

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.211 OF 2004

ALLAHABAD THIS THE 16th DAY OF September, 2004

HON'BLE MR. D. R. TIWARI, MEMBER-A

Shri P.D. Pal,
S/o Late Laloo Lal Pal,
R/o NB-30, H.A.L., Township,
Kanpur.

• • • • • .Applicant

(By Advocate Sri T.S. Pandey & Sri S.N. Tripathi)

Versus

1. Union of India,
through Secretary,
Ministry of Defence, North Block,
New Delhi.
2. Regional Director, R.C.M.A.,
C/o H.A.L. (T.A.D.), Kanpur.
3. Chief Executive (Airworthiness)
CEMILAC, Ministry of Defence,
Govt. of India, Marathalli Colony,
Post Bangalore-560037.
4. Director General, Research &
Development Organisation,
Scientific Advisor to Raksha Mantri,
Govt. of India, Ministry of Defence,
South Block, New Delhi-110011.
5. Director of Personnel,
Ministry of Defence,
Defence Research and Development Organisation,
'B' Wing Sena Bhawan,

Dhara

D.H.Q., P.O., New Delhi-110011.

6. Mr. R.C. Sharma, Regional Director,
R.C.M.A., C/o HAL (YAD), Kanpur.

..... Respondents

(By Advocate Shri Rajeev Sharma)

O_R_O_E_R_

By this D.A. filed under Section 19 of
Administrative Tribunals Act 1985, the applicant has prayed
for the following reliefs:-

"(i) It is respectfully prayed that the court
may quash the movement order dated 7.1.2003
passed by respondent no.2 and also quash the orders
dated 30.4.2003, 4.11.2003 and 14.1.2004 passed
by respondent no.4.

(ii) It is respectfully prayed that this Court may
direct respondents to pay the petitioner/applicant
his salary upto date and also future salary month
to month.

(iii) It is also respectfully prayed that this
Court may direct respondents to conclude the
enquiry and make it public pending against Sri
Amarjit Das SC'D'.

(iv) It is respectfully prayed that this Court
may direct respondents to call the applicant for
interview for promotion for which he was not
called on 10.7.2002."

2. Shorn of the Superfluities, the necessary factual
matrix to adjudicate the issue is that the applicant joined
Research & Development Organisation at Kanpur on 17.4.1990
as Junior Scientific Assistant (JSA) after getting released
from the Indian Air Force. While in the Air Force, the
applicant was working in the Armament Trade. In due
course of time he was promoted to higher grade and is
presently holding the post of Technical Officer 'A' from
01.09.1995 onwards.



Consequent upon his permanent posting to RCMA (AA) Pune, he was served with movement order dated 07.01.2003. The movement order is to the effect that the officer will move on public interest and he is permitted to avail of twelve days joining time as per admissible rules. The order also stated that he has been paid TA/DA for self and family, composite grant and packing allowances. This order was challenged in O.A. No. 110/03 decided on 13.2.2003 of Rs.20,000/- (Page 25). The operative portion of the said order is as under:-

"Considering these circumstances, we do not find it a fit case for interference, as the representation of the applicant against the transfer and movement order is pending before the superior authority. Subject to aforesaid, application is disposed of. No order as to costs."

3. The applicant has challenged the impugned order on various grounds mentioned in sub-para i to iv to para 5 of the O.A. During the course of argument, Shri T.S. Pandey, learned counsel for the applicant has challenged the orders mainly on the ground of malafide. He has tried to establish malafide to the events prior to the present movement order. He has contended that on 01.08.2001 The Regional Director ordered the applicant for an internal transfer from RCMA, HAL, Kanpur to RCMA Cell. In pursuance of that transfer to RCMS cell, applicant reported on 27.07.2002 but the officer incharge Manjit Das 'S.C.D.' did not allow the applicant to join his duties at RCMA Cell and misbehaved with the applicant. The applicant immediately reported the matter to Regional

