

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00340/2020

Reserved on: 23.02.2021

Pronounced on: 07.04.2021

C O R A M

HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER

HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Ashok Kumar, S/o Late Ajij, resident of Mohalla- Mehru Tola Begumpur,
Patna City, P.O.- Begampur, District- Patna.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. Union of India through Secretary, Ministry of Labour & Employment, Government of India, New Delhi-110001.
2. The Director General (Hq.), Employees' State Insurance Corporation, Panchdeep Bhawan, C.I.G. Marg, New Delhi-110002.
3. The Insurance Commissioner (P&A), Headquarters Office, Employees' State Insurance Corporation, Panchdeep Bhawan, CIG Marg, New Delhi-110002.
4. The Dy. Director, Employees' State Insurance Corporation, Panchdeep Bhawan, Panchdeep Bhawan, CIG Marg, New Delhi: 110002.
5. The Regional Director, ESI Corporation, Regional Office, Jawahar Lal Nehru Marg, Panchdeep Bhawan, Patna- 800001.
6. The Dy. Director (Administration), O/o Regional Director, ESI Corporation, Regional Office, Jawahar Lal Nehru Marg, Panchdeep Bhawan, Patna- 800001.

.... Respondents.

By Advocate(s): - Mr. S.K. Bijpuria

ORDER

Per S.K. Sinha, A.M:- The OA has been preferred against the order

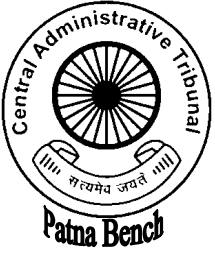
dated 21.08.2020 of Dy. Director (Admn.), Office of Regional

Director, ESIC, Patna transferring the applicant from Patna City Branch office to Samastipur Branch office (Annexure A/1). The applicant has prayed for quashing and setting aside the impugned order and permitting him to continue at Patna.

2. As per pleadings, the applicant is a Group 'C' employee of ESIC posted as Branch Manager, Patna City Branch office since April, 2018.



Prior to the posting at Patna, the applicant served at Muzaffarpur from August, 2014 to April, 2018. At Patna he was given additional responsibility of the ESIC Branch office at Samastipur where he was required to go twice a week. On 21.08.2020 the applicant had an argument with the Regional Director, ESIC over phone on the issue of his not visiting Samastipur and the same day Dy. Director (Admn.) issued the impugned transfer order. The applicant has assailed the transfer order stating that his transfer out from Patna was premature and in violation of the ESIC Headquarter order dated 04.06.2020 putting moratorium on rotational transfer of officers of Group 'A', 'B' and 'C' till April 2021 in view of the Covid pandemic. The applicant has also pleaded that the transfer has been ordered without recommendation of the placement committee and it is punitive in nature. After receiving the impugned transfer order the applicant submitted representation on 24.08.2020 and followed that up with reminders on 31.08.2020 and 04.09.2020.



3. Respondents contested the OA on maintainability and filed written statement in which they have averred that the applicant, on being transferred to Patna as Branch Manager, Patna City Branch office was given additional charge of Branch Manager and Social Security Officer at Samastipur Branch office. He was required to visit Samastipur Branch office at least on two days per week or more as per requirement (Annexure R/1). On 28.10.2019 a separate order was issued reiterating the additional charge of Samastipur to the applicant vide office order dated 28.10.2019 of Bihar Regional Office id ESIC. Respondents have pleaded that Employees State Insurance Corporation (ESIC), established under ESI Act is an autonomous body with objective to provide medical and cash benefits to the most under privileged and penurious section of the society at the time of need. While the Headquarter of ESIC functions from New Delhi the organization has Regional or Sub Regional offices in the State. The Organisation has branch offices and also Dispensary-Cum-Branch Offices (DCBO) in the field which are headed by Branch Managers. Under the Bihar Regional Office of ESIC, 6 DCBOs and 14 BOs are functional throughout the State. The applicant, despite clear orders, was not visiting Samastipur which led to pendency of a large number of unsettled pension claims (545) and unpaid rent and electricity charges of the office premises. The respondents have annexed the related complaints received from people. Keeping the exigency of public service in view the applicant was transferred to Samastipur to



dispose of the pending IP (Insured Person's) claims etc. The transfer of applicant was in administrative exigency and not part of periodic/rotational transfer which would require recommendation of the transfer committee. In accordance with the transfer policy issued by the ESIC Headquarters on 20.07.2006, competent authority can transfer an officer as per the requirement on administrative grounds or in exigency of public service. The transfer was ordered in exigency of public service to ensure speedy settlement of pending IP (insured person) claims etc. at Samastipur. The applicant was trying to bring political influence on respondent no. 5 and also threatened the respondents to lodge complaint before National Commission for Schedule Caste (NCSC) on the issue of his transfer. The respondents have requested to dismiss the OA.

