


**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 291/00672/2014

Order Reserved on : 12.04.2016

Date of Order: 28.04.2016

28.04.2016 

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Anil Kumar Sharma S/o Late Shri Hari Narayan Sharma aged about 50 years, R/o B-166, Daya Nand Nagar, Jhalana Doongri, Jaipur-302004 presently working as Driver in O/o the Geological Survey of India, Jhalana Doongri, Jaipur-302004.

.....Applicant

(By Advocate Mr. P.N.Jatti)

VERSUS

1. Union of India, through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata.
3. Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongri, Jaipur-302004.
4. Mr. Jaya Lal , Director and Office Superintendent, Geological Survey of India, Jhalana Doongri, Jaipur-302004.

.....Respondents

(By Advocate Mr.R.D.Rastogi, Sr. Advocate assisted by Mr. S.Shrivastava, Counsel)

ORDER

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the transfer order of the applicant dated 02.12.2014 (Ann.A/1) alleged to have been issued with malafide intention, seeking the following reliefs:-

8 (i) That by a suitable writ/order or the directions the impugned order dated 02.12.2014 be quashed and set aside.

(ii) That by a suitable writ/order or the directions the respondents be directed not to relieve the applicant and allow the applicant to perform his duties continuously at the present post and place.

(iii) Any other relief which the Hon'ble Bench deem fit.

When the matter came up for consideration and hearing Ld. Counsel for the applicant contended that the applicant is a Driver Grade-I in Geological Survey of India, Jhalana Doongri, Jaipur and he is also office bearer of the Drivers Union and holds the post of Assistant Secretary (reference Ann.A/6) and has been authorized to work as General Secretary vide letter dated 03.11.2014 (Ann.A/3). Counsel for applicant in this context contended that the applicant in his capacity as Assistant Secretary had complained vide letter dated 14.11.2014 (Ann.A/4) against a wrongful promotion/deployment of one Shri Shankar Lal Dangi, Driver to the post of UDC as per order dated 28.08.2014 and this annoyed respondent authorities so much that as brought out in para 4.4 of the OA, he was transferred with malafide intention vide Ann.A/1 dated 02.12.2014 soon thereafter to Gujarat Gandhi Nagar. He further submitted that in the said order though public interest has been stated but there is no real public interest in the transfer. He further contended that the respondents were in such a hurry that it was even stated in the transfer order itself that there is no requirement of a separate relieving order, though a separate relieving order is

generally required to be issued as per standard administrative procedure:

2. Counsel for the applicant further submitted that as may be seen from the letter dated 12.06.2014 (Ann.A/2) the applicant was elected as Assistant Secretary of the GSI Drivers Union, Western Region, Jaipur and later vide Ann.A/3 dated 03.11.2014 the General Secretary had informed the Dy. Director General (HOD), Western Region, Jaipur that he remains busy in tour duties, therefore, the applicant is being authorized to perform the day today work of correspondence as General Secretary and it was further requested that applicant be posted at Headquarters in accordance with the guidelines of the DOPT. Counsel for applicant reiterated that only because the applicant made a complaint bringing out certain violation of rules and regulation in promotion of Mr. Shankar Lal Dangi vide letter dated 14.11.2014 (Ann.A/4) which would have harmed the respondents they got annoyed and even without there being any (public interest because there is no mention of any shortage of drivers in Gandhi Nagar, Gujarat in the transfer order Ann.A/1) and no such plea has also been taken by the respondents in their reply and despite the fact of applicant being Assistant Secretary of the Union and functioning as General Secretary, he was transferred to Gujarat Gandhi Nagar and even his personal medical problems and that of his wife, and problem of his daughter were not considered. He further submitted that the complaint of the applicant was genuine and during the course of hearing placed copy of the

order dated 17.02.2016 of the office of DG, GSI, Kolkata (kept on record) by which the promotion of Mr. Shankar Lal Dangi to the post of UDC has been terminated and copy of the same has been endorsed to the applicant. Counsel for applicant further submitted that the applicant was granted interim stay on the transfer order dated 02.12.2014 (Ann.A/1) vide order dated 05.12.2014 after considering all the relevant facts.

3. Counsel for applicant also submitted that vide the same order dated 02.12.2014 Ann.A/1, one Mr. S.K.Jain, Assistant was also transferred from Jaipur to Gujarat Gandhi Nagar but he was not relieved for a period of six months (and later on his transfer was cancelled) and his service book was sent on 22nd December, 2014 i.e. after a period of 20 days, but in the case of applicant, because of malafide intention, his LPC was sent on the very next day on 03.12.2014 as may be seen from Ann.A/1 filed with MA No.291/00085/2015 and even Service book was sent the next day on 04.12.2014 (Ann.A/2 in the aforesaid MA).