Dhara

Director but he did not take any action against Amarjit Das though his misbehaviour and the applicant by an application appraise the Chief Executive, MILAC Bangalore of the State of Affairs obtaining here at Kanpur. The Chief Executive ordered enquiry against Shri Amarjit Das 'S.C.D.' for his misbehaviour with the applicant and also against all those including Regional Director RCMA responsible for harassment to the applicant. In the enquiry the applicant submitted his reply before the investigating officer which is at Annexure-1 of the Compilation no.2. He submits that this gives an indication of the attitude of the Regional Director against the applicant.

4. He has further submitted that the applicant was to appear for promotion,interview and the date of interview was fixed for 10.07.2002. The Regional Director RCMA with a malafide intention did not intimate the fax message dated 06.07.2002 regarding the applicant assessment date i.e. 10.07.2002. The counsel for the applicant has further contended that his transfer to Pune will not be in public interest. Vide para 19 of the D.A. the applicant has stated that nature of work at RCMA, Kanpur deals with Airworthiness aspects of (AA) aspects transport whereas RCMA/Pune deals with Airworthiness of Air Armament, hence these are altogether different areas of functioning. It has also been averred that the applicant has no relevant experience in the field of airworthiness evaluation/aspects of air armament. In view of this it has been alleged that his transfer is

Han

because of malice against the applicant.

5. In order to prove malafide, the applicant has alleged that the Regional Director has taken no step to relieve the applicant from his charge and opportunity for handing over the charge is still awaited. It has also been stated that the Regional Director is not the competent authority to issue any transfer order of an officer from one RCMA to another.

In view of these allegations the learned counsel for the applicant has concluded that the malafide against the applicant have been proved beyond doubt and the O.A. may be allowed and the movement order be quashed. It is for these reasons that the Regional Director has been impleaded by name as respondent no.6.

6. The respondents, on the other hand, have hotly contested the contention of the applicant by filing the counter affidavit and they have stated that the incident of internal transfer raised by the applicant has no bearing on the grievance of the applicant in the instant O.A. They have further clarified that the atmosphere of confrontation was the creation of the applicant himself when he was transferred internally within RCMA in August 2001 which was subsequently resolved with the intervention of Chief Executive from Bangalore who is over all controller of the RCMA. There was internal enquiry which also found that the applicant was guilty of insubordination. The respondent

Dhawal

have further submitted that promotion, interview for the year 2002 in respect of applicant was initially scheduled for 24.06.2002 at Bangalore and re-scheduled on his request first for 09.07.2002 at Bangalore and further for 10.07.2002 at Kanpur. The request for change of venue was made by the applicant in the last minute and accordingly his request was granted by the concerned authority only on 06.07.2002 and intimation of the same received in the RCMA from Headquarter through fax only on 08.07.2002. Intentionally the applicant disappeared from Kanpur from that date and efforts to locate him and deliver the copy of the fax earlier at office or at his home turned futile. His Disappearance from the station without any intimation and his unauthorized absence till 15.07.2002 even when he was well aware of his impending interview for promotion in the near future clearly shows his disinterest in attending the interview.

7. The respondent have further argued that the applicant is primarily from the Armament Trade even while he was serving in the Air Force. The applicant was posted initially in RCMA Kanpur where basically transport airworthiness of the aircrafts is judged. Thus, the applicant was more or less under utilized in Kanpur so far as his potentials ~~are~~ were concerned. The circumstances of his transfer order from Kanpur to Pune were prompted by the sudden demise of one of the scientists in Pune where the RCMA is responsible for ensuring airworthiness of the aircrafts from

Dfca

air armaments angle and the applicant fitted into the requirement of that vacancy from all angles. Under these circumstances his transfer from Kanpur to Pune was ordered which was purely guided by the organizational needs vis-avis the potentials of the individual. The applicant instead of complying with the lawful orders, made an issue by sending representations to various authorities making baseless allegations and raising unconcerned issues just with a view to confuse the whole issue. As such the transfer order of the applicant from Kanpur to Pune issued on 30.12.2002 are justifiable both under the rules as well as by all fairness. Respondents have further submitted that there was no handing over the charge involved in his case as he had no accountable documents or inventory on his charge which was to be taken over from him.

