

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 284 of 2020

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Smt Santoshini Mishra, aged about 36 years, wife of Patitapaban Swain, At-Barabaria, P.O.-Patrapur, P.S.- Jagatpur, Dist-Cuttack, at present residing at Plot No – 1122/2491, First Floor, Matha Pokhari, Rasulgarh, Bhubaneswar, Pin No. – 75101, now working as Officer Accounts, CIPET; IPT – Raipur, Industrial Area Bhanapuri, Near Urkura Railway Station, Raipur-493221, Chhattisgarh.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary to Govt. of India, Dept of Chemicals and Petro Chemicals under the Ministry of and Fertilizers, Govt. of India, Room No – 341, A-Wing, Sastri Bhawan, New Delhi.
2. Director General, CIPET Head Office, TVK Industrial Estate, Guindy, Chennai-600032.
3. Principal Director (F&A), CIPET Head Office, TVK Industrial Estate, Guindy, Chennai.
4. Director Administration, CIPET, TVK Industrial Estate, Guindy, Chennai – 600032.

5. Director & Head, CIPET-CSTS, Balasore, At-Plot No-A,
Bampada, IDCO Industrial Area, Balasore – 756056,
Odisha.

6. Director Head, CIPET – IPT, Raipur Industrial Area,
Bhanpuri, Near Urkura Railway Station, Raipur-
493221, Chhattisgarh.

7. Dr. P. C. Padhi, at present working as Director & Head,
CIPET-IPT, Raipur, Industrial Area Bhanpuri, Near
Urkura Railway Station, Raipur-493221, Chhattisgarh.

.....Respondents.

For the applicant : Mr. B. K. Mohanty, Advocate.

For the respondents: Mr. S. B. Mohanty, Advocate.

Mr. S.P. Pati, Advocate.

Heard & reserved on : 29.09.2020 Order on :05.11.2020

O R D E R

Per Mr. Swarup Kumar Mihsra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To quash the impugned order dt. 22.04.2020 under Annexure-6 in changing the place of posting from CIPET-IPT, Bhubaneswar to CIPET-IPT, Raipur.*
- (ii) *To pass such other order (s)/direction (s) as may be deemed fit and proper in the bonafide interest of justice.*

2. The case of the applicant as averred in brief in the OA is that the applicant while working at CIPET, CSTS, Balasore was transferred to CIPET: IPT-Bhubaneswar vide order dated 09.04.2020 (Annexure -2). While the applicant was waiting for relieving order in order to joining at Bhubaneswar she had attended the video conferencing held under chairmanship of Respondent No.2/Director General of CIPET on 21.04.2020 where even though Daily Finance Report was not on agenda but applicant had clarified financial balance of CIPET, Balasore which was disputed by the then Balasore Centre Head/Respondent No.7. She was issued memo dated 22.04.2020 (Annexure 5 series) directing the applicant to submit explanation within 2 days regarding financial balance which she had received by mail. On 22.04.2020 vide order at Annexure 6 the transfer order of the applicant was modified by changing her posting from Balasore to Raipur instead of Bhubaneswar. The applicant further averred that Respondent No. 7 had called the applicant to his chamber and had misbehaved with her and took signatures in printed and blank documents on 22.04.2020 and had sent one administrative officer who entered her residential house without knocking on the door and without permission indicating intention of Respondent No. 7 to harass the applicant both mentally and sexually. The applicant submitted her explanation to Principal Director (F&A) on 24.04.2020 (Annexure 8) by email and

hard copy was sent on 27.04.2020 enclosing relevant documents. The applicant further submitted that on 27.04.2020 Respondent No.7 ordered vide Annexure 9 series for shifting all files and records from applicant's cabin and ordered Manager (F&A) to handle the accounts and finance department which the applicant was looking after. The applicant handed over charge to Manager (F&A) on 28.04.2020. After consideration of applicant's reply dated 24.04.2020 to the Memorandum dated 22.04.2020, Respondent No. 3 directed the applicant vide letter dated 29.04.2020 (Annexure 10) to submit further reply which was submitted b the applicant to the DG with a copy to respondent no. 3 by email on 01.05.2020 and hard copy was submitted on 04.05.2020 (Annexure 10). The applicant on 01.05.2020 (Annexure 11) had submitted a representation regarding the incidence of Administrative Asst of Balsore unit entering the applicant's residential building and misbehaving with her to Respondent No.2. On 07.05.2020 the applicant registered a FIR (Annexure 12) against the Administrative Asst and Dr. P. C. Padhi, respondent no. 7 for the above reasons. Respondent No. 3 on 06.05.2020 issued memorandum (Annexure 13) to the applicant on two different charges and she has filed another OA bearing No. 232/2020 in this Tribunal challenging the same which is sub-judice and on which the notice was served on CIPET: CSTS Balesore center on