4. In the rejoinder, the applicant has claimed that transfer was in lieu of punishment as it was issued after exchange of words with the Regional Director who had enquired why he was not going to Samastipur office and he had clarified that it was because of poor availability of public transport. The applicant has further maintained that the transfer order was without the recommendation of the placement committee and also without giving any opportunity to explain his stand.

5. After admission, we heard counsel for both sides. Shri J.K. Karn, Id. Counsel for applicant referred to the transfer policy of ESIC

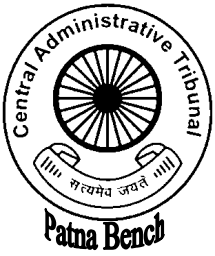


dated 20.07.2006 in which the normal tenure of an officer at a station is three years and if an officer is to be transferred before the completion of normal tenure the reasons thereof is required to be recorded. He also mentioned that in the latest transfer policy of ESIC issued on 14.01.2021 there is a provision for transfer committee which shall examine all request options received as per the transfer policy. The impugned transfer order issued on 21.08.2020 required the applicant to join Samastipur BO in August, 2020 itself. The transfer order was also in violation of the direction issued by the ESIC Headquarter dated 04.06.2020 in view of Covid pandemic. The directive clearly mentioned that there would be no rotational transfer of officers/officials in different grades (Group 'A', 'B' & 'C') till 30th April, 2021. The applicant had submitted a representation on 24.08.2020 and further reminded the Regional Director, ESIC Regional Office on 31.08.2020 and 04.09.2020 for cancellation of his transfer order which has not yet been decided. The applicant was transferred in lieu of punishment which is against the settled law. Ld. Counsel mentioned that the transfer is not in administrative exigency but with an ulterior motive. Ld. Counsel also stressed that as the transfer order was issued without recommendation of the transfer committee it was against the policy guidelines. Ld. Counsel mentioned that earlier, this Tribunal in the case of Y. Neelakantham Vs. Union of India & Ors, in OA 284/2020 had observed that if a transfer order is not in conformity with the transfer policy guidelines

it is liable to be set aside. Ld. Counsel also mentioned that Hon'ble Supreme Court in its judgement in the matter of **T.S.R Subramanian Vs Union of India** pronounced on 31.10.2013 in WP (Civil) No. 82/2011 stressed on the need to abide by the normal tenure of posting.



6. Ld. Counsel for the respondents Shri S.K. Bijpuria stated that the applicant was required to visit Samastipur at least two days in a week or more as per requirement to dispose of the work there. As ESIC provides medical and cash benefits to the underprivileged and poor sections of the society, several complaints were received from the beneficiaries of Samastipur about non-payment of claims to the pensioners and other beneficiaries. On 21.08.2020 an office note was put up before the Regional Director that complaints were coming from insured persons and other beneficiaries under ESI Act from Samastipur Branch office and it was proposed to post the applicant at Branch office, Samastipur. The rent and electricity bill of the ESIC office premises was also not paid for last six months. The Regional Director approved the transfer of the applicant in public interest. At the time of issuance of this transfer order, the transfers and placements of Group C officers within ESIC were being regulated in accordance with the Headquarter office direction of 20.07.2006. Later, ESIC issued transfer/posting policy for Group 'A' and 'B' officers on the administrative side on 02.12.2014. The transfer policy dated



20.07.2006 provides that the competent authority can make deviations from the transfer guidelines on administrative grounds and in exigency of public work while recording the reasons in writing. The transfer of applicant was in view of the growing cases of public grievances on account of non-payment of pension and other benefits. The applicant had been assigned this work as additional charge at the time of his transfer to Patna which was reiterated again vide order dated 28.10.2019. The complaints concerning the functioning of ESIC at Samastipur had grown because the applicant was not visiting Samastipur. Therefore, the applicant was transferred to Samastipur in administrative exigency and public interest. The Id. Counsel for respondents stated that the law on transfer is well settled by Hon'ble Supreme Court through its various decisions. He referred to the cases of **Gujarat Electricity Board Vs. Atma Ram** reported in AIR 1989 SC 1433, **Major General J.K. Bansal Vs. Union of India** in Appeal No. (Civil) 5189 of 2005 dated 23.08.2005 and **Mrs. Shilpi Bose Vs. State of Bihar** reported in AIR 1991 SC 532. Id. Counsel for respondents also mentioned that public transport services have resumed and there is no impediment in applicant going and joining at Samastipur Branch office.

7. Having gone through the submissions of rival counsels and pleadings and materials on record, we find that moot issue in this OA

is whether the transfer order of the applicant was in accordance with the existing rules/guidelines.

8. The applicant has averred that his transfer was premature, without recommendation of the placement committee, against the ESIC headquarters guidelines issued on 04.06.2020 prohibiting rotational transfers till April 30,2021 in view of the Covid pandemic, and in lieu of punishment .



