

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.109/2021

This the 30th day of March, 2021

**COROM : Hon'ble Shri Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Shri Patni Vijaykumar
S/o. Kantibhai
Aged : 42 years,
Serving as Lab Attendant
in the office of the Respondents
Residing at : Block No.37, House No.292,
Bombay Housing Colony, B/h. Nutan Mill,
Saraspur, Ahmedabad 380 018. Applicant.

(By Advocate : Shri M.S.Trivedi)

Versus

1. The Union of India
Through the Secretary
Govt. of India, Ministry of Health and Family Welfare
Department of Health Research
Indian Council of Medical Research
V. Ramalinga Swami Ansari Nagar
New Delhi 110 029.
2. The Director
Ministry of Health and Family Welfare
Department of Health Research
Indian Council of Medical Research
NIOH, Meghaninagar,
Ahmedabad – 380 016. Respondents

(By Advocate : Shri Joy Mathew)

ORDER – ORAL

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

Considering that the respondents have filed their reply, pleadings
are treated as complete. The OA is admitted.

2. With the consent of counsel for both the parties, the present OA is taken up for final hearing.

3. The applicant, aggrieved by his transfer order dated 08.03.2021 (Annexure A-1) and the relieving order dated 16.3.2021 (Annexure A-2), has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985.

4. It is stated by the applicant that he is permanent employee of the respondents and working under the respondent No.2 as Lab Attendant-I.

5. The Respondent No.1 has issued impugned order dated 08.3.2021 whereby the applicant has been transferred from ICMR, NIOH, Ahmedabad to NCDIR, Bangaluru with immediate effect with a direction that he may be relieved from his duty to join at NCDIR, Bangaluru. His redeployment will be valid for a period of six months or till further orders and any modification shall be done only with approval with ICMR, Headquarter.

6. It is the grievance of the applicant that the impugned order has been issued with vindictive intention to harass the applicant since he is Office Bearer and Executive Member of the Employees' Union in the office of the respondent No.2.

6.1 The Director, NIOH, Ahmedabad misrepresented the facts to the higher officials of malpractice done by the then Director, NIOH in process of the recruitment of the employees in the office of the

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respondent No.2, the said details were reported to the higher officials and pursuant to it, vigilance inquiry was also held against the then Director, NIOH, Ahmedabad.

6.2. Therefore, to target the applicant as he being the Office Bearer and the Executive Member of the Employees' Union, he has been subjected to be transferred by way of impugned order.

6.3. The impugned order has been issued without prior intimation or confidence taken by the respondent No.2 of the Union. Therefore, the transfer of the applicant is contrary to the instructions/ policy in vogue.

6.4 It is further submitted that the applicant along with other similarly placed employees at NIOH, Ahmedabad had acquired the expertise in technical work. However, the applicant has been transferred to NCDIR, Bangaluru where there is no such technical work which the applicant is performing at NIOH, Ahmedabad. Since the applicant and other staff recruited for specialization work and without any such work, they have been transferred which amounts to loss of expertise of such technical works to the parent organization and its weaken the Institute thereby causing sufferance in day to day scientific work. Therefore, the impugned order cannot be said to be issued in public interest.

6.5 Further, staff of NIOH was engaged to control the COVID-19 since April, 2020 and still working for the same. In this pandemic situation, the applicant has family problems, the respondents ought not to have issued transfer order along with the relieving order.

6.6 It is the grievance of the applicant that since the respondents have also issued relieving order, there is no scope for him to represent against it to the higher authority.

6.7 It is further submitted that as per the Office Memorandum dated 14.12.2020 (Annexure A-3) issued by the respondent No.1, the number of posts of LDC/ UDC/ Steno have already been abolished and restructuring of technical cadre is in progress and as a part of progress of restructuring technical cadre, the applicant and other employees are transferred by the respondents, which is contrary to the instructions contained in said OM dated 14.12.2020.

6.8 Counsel for the applicant submits that impugned decision will cause great hardship to the applicant and his family members during this pandemic time more particularly, recently second waves of COVID-19 has spread over in most of the states of the country.

7. Counsel for the applicant, therefore prays for quashing and setting aside of the impugned order dated 08.3.2021 (Annexure A-1) and the relieving order dated 16.3.2021 (Annexure A-2) whereby he was relieved to enable him to join at transferred place.