24.06.2020. The applicant further submitted that even though she was transferred on 09.04.2020 and then the order was modified on 22.04.2020 but on 24.06.2020 (Annexure 16) she was relieved even though she was on EL till 26.06.2020. She had submitted representations dated 01.07.2020 & 14.07.2020 (Annexure 17) to Respondent No. 1 to allow her to continue working at Balasore or at Bhubaneswar due to Covid Pandemic situation but since she was relieved she submitted her joining to Raipur Centre on 03.07.2020 and requested permission for work from home which the respondents vide mail dated 07.07.2020 (Annexure 18) allowed her to work from home from 03.07.2020 to 17.07.2020. The permission to work from home was extended till 31.07.2020 on applicant's request vide order dated 21.07.2020 (Annexure 19). Hence the applicant to challenge the order dated 22.04.2020 modifying the original transfer order has filed this OA.

3. The respondents in their counter inter alia averred that in the organizational interest applicant was first transferred and posted to Bhubaneswar vide order dated 09.04.2020 and before the said order was implemented it was amended vide order dated 22.04.2020 where the applicant was posted to CIPET-Raipur and applicant too joined at Raipur on 03.07.2020 and has been continuing to work from home. It is further submitted that the Memo dated 22.04.2020 was issued by Respondent No. 3/Director

(F&A), CIPET Head Office and Respondent No. 7 has no role in this and that the transfer and posting order of applicant to CIPET, Raipur was issued on 22.04.2020 and the events that occurred subsequently are irrelevant. The respondents on receipt of complaint given by the applicant through whatsapp has been forwarded to CIPET Head Office and as per the Sexual Harrassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2012 an internal complaint committee for sexual harassment was constituted by CIPET Head Office and the committee is in the process of enquiring the case. It is further submitted that on 27.04.2020 applicant along with her two nos. of relatives had entered into the office premises and violated the guidelines of COVID 19 and shouted in the Chamber questioning the action taken by CIPET against Mr. Smruti Ranjan Mishra, Admin. Asst. Gr. II and reason for shifting the files/documents and system for which the Director & Centre Head has given a complaint to CIPET Head Office with detail facts and evidences on which basis the disciplinary authority *prima facie* decided to draw the disciplinary proceedings and the applicant has submitted her written statement of defence and inquiry proceedings are underway. The applicant had joined at her place of posting at CIPET Raipur centre on 03.07.2020 and therefore she cannot question the order of transfer after its implementation and given effect to. It is further submitted

that the applicant has been given permission to work from home which was extended from time to time on her request and in order dated 04.09.2020 the applicant has already been informed that no further extension of permission of work from home will be entertained. Since the applicant is holding a transferable post and the transfer order was issued by competent authority and is neither violative of any statutory rules nor suffer from any vice of malafide the OA should be dismissed.

4. Learned counsel for the applicant relied on the following citations:

- a) Honble Apex Court judgment in Punjab & Sind Bank & Ors Vrs. Durgesh Kuwar. 2020 LLR 355 = Manu/SC/0316/2020.
- b) Hon'ble Orissa High Court judgment in ShantilataPattanaik Vs. Swaminathan Research Foundation 2012(2) ILR-Cuttack 914

5. Learned counsel for the respondents relied on the following citations:

- a) AIR 199 SC 532 Para 4 in M/s. Shilpi Bose Vs State of Bihar.
- b) AIR 1993 SC 2444 in Union of India Vs. S. L. Abbas.
- c) AIR 1982 SC 776 TD Subramaniam Vs Union of India.
- d) AIR 2001 Supreme Court 343 in State of Punjab V. V.K. Khanna and others.

e) 1996 (II) OLR 358 Sri Naresh Chandra Das Vs. The O.S.I.C Ltd and others.

f) 1998 (1) ATT (HC) 230 Pravat Kumar Das Vs. Board of Secondary Education, Orissa and others.

