring one Dr. P. Damodaran from Delhi Administration who joined Coimbatore on 2.5.89. The statement of the applicant on 17.4.89 before the Court that there was still a vacancy on that date at Coimbatore is not correct.

5. According to the Respondents, the applicant was relieved on 18.11.88 and not on 1.11.88 as contended by the applicant in his application. The averments made by the applicant are not only far from truth but also imaginary and not evidenced with documents and has alleged so only with malafide intention of maligning the authority vested in Respondent No. 4 by law in force. The incident of Shri Murugavelu, L.D.C., mentioned by the applicant is purely an administrative matter in which the applicant has no right. Moreover, there was no occasion when Shri Murugavelu was either eligible for promotion to a post of U.D.C. or Stenographer as per the rules in force and, therefore, the allegation in this respect is not only false but also made with an intention to malign the respondent No.4.

6. The applicant was transfer^{red} to Bombay due to administrative reasons and in public interest. The place of posting was decided by the Ministry of Health being the cadre controlling authority in public interest and it was not made on the suggestion

either from the Govt. of India Press, Coimbatore, or the Director of Printing. The orders of transfer were issued on 21.10.88 and he was relieved of his duties with effect from 7.11.88 by the Manager, Govt. of India Press, Coimbatore. The applicant proceeded on leave with effect from 28.10.88 to 6.11.88 on the ground of his mother's illness, leaving the station without proper permission and taking leave for granted, contrary to the provisions contained in the Rules. Government of India Press, Coimbatore's letters dated 4.11.88 and 18.11.88 were sent to his leave address as furnished by him in the leave but the same were returned undelivered as the addressee was not available in the station. The allegation of harrassment and bureaucratic interference by Respondent No.4 is nothing but imaginary and not supported by any documentary evidences. Neither the Govt. of India Press, Coimbatore, has any knowledge of the applicant's wife in service in the capacity of Asstt. Surgeon in the Tamil nadu Health Service, nor the applicant, as a reasonable Group 'A' Official has intimated his Controlling Authorities of the same. According to Respondent No.4's knowlege, the wife of the applicant has been running a private nursing home at Perianaickenpalayam, Coimbatore, known as INDUMATHI NURSING HOME. It is because of this that the applicant wants to continue in Coimbatore.

7. The learned counsel for the applicant stated that a definite malafide has been raised against Respondent No.4 who has not tried to file an affidavit nor has he appeared personally. Since he was impleaded ^{by name} and he has not respondend, it should be taken for granted that the statements made ^{are correct and} must be accepted. He cited the authority of the Supreme Court in the case of Pratap Singh Kairon relied upon by the Principal Bench in ATR 1986 (2) 549 which has laid down that formal denial by the Department is of no consequence where a Respondent under the Department has been impleaded and he has not cared to make a rebuttal. He also cited another case ATR 1986 (1) 314 - Prasadilal Sharma Vs. Union of India (Divisional Railway Manager, Kota) - where it has been held by the Tribunal that if a transfer is based on a complaint, it has to

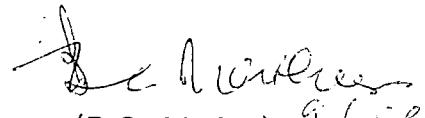
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be quashed. The learned counsel also cited other cases - K.K. Jindal Vs. G.M. Northern Railways & Others - ATR 1986(1) 304 and - M.P. Chauhan Vs. U.O.I. & Another - ATR 1989(1) 253 where it has been held that where transfer orders are arbitrary, they amount to harrassment and must be quashed. The learned counsel further emphasised that no copy of the transfer order passed by the Ministry was ever given to the applicant. Only Respondent No.4 has relieved him quoting some order from the Ministry without giving him a copy of the same. The applicant in his representation dated 14.8.88 (Annexure A2) addressed to the Director General of Health Services had very clearly indicated how Respondent No.4 was committing a number of irregularities and how he was harrassing the applicant in his medical work. As the applicant had made a complaint against the conduct of Respondent No.4, his transfer on the recommendation of Respondent No. 4 would be arbitrary and not in public interest. The applicant also mentioned that Dr. P. Kangaraj who was posted in his place on 16.11.88 resigned because he was also harrassed by Respondent No.4.

8. The learned counsel for the respondents, Mrs. Raj Kumari Chopra, said that the applicant had filed no rejoinder and, as such, whatever has been stated in the counter of the respondents must be accepted. She said that the applicant was relieved on 18.11.88 and not on 7.11.88 in public interest and as the vacancy has already been filled, the application has become infructuous and should be rejected. She said that one Dr. Damodaran has been transferred from Delhi Administration to Coimbatore in place of the applicant and he should have joined say Coimbatore on 2.5.89, but she could not with certainty as due to doctors' strike in Delhi, the position was not clear. The applicant, however, denied that the vacancy has been filled and had Dr. Damodaran joined at Coimbatore he would have known as he was still living in ^{the} ~~for the Medical office~~ Government quarter nearby. He denied that the post had been filled up.

Y.M. *BC*

9. I have gone through the pleadings and carefully considered the arguments on both the sides. Normally, courts are not to interfere in matters of transfers if they are in public interest. In this case, however, it is quite clear from the counter filed by the Respondents that the transfer was made by the Ministry of Health on a request from the Manager, Government of India Press, Coimbatore, ~~on~~ administrative grounds and in public interest. Later in para 4.6 of the counter it has been stated that the transfer was made in public interest and not on the suggestion either from the Govt. of India Press, Coimbatore or Director of Printing. This does not appear to be correct. In para 1 of the counter, it has been clearly stated that the transfer was on the request of the Manager, Govt. of India Press, Coimbatore (Respondent No.4) against whom the applicant had made several allegations. There is no need to go into the question whether Respondent No.4 had at any time really harrassed the applicant or anyone else on account of their being Scheduled Caste, but when definite allegations of malafide have been made against Respondent No.4 who has not filed any affidavit and if the transfer of the applicant is at the request of Respondent No.4, as mentioned in the counter of the respondent, the transfer cannot be held bonafide. Merely by saying that the transfer is in public interest, it does not become so unless it can be shown so in this case. A copy of the actual transfer order should have been sent to the applicant direct. It has not even been filed ~~in~~ the counter of the respondents. In the circumstances, it is held that the transfer order is not bonafide and is quashed. ~~In the circumstances, The application is allowed~~, and the applicant should be taken back at Coimbatore immediately. The period of absence should be treated as leave which may be due to him and all accounts settled within a month. There will be no orders as to cost.


(B.C. Mathur) 9.6.81

Vice-Chairman