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Central Administrative Tribunal
Principal Bench

OA-2828/2004

New Delhi this the 24th day of December, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Sh. K.C. Yadav,
Dy. Director,
National Power Training Institute,
Badarpur, New Delhi.

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Applicant

(through Sh. P.P. Khurana, Sr. Counsel with Ms. Harvinder Oberoi)

Versus

Union of India through

1. Secretary (Power),
Ministry of Power,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-1.

2. Dr. B.S.K. Naidu,
Director General,
National Power Training Institute,
Sector-33, Faridabad-121003.

3. Sh. A.V. Chaoji,
Principal Director,
National Power Training Institute(NR),
Badarpur, New Delhi-44.

4. Director(Finance & Administration),
National Power Training Institute,
Sector-33, Faridabad-121003.

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Respondents

(through Sh. M.M. Sudan, Standing Counsel)

ORDER

Hon'ble Shri Shanker Raju, Member(J)

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Applicant impugns respondents' order dated 8.11.2004 transferring him from New Delhi to Bangalore.

2. Applicant, who has been working as Deputy Director (Tech/Faculty), was earlier transferred to Neyveli by an order dated 29.10.2002, which was assailed in OA-2842/2002. The Tribunal by an order dated 21.1.2003, finding the transfer as mala fide, set aside the same.

3. The above order of the Tribunal was assailed by the respondents in WP-2197/2003 before the Delhi High Court.

4. During the interregnum when the matter was sub-judice, respondents have circulated through letter dated 9.3.2004 options from staff of National Power Training Institute, Faridabad to be transferred to Bangalore. The last date of submission was 31.3.2004. As the issue was sub-judice and there was no stay of the directions of the Tribunal by the Delhi High Court, CMP-5651/2004 filed by the applicants to enforce transfer of the applicant was disposed of and resultantly the respondents have passed an order on 31.5.2004 whereby the applicant was transferred from Badarpur to Guwahati in public interest.

5. By an order dated 24.8.2004, the Delhi High Court has affirmed the decision of the Tribunal with the following observations:-

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"In view of all this, we find ourselves in agreement with the view taken by the Tribunal to dismiss this petition. This, however, shall not be construed to mean that the Respondent could not be transferred outside Badarpur in this regard as and when the exigency of administration so dictates."

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6. By an order dated 8.11.2004, which is a modification of order dated 31.5.2004, applicant has been transferred to Bangalore, giving rise to the present OA.

7. Learned Senior Counsel Shri P.P. Khurana with Ms. Harvinder Oberoi vehemently opposed the same on the ground that mala fides of respondents writ large and have been reiterated by the High Court while affirming the decision of the Tribunal.

8. In the above conspectus, it is stated that though there has been liberty granted to the respondents in administrative exigency to post the applicant outside Badarpur yet it has to be established that the impugned transfer is in administrative exigency.

9. Shri Khurana traversed the pleadings to contend that when the OA-2886/2002 filed by the applicant was disposed of on 15.10.2002 and as the DPC has considered dicta of the Tribunal singling out the applicant without affording him an option, as extended to others, clearly shows that they are misusing the liberty accorded to them by the High Court. It is in this conspectus stated that no administrative exigency is involved as the applicant who had been performing the work of teaching, on being displaced on mechanical side, guest teachers are being posted in his place. Learned counsel relies upon the decision of the Apex Court in Union of India & Ors. Vs. D. Mohan & Ors. (1995(2)SLR 7) to contend that in reorganization of service, transfer without seeking an option vitiates the order of transfer.

10. Relying upon the decision of the Co-ordinate Bench of Ernakulam in K. Ramachandran Vs. Director General, All India Radio, New Delhi &

Ors. (1994(27)ATC 650) wherein it is stated that even in exigency of service, it is mandated upon the Government to satisfy the Court that the transfer order has been issued *bona fide* without violating any norms.

11. Shri Khurana contended that there are at least 8 Senior Officers in NPTI, Faridabad having longer stay yet they have not been displaced. This, according to him, makes the order punitive for collateral purposes.

12. Shri Khurana further stated that applicant being highest qualified in senior feeder of NPTI has been performing the work with due diligence and utmost devotion. In the matter of two Deputy Directors, namely, Dr. S. Selvam and Sh. N.M. Rao, options have already been opted to serve at Bangalore. There is no public interest or administrative exigency involved in the transfer of the applicant.

13. It is further stated that mala fides alleged and proved on record as reiterated by the Delhi High Court is still perpetuated and the order passed without seeking option from the applicant is nullity in law.

