

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH PATNA

Registration No. OA-605 of 1996

(Date of order 6.4.1998)

Purnima Sanyal,

W/o Sri Subrata Sanyal,

With Mr. M. Palit

Versus

1. Union of India through the General Manager
South Eastern Railway, Garden Reach,
Calcutta.
2. Divisional Railway Manager, Chakradharpur Divn.
Chakardharpur, Distt. Singhbhum (West).
3. Sr. D.P.O. Chakradharpur Division,
Chakradharpur Dist. Singhbhum (West).
4. Assistant Personnel Officer (W), S.E.Railway
Tatanagar, West Singhbhum..... Respondents

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

ORDER

Hon'ble Mr. Justice V.N. Mehrotra, V.C.

This OA has been filed under Section 19 of the A.T.Act, 1985 with the prayer that the relieving order dated 1.8.1996 Annexure-4, be quashed and the respondents be directed to post/adjust the applicant

on any post as Senior Clerk at Tatanagar, considering her husband's posting. It is also prayed that the respondents be directed not to give the effect to the order dated 1.8.1996.

2. The applicant was initially appointed as Junior Clerk on 24.5.1979 at Chakradharpur. She was transferred to Tata Nagar in the year 1981 and was promoted as Senior Clerk in the year 1986. She was transferred to Chakradharpur in the year 1982 and was transferred to Tata Nagar in August, 1994 on her own request. The applicant has asserted that in the APO(W) Office at Tata Nagar where she was working since August, 1994 there were about 20 male employees and 9 female employees. Some of the male employees used to tease the ladies and also used to disturb them. The ladies complained before the authorities but no action was taken. There was an incident on 5.6.1996 in respect of which the applicant made a complaint before the respondent no. 4 APO(W) but no effective step was taken. It is also asserted that on protest there was some altercation between the staff of APO(W) Office and lastly one Shri Vinod Ram lodged an F.I.R against some staff members of the office. The matter was also published in a newspaper. Due to the protest by the applicant the authorities became biased against her. The Divisional Personnel Officer issued a show cause notice to the applicant on 14.6.1996 as to why D&A action be not taken against her. The applicant filed show cause against the same. Suddenly on 1.8.1996 she was released from Tata Nagar Office and transferred to the office of Senior APO(W) Chakradharpur. The applicant has asserted that her transfer from Tata Nagar to Chakradharpur was result of mala fide action and the same was arbitrary.

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It is also asserted that her husband was serving at Tata Nagar and she could have been posted in any other office in Tata Nagar itself where some posts of Senior Clerk were still vacant. The applicant asserts that the transfer order amounts to punishment and was liable to be quashed.

3. On behalf of the respondents it is asserted that under office order dated 31.7.1996 the applicant was transferred from Tata Nagar to Chakradharpur and was released on 1.8.1996. She reported for duty in the office of Senior DPO, Chakradharpur on 2.8.1996. It is asserted that the applicant has not disclosed all the relevant facts and also has tried to twist some of the facts. It is claimed that the applicant submitted a representation on 8.6.1996 to respondent no.3 bringing out some untoward incident in the office of respondent no.4. She prayed for immediate inquiry in the matter for initiating action against the offenders. In that representation she had also mentioned a feeling of being unsafe. It is further asserted that in view of the representation dated 8.6.1996 by the applicant, a fact finding inquiry was ordered by the respondent no.3 and accordingly the then DPO-II, Chakradharpur was nominated to enquire into the allegations. The applicant attended the inquiry on 11.6.1996 and was asked to appear on the following day. She appeared on 12.6.1996 for the inquiry but left it half way and showed non-co-operation with the inquiry authority. She even took away the incomplete proceeding of the day which she refused to return even on request hence the letter dated 14.6.1996 Annexure-2 was issued. Even after that she showed no inclination to attend the inquiry but reported sick under Private Doctor from 13.6.1996. It is in these circumstances that the letter under Annexure-2 was issued. The representation dated 18.6.1996 by the applicant was received in the office of the respondent no.3 but the applicant had already reported sick from 13.6.1996.

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She continued in the sick list till 31.7.1996 hence no further action could be taken in the fact finding inquiry as her own statement was incomplete. The officer conducting the inquiry was in the meanwhile transferred to Nagpur on 14.7.1996. It is further mentioned that the applicant had herself in her representation dated 8.6.1996 expressed sense of insecurity and hence when she reported back to duty from sick list she was transferred to Chakradharpur by order dated 31.7.1996. The transfer in question was more to suit the applicant than other consideration. The respondents have denied that the transfer order was passed by way of punishment or was mala fide. It is also mentioned that in view of strained relations ~~of~~ of the applicant with some of her co-workers, it was not considered expedient from the administrative point of view to again transfer her in the vacancy under APO(W) Tata Nagar. It is claimed that in the instant case the applicant was transferred from Tata Nagar to avoid administrative inconvenience in the circumstances prevailing at that time in the office of APO (W), Tata Nagar. It is also claimed that the applicant does not have any right to assert that she must be posted in the same place where her husband was posted. It is thus asserted that the transfer order was valid and there was no ground for quashing the same.

4. The applicant in her rejoinder has denied that she was not co-operating in the fact finding inquiry. She has also asserted that after notice to her no inquiry was conducted and she was wrongly transferred from Tata Nagar in hasty manner. It is asserted that she should have been posted at Tata Nagar itself where some posts are still lying vacant in different offices.

