

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1961/88

199

T.M. NO.

DATE OF DECISION 1.8.1991

<u>KM. SANGEETA BHAT NAGAR</u>	Petitioner
<u>SHRI B.S. CHARYA</u>	Advocate for the Petitioner(s)
<u>THE DIRECTOR GENERAL OF HEALTH SERVICES & OTHERS</u>	Respondent
<u>NONE</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. ^{Judge} U.C. Srivastava, Vice-Chairman (J)

The Hon'ble Mr. I.P. Gupta, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(DELIVERED BY SH. U.C. SRIVASTAVA, HON'BLE VICE-CHAIRMAN)

This application has been filed against a transfer order dt. 4.10.1988 transferring the applicant from Chemistry division to Pharmacology division of the Central Indian Pharmacopoeia Laboratory. According to the applicant, it is an unusual transfer order which will result in blockage of her future promotions and rather block in future career and that is why it is a case in which interference can be made. The applicant, after passing

M.Sc. in Organic Chemistry was appointed as Junior Scientific Assistant in February, 1980. Her appointment was in accordance with the rules of 1969 which provided that the basic qualification for Junior Scientific Assistant is B.Sc., but one can be promoted in any of the disciplines as Senior Scientific Assistant and there were 5 disciplines which are as follows :-

1. Chemistry
2. Research and Development
3. Pharmacology
4. Micro-Biology
5. Pharmacognosy

For the post of Junior Scientific Assistant, promotional avenues were also open as the next promotional post of Senior Scientific Assistant Grade-II and Senior Scientific Assistant Grade-I and direct appointment for the post of S.S.O. Grade-II and S.S.O. Grade-I was provided through U.P.S.C. In the year 1985, new Recruitment Rules came in force and the qualification and the criteria for the post of Senior Scientific Assistant, S.S.O. Grade-II and S.S.O. Grade-I was revised. The basic qualification for the post of Junior Scientific Assistant was made M.Sc. and the promotion was prescribed cadrewise from five cadres mentioned above. An incumbent who is M.Sc. in a particular cadre, can claim promotion for the post of S.S.O. Grade-II and Grade-I after putting five years' experience as Junior Scientific Assistant (Chemistry) and claim further promotion to the post of S.S.O. Grade-II after putting in five years' ^I ₁

regular service as S.S.A.(Chemistry) subject to the availability of vacancy. However, incumbent from R & D cadre could also be considered for promotion from the post of Senior Scientific Assistant to S.S.O. Grade-II. In the R & D, direct recruitment is made to the post of Senior Scientific Assistant through U.P.S.C. and the same is also made against the post of S.S.O. Grade-II and S.S.O. Grade-I through U.P.S.C. By the impugned order, the applicant was transferred from Chemistry division to Pharmacology division which led her to approach this Tribunal and the Tribunal granted an interim order. According to the applicant, the case is that she has challenged this transfer order on the ground that it is a malafide transfer order and the same has been passed after there was dispute in between her and Yogender Kumar, Sr. Scientific Assistant who made an attempt ^{attempt} ~~attack~~ to manhandle her. Although she made a complaint against the same, but the same was hushed up. She again made a representation against the same on 6.11.1987 and instead of taking any action against Yogender Kumar and transferring him elsewhere it was later on made after several months that the applicant herself was transferred from this Chemistry division. According to the applicant, one Savita Shukla who was also working as Senior Scientific Assistant in Chemistry division was transferred to Pharmacology division, but on her

representation, she has been transferred back to the Chemistry division in the same capacity vide order dt. 20.8.1987 and in case transfer order in her case is maintained with malafide intention, she may be deprived of the promotional post in her branch for further promotional post for which five years' experience is required and in case she is shifted to the other speciality, she may be deprived of five years' continuous experience in that special division. In the reply, the respondents have pleaded that the transfer has been made in normal course. It has been said that in the appointment letter, no particular discipline was assigned to her and in the administrative exigencies of work, she is required to be rotated and posted to any division of the laboratory for training required in different disciplines as they are eligible for promotion to the post of S.S.As. of all disciplines of the laboratory irrespective of their qualifications and as such, inter-department transfer of certain J.S.As. did take place and the applicant who was earlier transferred to Research and Development/Indian Pharmacopoeia Section, did not raise any objection and joined that division from the year 1981 to 1983. Her plea that there is no prospect of promotion if she is transferred to another section, is tenable as she is already eligible for the next promotion to the post of S.S.A. and is being considered accordingly for the post of S.S.A.(Pharmacology),

recently advertised. The applicant stated that the transfer earlier took place and the transfer did not stand in way of one's promotion and she was too transferred, but all this took place before the coming in force of the Rules of 1985 because prior to that, one could seek advancement upto the rank of Senior Scientific Assistant in any discipline. Now after amendment of the Rule, 1985, the same is not possible nor permissible and as such the guidelines which existed earlier, will kill the chances of her and others who are transferred in such a manner. From the facts stated above, it is clear that the transfer order which has been passed obviously cannot be said to be an exigency of the situation. No explanation for the same has been given as to why she has been selected out for such a transfer and further such a transfer will put an end to the applicant's promotional chances in the discipline to which she belongs. Whether she can get promotional chances through direct recruitment or whether the recruitment is possible or not, is a matter for future consideration and cannot be taken into account for deciding this application and in view of the fact that the transfer order is changeable, it appears to be a fit case in which the interference should be made, though generally interference is not made in a transfer order and accordingly, this application is allowed and the transfer order dt. 4.10.1988 is quashed. Now we have been informed that the applicant has been working in the

other department since then. Obviously, thus there is no break in the service and the period cannot be treated as absence. But as regards other benefits to which the applicant departmentally is entitled to, it is for the applicant to approach the department and the department obviously will consider the request and grievances in this behalf in the light of the correct legal position. However, it has been made clear that it should not be taken as if we have come to the conclusion that in the department, no transfer order can be passed, but the same can be done, but not in every matter and this case is not to be taken as precedent in the matter of the power of the department to transfer its employees. However, there will be no order as to the cost.

I.P. Gupta
(I.P. GUPTA)

MEMBER (A)

U.C. Srivastava
(U.C. SRIVASTAVA)

VICE CHAIRMAN (J)