

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: This the day of 1999

Present:- Hon'ble Mr. Rafiquddin, Member (J.)

Original Application No. 700 of 1999

Dr. Virendra Srivastava aged about 49 years
son of Sri B.N. Srivastava,
Posted as Asstt. Medical Officer, Ordnance Factory
Kanpur, resident of 8/113 Aryanagar, Kanpur.

. . . Applicant.

(Through Sri S.K. Agarwal, Adv. and Sri S.K. Misra, Adv.)

Versus

1. Union of India through the Secretary
Ministry of Defence (Production)
New Delhi.
2. The Ordnance Factories Board,
10-A Shaheed Khudiram Bose Marg,
Calcutta, through its Chairman.
3. The General Manager,
Ordnance Factory,
Kanpur.
4. The Director General,
Ordnance Factories,
10-A Shaheed Khudiram Bose Marg
Calcutta.
5. Dr. (Mrs.) Indu Dev,
Addl. Director, Health Services,
Ordnance Factories Board,
10- A Shaheed Khudiram Bose Marg,
Calcutta.

. . . Respondents.

(Through Sri Amit Sthalekar, Adv.)

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Order (Reserved)

(By Hon'ble Mr. Rafiquddin, J.M.)

By means of the present O.A., the applicant has sought quashing of the impugned transfer order dated 17th May 1999.

2. The facts of the case in brief are that the applicant was initially appointed as short term Medical Officer on 1.12.1978 initially with the minor break of few days but since 30.7.1988 in the respondents organization. It appears that O.A. 1294/88 was filed by the applicant along with other colleagues for regularization of his service on the basis of service record through Union Public Service Commission. The O.A. was allowed by this Tribunal and the respondents were directed to consider the case of the applicant for regularization. Later on, on the recommendations of the U.P.S.C. the applicant was appointed as regular Medical Officer treating him as fresh recruits. However, the applicant challenged before this Tribunal vide O.A. No. 1607/93, the aforesaid regularization order. It was allowed by a Division Bench of this Tribunal vide order dated 6th November 1997. The matter did not end there and the applicant again approached this Tribunal vide O.A. (D. No. 2158/99) in which the legality of the order passed by the respondents in compliance of the order of this Tribunal in O.A. 1607/93 has been questioned and as such the dispute regarding status and seniority of the applicant is still pending before this Tribunal, for decision.

24 3. In the meantime vide impugned order, the applicant who is at present posted at Kanpur, has been

transferred from Kanpur to Jabalpur along with other four medical officers who have also been transferred to other stations namely Kosipur (W.B.) Dehradun and Shahjahanpur. Aggrieved by the impugned order of his transfer, the applicant made a representation on 13th May 1999 to the Chairman Ordnance Factories Board Calcutta (Annexure A-13). The representation has not yet been disposed of till date of the filing of the present O.A. and since the respondents 3 and 5 are pressing upon the applicant to relieve his charge at Kanpur and join at Jabalpur, he has preferred the present O.A.

4. According to the applicant, the impugned order is patently illegal, arbitrary and malafide. The applicant has also alleged that the respondent No.5 Dr.(Mrs.) Indu Dev, Addl. Director Health Services Ordnance Factory Board, who has been impleaded in the present O.A. in personal capacity, is in the habit of contravening and disobeying the order of this Tribunal. It is alleged that for designating herself on higher post for which she is not entitled and adverse remarks were passed against her by this Tribunal in O.A. 1031/95 Dr. Vimal Chandra Bhadra Vs. Union of India.

5. The main ground for challenging the impugned order is that on receiving the information regarding the applicant's action of approaching this Tribunal for redressal of his grievance regarding his status and seniority vide O.A.(D.No.2158/99) the impugned transfer order has been passed with a view to separate the applicant and his colleagues so that they could not collectively pursue their matter before this Tribunal. It is further alleged that the impugned order has been passed in order to victimize and give a lesson to the applicant, along with his other

colleagues so that they could not dare to challenge the action before this Tribunal. It is also claimed that the respondents are compelling the applicant and his colleagues to work on the post of Asstt. Medical Officer while a very large number of incumbents have already been promoted on the higher post as Senior Medical Officer and Principal Medical Officer. Thus, instead of giving the applicant due promotion, status and emoluments, the respondents have transferred him on the post of Asstt. Medical Officer deliberately and to maline his reputation by posting him under the persons who are much junior to the applicant. The impugned transfer order has been passed for extraneous and collateral purposes as it is malafide, illegal and is liable to be set aside.

6. The application has been contested on behalf of the respondents who have denied the allegations of the applicant. It is stated on behalf of the respondents that transfer order has been passed by the competent authority following the provisions contained in the statutory recommended rules and the same is legal and valid. It is also claimed that the order passed by this Tribunal in the matter of the applicant has been fully complied with. Besides the facts regarding decision of the regularization of the service, status and seniority of the applicant is not relevant for the purpose of decision and the controversy in the present case. It is also clarified that the impugned transfer order of the applicant has been ordered by the competent authority namely Chairman, Ordnance Factory Board. The impugned order has been passed by the respondents No.5 by virtue of her being posted in the Ordnance Factory Board Medical section as ordered by the

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Chairman of the Board in the normal course of discharge of her official functions. The representation dated 31st May 1999 as made by the applicant has also been disposed of on 28th June 1999. It is also denied that respondent No.3 and 5 have pressurised the applicant to move on transfer or holding any threat of disciplinary action against the applicant. The applicant being a Group A officer with All India Transfer liability as a condition of service is bound by this condition.