14. On the other hand, respondents' counsel Shri M.M. Sudan vehemently opposed the contentions and produced the record for our perusal. According to him, after extending option to which the applicant had not responded to, order transferring 12 officers was issued on 12.5.2004. Thereafter Power Systems Training Institute (hereinafter referred as PSTI) Bangalore funding under the Central Electricity Authority (hereinafter referred as CEA) were merged with NPTI w.e.f. 1.4.200. Initially, the officers and staff working in these two Institutes were treated on deputation on Foreign Service to NPTI. Having exercised their option for repatriation to CEA, 13 out of 15 officers were repatriated

and the remaining two officers are to be repatriated on 31.1.2005. This has necessitated filling up of the post at PSTI Bangalore.

15. Shri Sudan relying upon the decision of the Apex Court in N.K. Singh Vs. U.O.I. & Ors. (1994(28) ATC 246) and State of U.P. & Ors. Vs. Gobardhan Lal (2004(3)SLJ 244) contended that one has no right to be posted forever at a place and on being All India transfer liability, bona fide exercise of the respondents in administrative exigency when transfer is a condition of service, the transfer cannot be found faulted with.

16. I have carefully considered the rival contentions and perused the material placed on record.

17. It is relevant to produce the observations made in Gobardhan Lal's case:-

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This

Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

18. If one has regard to the above, transfer is to be interfered in judicial review only if it is found that it is an out come of mala fide exercise of power and is violative of any statutory provision. It can be interfered also when there is infraction to preface, norms or liberty. I find from the record that during the pendency of CWP (supra) before the High Court, vide letter dated 9.3.2004, in view of merger of HLTC and PCI with NPTI, willing officers have been asked to exercise their options for posting. As the matter is sub-judice and the request of the respondents/petitioners therein has not been disposed of giving liberty to transfer the applicant, there is no question of exercise of option by the applicant. It is also trite law that once the matter is taken cognizance and is sub-judice before High Court, any act to the detriment or any other act which is an impediment in the administration, shall have not to be resorted to by the respondents. Applicant's Writ Petition was disposed of on 24.8.2004 and the decision in OA-2886/2002 was stayed by the High Court on 9.11.2002, the applicant was immediately relieved on the next date. The question arises for my consideration is that in principle and as a policy, once the respondents have decided to seek options from the willing officers to join in administrative exigency, the situation as arisen earlier to warrant positing of officers who opted their option for posting at Bangalore had been posted there. The applicant has not extended any option and was also ^{unable} to exercise it due to pendency of CWP. Accordingly, after the decision of the High Court the respondents

instead of passing a fresh order of transfer in continuation of the order passed an order on 31.5.2004 have only partially modified the above order and changed the posting of the applicant from Guwahati to Badarpur. This should be done in consonance with the similarly and identically situated as no option has been sought. The norms laid down by the respondents have not been uniformly applied in the case of the applicant. This is invidious discrimination and smacks of illegal modification. Moreover, I find that whereas the applicant has no right to be posted at Badarpur permanently yet he cannot be shunted out unceremoniously. The exigency of service is a demand or requirement to run administration smoothly but it is incumbent upon the respondents to have extended option to the applicant to have his say in the matter. The only ground to justify the administrative exigency is the repatriation of other officers yet I find that there are other officers having longer service at NTPI at Badarpur who could have been considered by the respondents.

19. The reference to the liberty accorded to the respondents to post the applicant outside Badarpur and to order his transfer is indeed available but this has to be in consonance with law. Once the modification of the order dated 31.5.2004 has been done to post the applicant at Guwahati, it has a condition precedent whereas seeking an option from the applicant and thereafter to act accordingly, as the aforesaid has ^{we} ^h ~~not been~~ done, the same is not in consonance with the uniform policy adopted by the respondents and action smacks arbitrariness. In *Rajender Roy Vs. U.O.I.* (1993(1)SCC 148), the Apex Court has ruled that to draw reasonable avenues of mala fide action from the pleadings and antecedents facts and circumstances, a firm foundation is to be laid

down and arrived. On the face of it in view of partial modification of order dated 31.5.2004, I find that this has been done without seeking option from the applicant.

20. In the result, for the foregoing reasons, the OA is partly allowed and the impugned order is set aside. The applicant shall be entitled to all consequential benefits. However, this shall not preclude the respondents to seek option from the applicant and thereafter to pass an order in accordance with law. No costs.


(Shanker Raju)

Member(J)

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