

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA 140/1987

Date of Decision: 1.9.1992

(6)

Shri S.K. Gairola

... Petitioner

Versus

Union of India & Ors

... Respondents

CORAM :-

The Hon'ble Mr Justice V.S. Malimath, Chairman
The Hon'ble Mr I.K. Rasgotra, Administrative Member

For the Petitioner - Shri G.D. Gupta, Counsel
For the Respondents - Shri P.P. Khurana, Counsel

JUDGEMENT (ORAL)
(Hon'ble Mr Justice V.S. Malimath, Chairman)

We are concerned in this case with the request of the petitioner for transfer to the Department of Chemicals & Petro Chemicals, (Office of the Development Commissioner (Drugs) as Junior Investigator. We do not want to burden the judgement with long history of the case as we are inclined to limit our consideration to the question as to whether the Respondents were right in declining the request of the Petitioner for transfer to the Office of Development Commissioner (Drugs), as Junior Investigator. The respondents themselves offered to consider the case for transfer after a good deal of deliberations and anxious consideration

subject to the petitioner giving an undertaking that he will not have any claim of seniority over and above Shri Jayaraman and Shri A.K. Chopra who had already been absorbed as Junior Investigators on transfer basis and that he will have no objection if his candidature was to be considered along with other candidates for absorption as Junior Investigator ~~xxxxx~~ in the Office of Development Commissioner (Drugs). The petitioner gave his undertaking on 17.9.1986 as per Annexure-21 precisely in terms of the undertaking demanded from him as per Annexure-20. Ultimately a decision was taken on 29th January, 1986 as per Annexure-III along with the reply filed by the Respondents that since the Petitioner had not completed the 'cooling off' period of one year he could not be considered for the post of Junior Investigator. Learned Counsel for the petitioner submitted that the decision of the Respondents is arbitrary, firstly, for the reason that they are going back from the assurance given to him when they called for an undertaking and secondly, on the ground that the reason assigned by the respondents for rejecting the request of the petitioner for transfer is not relevant or tenable. In our opinion

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both the pleas of the Learned Counsel for the petitioner are sound and deserve to be accepted having regard to the background and events that have taken place.

2. A decision was taken to grant absorption on transfer basis to the petitioner, and the petitioner having given an undertaking for the same in accordance with the request of the Respondents there was no justification for the respondents to go back from the offer they had already made. There was no change in the circumstances. When the respondents had made the offer they were aware that one year had not elapsed after the petitioner had returned to the parent department. The appointment of the petitioner in the Office of Development Commissioner (Drugs) was treated on regular basis but later on the appointment of the petitioner was also sought to be described as on deputation basis. The petitioner had submitted a representation against the same. The offer to absorb on transfer basis having been made in this background, there was no justification in our opinion for resiling from the offer they had made earlier. It is not stated that the petitioner's request for transfer

did not merit consideration but what they say is that it is not appropriate to transfer him before the Petitioner serves in the parent department for one year atleast vide Annexure-III to the reply filed by the respondents.

3. The respondents failed to see that this is not the case of the petitioner seeking to go on deputation for a period to another department, which requires the petitioner staying in the parent department for the 'cooling off' period of one year. This is a case in which petitioner has sought migration to another department on permanent basis by the process of transfer and the question of his going back to the parent department would not ordinarily arise. We are, therefore, of the view that the rejection of the petitioner's offer on the ground that the cooling off period has not expired, is wholly unjustified. The rejection must, therefore, be held as arbitrary.

4. For the reasons stated above, Annexure-III dated 29.1.1986 produced by the respondents along with reply is declared as illegal and invalid. We further direct the respondents to transfer

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the petitioner for absorption in the Office of Development Commissioner (Drugs), Department of Chemicals & Petro-Chemicals, Government of India as per offer in Annexure-20, (Dated 15th September, 1986) and the undertaking given by the petitioner as per Annexure-21 dated 17.9.1986. The Order shall be complied with within a period of three months from the date of receipt of this judgement.

No costs.

S. K. Rastogi

(I.K. RASGOTRA)
MEMBER (A)

V. S. Malimath

(V.S. MALIMATH)
CHAIRMAN

SSS
4.9.92