7. The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place.

(Vide B. Varadha Rao v. State of Karnataka and Ors.,
; Shilpi Bose v. State of Bihar, ; Union of India v. N.P.
Thomas, ; Union of India v. S.L. Abbas, ; Rajender Roy v.
Union of India, ; Ramadhar Pandey v. State of U.P. and
Ors., 1993 Supp. (3) SCC 35; N.K. Singh v. Union of India
and Ors., ; Chief General Manager (Tel.) N.E. Telecom Circle
v. Rajendra Ch. Bhattacharjee, ; State of U.P. v. Dr. R.N.
Prasad, 1995 (Supp) 2 SCC 151; Union of India and Ors. v.
Ganesh Dass Singh, ; AbaniKante Ray v. State of Orissa,
1995 (Supp) 4 SCC 169; Laxmi Narain Mehar v. Union of
India, ; State of U.P. v. Ashok Kumar Saxena, ; National
Hydroelectric Power Corporation Ltd. v. Shri Bhagwan,
; Public Services Tribunal Bar Association v. State of U.P.

and Ors., ; State of U.P. v. Siya Ram, ; and Union of India v. Janardhan Debanath, .

7. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board v. AtmaramSungomalPoshani, , the Hon'ble Supreme Court has observed as under:-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

6. In Gobardhan Lal (supra), the Apex Court held as under:-

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation

concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

7. This Tribunal has gone through pleadings of the parties, documents relied by them and the citations relied by parties. This Tribunal had also heard Learned counsels for the parties. The facts and circumstances of the decision as relied upon by learned counsel for applicant are different from the facts and circumstances of the present case and therefore are not applicable to the present case.
8. It is seen that the initial order of transfer was passed vide Annexure A/2 on 09.04.2020 for transferring the applicant from Balasore to Bhubaneswar. Thereafter the said transfer order was modified and the applicant was transferred from Balasore to Raipur as per the transfer order dated 22.04.2020 vide Annexure A/6. The official meeting in question attended by the applicant from Balasore office through Video Conferencing was conducted on 21.04.2020. The memo asking for explanation from the

applicant vide Annexure A/5 was issued on 22.04.2020. The applicant was relieved on 24.06.2020 as per the order passed by the authority although the applicant was on EL till 26.06.2020. She has already submitted her joining report vide Annexure A/18 dated 03.07.2020 for joining at Raipur. The fact remains that the request made by the applicant to the authorities to permit her to work from home due to the pandemic situation arising out of Covid 19 was allowed and she was permitted to work from home till 31.07.2020. It is alleged by the applicant that Respondent No. 7 and another subordinate staff had misbehaved with her and she had made complaint about it to the authorities. In this regard she lodged a FIR on 07.05.2020. The memo for initiating Departmental Proceeding against her was issued on 06.05.2020 vide Annexure A/13. In the meantime one enquiry by internal authority has already been started in order to enquire about the allegations made by the complainant for sexual harassment at working place under Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2012 as made by her against Respondent No. 7.

9. The applicant has failed to prove that subsequent modification of transfer order vide Annexure A/6 has got anything to do with the meeting dated 21.04.2020. On the other hand the respondents have claimed that charge memo has been issued against her for illegally entering into

office premises and for her misconduct on 27.04.2020 in violation of guidelines of Covid 19 issued by the authorities.

Thus from the entire scenario it is seen that the subsequent modification of transfer order vide Annexure 6 dated 22.04.2020 has nothing to do with meeting dated 21.04.2020. The transfer order in question has been issued by the competent authority i.e. Respondent No. 3.

The allegation as made by the applicant against respondent no. 7 is being enquired into by internal committee. The allegation as made against the applicant is also being enquired on the basis of charge sheet issued against her vide Annexure A/13. At this stage the applicant has failed to show to the satisfaction of the Tribunal that the subsequent modification of transfer order vide Annexure A/6 is punitive in nature. She has also failed to show that the said transfer order suffers from vice of malafide and that the said transfer order in any way violates any statutory rules or acts. Since transfer is an incident of service in the present case and therefore in the absence of any sufficient reasons this Tribunal is not satisfied that it is necessary to interfere in this case. Besides that the point urged during the argument by Learned Counsel for the Applicant that respondent no. 7 being posted at Raipur it will be not proper to post the applicant at that place needs no further consideration in view of subsequent transfer of respondent no. 7 from Raipur in the meantime. Therefore

the applicant has also failed to prove that the transfer order in question vide Annexure A/6 will in anyway hinder due inquiry by the internal committee.

10. In the circumstances the OA being devoid of merit is dismissed but without cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)