8. Per contra; the respondents have filed their reply and denied the claim of the applicant. Standing counsel for the respondents, Shri Joy Mathew mainly submits that as per the terms of appointment, the applicant is liable to serve in any part of the India. By accepting all terms of his appointment, the applicant has joined the service. Therefore, the employer is empowered to transfer an employee on functional requirement and public interest. Normally, a transfer order can be challenged only on the ground of *mala fide* intention or if the transfer is in violation of any service rules. In the present case, neither of these two situations exists. It is further submitted that no rules or any instructions under the OM prohibits the department from transferring an employee who is associated with activities of Union employees. Counsel for the respondents further submits that in fact, there is a serious shortage of administrative/ technical staff in other ICRM institutes /centres / Head quarter. As a result, it has become very difficult to cope up with day to day work of the institute /Centres / HQ very smoothly. Therefore, the applicant was transferred also on the functional requirement basis.

8.1 It is further stated by the counsel for the respondents that in the impugned order dated 08.3.2021, the competent authority in para 4 categorically stated that it is difficult to create new positions with respect to the posts of Scientific, Administrative and Technical on functional requirement basis to have a proportioned balance.

Therefore, the need arose to redistribute/ redeploy the Scientific, Technical and Administrative posts on functional requirement basis to have a proportioned balance. Therefore, it became necessary to transfer the applicant and other similarly placed employees due to needs arose in the department. It is further stated in the impugned order that all ICMRs institutes except two, have been doing COVID-19 testing validation, etc., by engaging huge manpower temporarily in project mode from April, 2020 onwards with minimal training. Hence, transfer of trained regular staff among the institutes is necessary to fill up the gap based on functional requirement and public interest.

8.2 Counsel for the respondents, Shri Joy Mathew place his reliance on the judgment passed by the Hon'ble High Court of Punjab & Haryana in the case of Ravi Prakash Gupta v/s. Union of India decided on 05.02.2021 and submitted that the transfer is an incident of service and no Government servant has a vested right to remain posted at a place of his choice nor can an employee dictate terms with regard to his place of posting.

9. Heard counsel for both the parties at length.

10. Considering the materials on record and submissions of the learned counsel for both the parties, it is noticed that the impugned transfer order dated 08.03.2021 issued by ICMR, New Delhi transferring the applicant from NIOH, Ahmedabad to NCDIR, Bangaluru particularly, on functional requirement of the

administration. The details with regard to the administrative exigencies has been stated by the respondent No.1 which justify their position to transfer the trained regular staff among the institute since they are not in a position to create new posts of technical / administrative staff. The needs arose in the department for transfer of the employee and the same has been well explained by the respondents. Expect contention that the applicant is Office Bearer of Employees' Union, nothing much has been alleged with regard to *malafide* action on the part of the respondents or violation of rules/ instructions governing transfer issue in the present case. In absence of which, we are not inclined to entertain this OA at this stage.

Lastly, counsel for the applicant submits that in view of the deployment by way of impugned order, which is for a shorter time, the applicant has been stated to be relived pursuant to the transfer order, if he submits his representation before the competent authority, the same may be considered and decide keeping in view the factual prevailing situation and instructions applicable at present.

11. It is settled principles of law that an order of transfer is an incident of Government service has held by the Hon'ble Apex Court in the case of the **Union of India & Ors. v/s. S.L.Abbas**, reported in 1993 (4) SCC 357, the Hon'ble Supreme Court held that :

"An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority".

As also the law laid down in the case of **Shilpi Bose v. State of Bihar**, reported in **AIR 1991 SC 532**, this Court held :

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.”

As also in the case of **Rajendra Singh and Ors. Vs. State of Uttar Pradesh & Ors.**, [2009] 15 Supreme Court Cases 178, has held that –

*“8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.
9. The Courts are always reluctant in interfering with the transfer or an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides.”*

12. Considering the aforesaid factual matrix and taking note of the law laid down by the Hon’ble Apex Court in aforesaid judgments (supra), in our considered view, we do not find any infirmities in the transfer order dated 08.3.2021 (Annexure A-1) as well as subsequent

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relieving order dated 16.3.2021 (Annexure A-2). The OA is accordingly dismissed by granting liberty to the applicant to submit his representation against his redeployment and it is open for the respondents to consider his representation with regard to redeployment. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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