5. I have heard the learned counsel for the parties and perused the material on record. In this case it is not

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disputed that the applicant was transferred from Tata Nagar to Chakradharpur by a competent authority. It is also not disputed that the applicant was holding a transferable post. Assertion by the applicant is that the order of transfer was by way of punishment and was mala fide in view of the facts disclosed in the application. It cannot be disputed that it is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present place of posting. Reference may be made to the decision in the case AIR 1993 SC 2486, State of Punjab Vs. Joginder Singh Dhatt and also to the decision in the case B.Varadha Rao Vs. State of Karnataka, AIR 1986 SC 1955. Further, in the case of H.N.Kritaria Vs. Union of India (1989) 11 ATC 269, the Hon'ble Supreme Court held that the order of transfer can be interferred with only on two grounds, viz; mala fide and patent illegality and for violation of statutory rules. Similarly, in the case S.L.Abbas Vs. Union of India (1993) 25 AIC 844, the Hon'ble Supreme Court held that an order of transfer is an incident of Government service. Unless the order is mala fide or is made in violation of any statutory provision, the court cannot interfere with it. In this case it was also observed that not following instructions/guidelines is not sufficient to quash as being mala fide.

5. In the present case the applicant challenges the transfer order on the ground that she had complained against some male employees in the office of APO(W), Tata Nagar and instead of holding a proper inquiry, she was transferred after issuing a notice to her on 14.6.1996 - Annexure-2.

6. In this case it cannot be disputed that the applicant had filed a complaint before respondent no.3 asserting that some male employees working in the same office used to tease the female employees. In view of the allegations made by her the respondent no.3 actually appointed an inquiry Officer who started conducting the inquiry as will appear from

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the assertions made by the respondents. The applicant appeared before the Inquiry Officer on 11.6.1996 but as her statement could not be completed on that day, she was asked to appear before the Inquiry Officer at 10. A.M. on 12.6.96. It is mentioned in Annexure-2 and also in the written statement by the respondents that the applicant appeared before the inquiry Officer at 1.00 P.M on that day but she left the place mid-way even though her statement was not completed. It is also alleged that she also took away with her typed statement. It is also mentioned that a Peon from the office was sent to her to collect the statement but she did not hand over the same. It is in these circumstances that the inquiry officer served ~~copy~~ the letter dated 14.6.96 Annexure-2 mentioning that the applicant was not co-operating with the inquiry and was disobeying the authority under which she was working. The applicant was advised to explain as to why D & A action be not taken against her. By this letter actually no D & A inquiry was initiated but the applicant was only asked to explain her conduct ~~by which~~ she did subsequently. From the material on record it appears that considering these facts and circumstances, the respondent no.3 issued the transfer order dated 31.7.1996 and the applicant was relieved on 1.8.1996 and she joined at Chakradharpur on 2.8.1996. The respondents have mentioned that the applicant had herself in her complaint mentioned that she was feeling very unsafe in the office and that she reported sick from 13.6.1996. It is claimed that considering the anxiety expressed by the applicant and also considering the hostile atmosphere in the office it was thought proper to transfer the applicant to Chakradharpur.

7. From the above facts it will appear that due to some incidents, the functioning of the office in question could not be said to be smooth. The applicant had complained against some of the male employees, an inquiry was directed to be

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held but as alleged by the respondents, the inquiry could not proceed, may be due to the non-cooperation of the applicant and due to her reporting sick for quite a long time. Considering these facts, if the authority concerned thought it fit to transfer the applicant from that office to Chakradharpur so that the hostility between the employees may end and office work could be carried out smoothly, it cannot be said that the order was by way of punishment or was passed mala fide.

8. The learned counsel for the applicant has argued that as a departmental inquiry was pending against the applicant in view of the letter dated 14.6.1996 Annexure-2, she should not have been transferred from Tata Nagar. In my view this letter does not indicate that any disciplinary inquiry had been initiated against the applicant. The applicant was only asked to explain her conduct on the ground that she was not cooperating with the inquiry which was initiated on her complaint. Further, merely because an inquiry might have been pending, the transfer order could not be said to have been passed by way of punishment. In the case State of Punjab vs. Joginder Singh Dhatt (supra), an inquiry was pending against the applicant and during the pendency of that inquiry the employee was transferred. The transfer order was quashed by the High Court but the Hon'ble Supreme Court set aside the order observing that "this Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servants from one place to another."

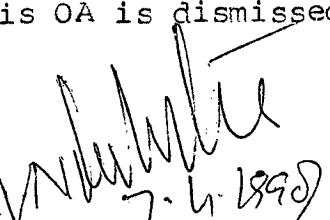
9. The learned counsel for the applicant has also argued that as the husband of the applicant was posted at Tata Nagar, the applicant should also have been posted at Tata Nagar itself. He has referred to some guidelines of the Govt. on this question. As observed by the Hon'ble Supreme Court in the case of S.L.Abbas (supra), merely because instructions/guidelines have not been followed, the order cannot be quashed as being mala fide.

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10. The learned counsel has also referred to certain decisions by the Tribunal in support of his contention that the order in question was mala fide. However, in view of the law laid down by the Hon'ble Supreme Court on the question of transfer, I do not find it necessary to refer to those cases.

11. In view of the facts and circumstances mentioned above I am unable to accept the contention by the learned counsel for the applicant that the impugned order of transfer was mala fide or was passed by way of punishment.

12. The learned counsel for the applicant has also argued that the applicant has made a representation for posting her in some other office at Tata Nagar itself, considering her difficulties. The applicant appears to have made a representation in respect of the same. However, it is for the appropriate authority to consider the hardship of the applicant and pass appropriate orders on her representation, if already filed by the applicant. It is not for this Bench to direct the respondents to post the applicant at any particular place. With the above observations this OA is dismissed. No order as to costs.


7.4.1890
(V.N. MEHROTRA)
VICE-CHAIRMAN