7. The respondents have also stated that the impugned order has been passed to meet functional requirements of different Ordnance Factories located all over country under the control of respondent No.1 and 2. The transfer of Gazetted Officers are done on periodical basis after thorough requirement and taking into account other facts like period of stay with different units. It is not only the medical officers but also other group A Gazetted officer belonging to Indian Ordnance Factory are also periodically transferred by respondent No.2 and 4. It is further reiterated that the respondents have acted in a bonafide manner and it can not be said that there is malafide conduct on the part of respondent No.5 just because she has signed the impugned order in normal official capacity.

8. I have heard the arguments of the learned counsel for the parties and perused the entire documents on record.

9. The only question for determination in this application is whether the impugned order is invalid and is liable to be quashed? The relevant considerations for holding a transfer order invalid

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are that firstly it has been passed in contravention of provisions of any law and rules and secondly the order has been passed malafidely.

10. In the present case, I find that on behalf of the applicant much emphasis has been given on the litigation initiated by the applicant before this Tribunal for his regularization of his service status in the service and fixation of his seniority. However, admittedly the matter is still pending before this Tribunal in a separate O.A. Hence it is neither possible nor desirable to express any opinion or to give any finding regarding the status and seniority of the applicant in the present proceedings. The dispute would be decided by this Tribunal in the pending O.A. It has however been urged by the learned counsel for the applicant that the transfer order has been passed with a view to prevent the applicant to pursue the matter regarding his seniority matter and status before this Tribunal. This argument is without any force because the applicant has been merely transferred from Kanpur to Jabalpur which can not be said to be a place far off from Allahabad and if a person can pursue his matter at Allahabad from Kanpur, it is not difficult for him to pursue the matter even from Jabalpur. It is no doubt correct that the applicant has alleged malafides on the part of respondent No.5. It has been urged that the respondent No.5 earlier misused her position by signing some orders as officiating Director of Health and some adverse remarks were passed by this Tribunal against her for doing so. In my opinion, the aforesaid facts are not relevant for the purpose of present petition because it has not been alleged that the impugned order has been signed by respondent No.5 unauthorisedly. In other words the impugned order

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has been signed by her in her official capacity and she is competent to do so.

11. It has also not been pointed out or pleaded on behalf of the applicant that the present transfer order has been passed in contravention of any rules and regulations. Admittedly the applicant has remained posted at Kanpur for a very long period, therefore it can not/^{be} concluded that the applicant has been shifted from Kanpur within a short period of time after his posting at Kanpur.

12. The learned counsel for the applicant has referred to some judgments in support of his contention. The case of Ram Ramaul Vs. State of Himanchal Pradesh, A.I.R. 1991 Supreme Court page 1171 is not of any help to the applicant. I find that the fact and the law laid down by the Hon'ble Supreme Court is not applicable on the facts of the present case. In the aforesaid case, the Hon'ble Supreme Court in an earlier order has ordered that the seniority of the complainant be restored and in non compliance of that order a contempt petition was filed before the Supreme Court. The Supreme Court while refusing to punish the contemner, however, directed that the promotion of the complianant be made along with all monitary benefits. As already stated, the matter of promotion seniority etc. is still pending before this Tribunal in another proceedings hence no direction can be given regarding the seniority etc. of the applicant.

13. Similarly in P.K. Chinnaswamy Vs. Government of Tamil Nadu, A.I.R. 1988 Supreme Court page 78, the Hon'ble Supreme Court has held that public servant should be given posting and work commensurate to his status. But the matter regarding status and seniority is still pending before this Tribunal, hence in the

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present proceedings, this Tribunal can not pass any order regarding status and seniority of the applicant.

14. In Smt. S.R. Venkataraman Vs. Union of India A.I.R. 1979 S.C. page 49, it has been held by the Supreme Court that if a discretionary power has been exercised by an unauthorised purpose, it is generally immaterial whether its repository was action in a good faith or in a bad faith. However, I do not find in the present petition that the impugned order has been passed for any unauthorised purpose. I find the transfer order has been passed in a routine manner and in public interest. There is also no material on record to hold that the order has been passed for any extraneous purpose namely to humiliate victimise or punish the applicant.

15. On behalf of the applicant a decision of All India Service Law Journal (C.A.T. Allahabad) C.P. Tyagi Vs. Union of India 1995(1)(CAT) page 235 where it was found that the applicant was an active worker of union and had represented against corruption of officers, his transfer order was issued for Calcutta and the same was changed to Bhopal on the same date, it was held that it was not a considered decision made in undue hurry and a chargesheet was also issued and withdrawn. In such circumstances a likelihood of bias was found present. I do not find that in the present case the impugned order has been passed in haste. Merely because the applicant has been litigating before the Tribunal for regularization of his services, fixation of seniority and status, he does not acquire a legal right to remain posted in a particular station with a view to pursue the matter before the Tribunal.

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16. For the reasons stated above, I do not find any merit in the present O.A. and the same deserves to be dismissed. Accordingly the O.A. is dismissed. However, there shall be no order as to costs.

Dated August 24 1999.

Raf Uddin
Member (J.) 24.8.99

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