In view of the above facts, the respondents have submitted that the D.A. is devoid of merit and deserves to be quashed.

8. I have heard the rival contentions/submissions of the counsel for the parties and have anxiously considered them. I have perused the pleadings as well.

9. During the course of the argument the learned counsel for the applicant has relied on the case of Shri Hargobinda Pathak Vs. Union Bench of India and Others, 10/2003, Swamynews 78, (Guwahati), date of judgment 31.1.2003 where it has been held that an

Dhoni

order of posting and transfer where it is made on public interest, it is required to be given effect to. The discretion of posting and transfer undoubtedly is vested on the employee but discretion must be exercised fairly and reasonably. Arbitrary exercise of discretionary power cannot be countenanced under the law and the Court or Tribunal will be within its right to exercise judicial power of review to uphold the rule of law. The respondents on the other hand has relied on the judgment of Hon'ble Supreme Court in the case of Gujarat Electricity Board and another, Vs. Atmaram Sungomal Poshami, reported in AIR 1989 SC 1433 wherein it has been held that whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules.

10. The crucial question which falls for consideration

[Signature]

is whether the action of the respondents to transfer the applicant is justified or not. It is a settled proposition of law that transfer orders cannot be interfered by the courts or Tribunals unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on the ground of malafide or the transfer order is vitiated by extraneous considerations without any factual background. The Hon'ble Supreme Court in numerous have held that transfer in the public interest is always valid and the courts and Tribunals are not appropriate forum to decide on transfer order of officers on administrative grounds. The will of administration should be allowed to run smoothly and the courts or Tribunals are not expected to indict the working of the administrative system and it should be left to the administration to take appropriate ~~iss~~ decisions in the matters of transfers. In the instant case, the transfer had been made in the public interest under the rules and I do not find violation of any rules involved. The counsel for the applicant has also not demonstrated during the course of argument that it is in violation of certain rules.

11. Another important issue raised and strongly pleaded by the learned counsel for the applicant that the transfer order is vitiated on the ground of malafide. The learned counsel for the applicant has tried his level best to prove the malafides which have been rebutted

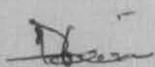
D. K. Veni

with equal vehemence by the respondents which may be noticed from para 6, and 7 of this order. It may be stated that no inference of malafidies can be drawn from mere difference of opinion between the officer transferred and the authorities transferred. In this case the applicant has levelled charges of bias against the Regional Director who is not even the competent authority to transfer and the transfer has been passed by the competent authority and the headquarter and the Regional Director has simply communicated the decision and issued the movement order in pursuance of the transfer order. Thus, no adverse inference can be drawn from the movement order issued by the Regional Director. The Burden of malafidies is heavy on the persons who alleged it; the alleging of malafidies are often more easily made than proved and the very seriousness of such allegations demand proof of high order of credibility. My this view is further fortified by the decision of the apex court in the case of Basudeo Tiwary Versus Sido Kanhu University and Others reported in JT 1998(6) SC 464. The Apex Court in the case of N.K. Singh Vs. U.O.I. and Ors. reported in 1994(3) SLJ 37 (SC) has held that whether the impugned transfer order is malafide, the court will look into the records only and not enter into a roving enquiry. The facts of this case clearly indicate that the applicant has not been able to prove the malafide in this case.

Dhar

12. In view of the legal position stated above and the reasons mentioned above the O.A. is bound to fail. In the result the O.A. is devoid of merit and is accordingly dismissed.

13. There shall be no order as to costs.


Member-A

/naelam/