9. It is indisputable that the applicant was transferred from Patna without completion of the three years tenure and that the transfer was without recommendation of any placement committee. The applicant as well as respondents both have put reliance on the transfer guidelines issued by ESIC Headquarters on 20.07.2006 a copy of which was provided during the hearing. The guidelines provide that normal tenure or all postings in ESIC will be for three years (para 3) and that the competent authority can make deviations from the transfer guidelines on administrative grounds and in exigency of public work while recording the reasons in writing (para 15). The respondents have averred that the applicant has been transferred in view of rising complaints of non-payment of pension and other benefits to the beneficiaries at Samastipur. The respondents have brought on record some public complaint documents relating pending payments etc. in support of their averment. As no regular Branch Manager was posted at Samastipur BO the applicant was

given additional charge of that office and the complaints arose because the applicant was not visiting that place and attending to the public grievances there. Since the applicant had been holding additional charge of Samastipur Branch office and had become familiar with the office he was transferred there in exigency of public service. The respondents have also brought on record a copy of the office note proposing transfer of the applicant to Samastipur BO in view of the growing complaints there. The Regional Director, ESIC Patna approved the proposal considering the need for posting of a regular BO. Hence, the impugned order was issued with reasons recorded in writing in accordance with the requirement of the ESIC guidelines dated 20.07.2006. There is no mention of any placement committee for transfer of officials in the aforesaid ESIC guidelines. Hence, there was no contravention of the transfer guidelines in issuance of the impugned transfer order.



10. The counsel for applicant referred to the ESIC transfer/posting policy dated 14.01.2021 which provides for transfer committee for rotational /periodic transfers. However, this policy was issued almost five months after issuance of the impugned order. Hence, the applicant's contention that the transfer order was not in accordance with the guidelines because it was not recommended by the transfer committee is not valid.

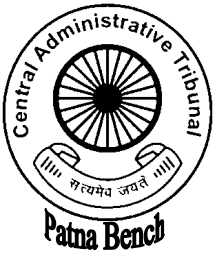
11. Also, the ESIC OM dated 04.06.2020 putting a moratorium on rotational transfer of officers/staff provides for transfers on administrative grounds. Sl. 2 of the OM reads as under:-

“2) The exceptions to this moratorium on rotational transfers, would, however, be administrative reasons to fill up any vacancy due to promotion/retirement and consideration of requests by officers/staff on compassionate grounds i.e. medical emergency with self or family members etc. with general principles that minimum dislocation is caused to the officers/officials while deciding postings on promotion.”



12. While the above exception provided in the OM does not specifically mention exigencies of public service the same gets covered under the administrative reason for filling up vacancy arising due to promotion/retirement. The post of Branch Manager at Samastipur BO had been vacant for quite some time and the applicant had been given additional charge of that office with direction to visit the place at least twice a week. The applicant was not visiting Samastipur regularly which led to rise in pendency of IP cases and lodging of complaints. We are of the view that the situation that developed at Samastipur BO warranted posting of regular officer in exigency of public service. As the applicant was already holding additional charge of Samastipur Branch office, his transfer gets well covered under the exception provided in the OM dated 04.06.2020. Also, since there was no proposal to initiate any departmental inquiry against the applicant, his transfer cannot be called a punishment.

13. At the same time the law on transfer is well settled with the orders of Hon'ble Supreme Court in a number of cases that transfer is an incident in service and no Govt. servant has a right to demand posting to a particular place/office. It is for the senior officers to decide how to best utilize the services of its officials/officers. Also once an officer is transferred he is required to join his place of posting first and then if necessary approach the Court for redressal of his grievances.



14. Hon'ble Apex Court in **Shilpi Bose Vs. State of Bihar & Others** reported in AIR 1991 SC 532 defined the limits of legal intervention in orders of administrative transfers as under:

“4. In our opinion, the courts should not interfere with a transfer 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 to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer is made 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. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

Further, in the case of **S.C. Saxena Vs. Union of India & Others** reported in (2006) 9 SCC 583, the Apex Court held that a government

servant under orders of transfer should first join the place of transfer.

“... a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...”



In the case of **State of UP Vs. Govardhan Lal** reported in AIR (2004) SC 2165 Hon'ble Supreme Court observed as under:

“... 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 be 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 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.”

15. Going by the ratio of above judgements, the applicant has no claim to posting to a particular place and accordingly, his opposition to the impugned transfer order is not in accordance with the settled law. This is particularly so because the transfer order is not in contravention of any existing rules/guidelines nor it has been claimed to be an outcome of mala fide exercise of power.



16. In the end, we are of the view that the impugned order was issued in exigencies of public service and is not in contravention of any existing rule/laws. Thus, the OA, being devoid of merit, is dismissed. No order as to costs.

[Sunil Kumar Sinha]
Administrative Member

[M.C. Verma]
Judicial Member

Srk.