4. Counsel for the applicant contended that the transfer of the applicant is clearly based on malafide because of the complaint he made against the promotion of Shri Shankar Lal Dangi, and as he is an office bearer of the Union and further that he has been discriminated against because, while Mr. S.K. Jain transferred in the same order, was allowed to continue for six months, but in the case of applicant, his LPC was sent the very next day and Service Book the next day. The action of the respondents is

clearly because of malafide and arbitrary and discriminatory, therefore, Ann.A/1 is required to be set aside qua the applicant and thus counsel for applicant prayed for the OA to be allowed.

5. Per contra, counsel for respondents submitted, that in the first place there is limited scope with the Courts and Tribunals in transfer matters as held by the Apex Court in a catena of judgments. As far as the question of malafide in the present OA is concerned, counsel for respondents contended that the applicant has simply made an allegation under Para 4.4 of the OA that he was transferred out of the malafide but he has not given any details or shown any proof of malafide. He has not even stated which authority had malafide intention and there is no link between his complaint dated 04.11.2014 (Ann.A/4) and the transfer order dated 02.12.2014 (Ann.A/1). Counsel for respondents further submitted that applicant is only Assistant Secretary of the Drivers Union and merely because of a letter (dated 03.11.2014, Ann.A/3) of the General Secretary that the applicant is performing some duties of General Secretary, he cannot be treated as General Secretary and be given any benefits due to a General Secretary of the Union.

6. He further contended that the main issue in this case relates to refusal of the applicant to perform the field duties as a Driver. In this context he submitted that the GSI is a department where extensive field work is required for study of exploration of various minerals and other activities and the applicant has been

consistently refusing to perform his field duties as may be seen from Annexure R/1, R/2, R/3 and R/4 filed with the reply. Counsel for respondents submitted that because of the applicant refusing to do the field duty, the Department had to hire the services of a Driver from outsourcing, incurring additional financial cost and as may be seen from Ann.R/4 the officers of the department were ready for field work but at the last minute the applicant refused to go on field duty causing great inconvenience to the team. The applicant refused duties in September, October and again in November, 2014. In fact the applicant time and again avoided field duty and he was even given warning vide earlier letter dated 30.10.2014 Ann.R/2.

7. As far as the transfer order is concerned, counsel for the respondents submitted that the applicant has been posted at the Headquarters at Gandhi Nagar as the applicant has a transfer liability and further that he has been at Jaipur from the time of his appointment and this is only his first transfer. Counsel for respondents also submitted that the applicant has already joined at Gandhi Nagar Gujarat and in fact the stay dated 05.12.2014 was obtained concealing the fact that the transfer order had already been given effect to and misleading the Hon'ble Tribunal and therefore, an MA No.291/00085/2015 was filed by the respondents for vacation of stay and the stay was vacated vide a detailed order dated 09.10.2015. Counsel for respondents also submitted that there is no malafide in the transfer order and he has been accommodated at headquarters. He further submitted

that the case of Shri S.K.Jain is different as he is not a Driver and he is in a different cadre and post and the question of discrimination does not arise. Counsel for the respondents also submitted that for the applicant's refusal of duties and insubordination, strict disciplinary action is actually warranted against him. However, presently the applicant has only been transferred vide order dated 02.12.2014 Ann.A/1 and given headquarter posting at Gandhi Nagar and on all these grounds he prayed for the dismissal of the OA.

8. In rebuttal counsel for the applicant contended with reference to Ann.R/4, that the applicant made a request not to give him field duty in view of his health problems and that is within his rights. Further no action was taken against him in the month of September, October or November on this ground but only after he made a complaint on 14.11.2014 (Ann.A/4) the transfer was made out of malafide and no public interest is involved in the transfer and prayed for allowing of the OA. He also submitted that no facts were concealed at the time of grant of I.R. vide order dated 05.12.2014.

9. Considered the aforesaid contentions and perused the record. The Apex Court in a catena of judgments has held that Courts and Tribunals should not ordinarily interfere in transfer matters as transfer is an incident/s and condition of service, unless the order is issued by a authority not competent to do so, or there is violation of statutory provision or there is proven case of

malafide. In this case the main issue relates to whether the transfer has been made with a malafide intention. It was contended by the counsel for applicant that the applicant was transferred only because the authorities were annoyed due to a complaint dated 14.11.2014 (Ann.A/4) made by him regarding the wrongful promotion/redeployment to the post of UDC of one Shri Shankar Lal Dangi, Driver and they went to such an extent that it was directed in the transfer order Ann.A/1 itself that no separate relieving order is required and without their being any public interest, the LPC of the applicant was sent the very next day. It has been the contention of the counsel for respondents that the complaint made by the applicant (Ann.A/4) relating to the wrongful promotion of one Shri Shankar Lal Dangi had no link with the transfer of the applicant. In fact because the applicant was constantly refusing to do the field duties (reference Ann.R/1 to R/4) in the respondent department GSI which has the responsibility of regular field work and the department had to get drivers from outsourcing and therefore, considering all the facts and circumstances the transfer was made to Gandhi Nagar, Headquarters which does not involve field duty and all medical and education facilities are there. It was also contended that there is no question of malafide as the applicant has not submitted any details by which the allegation of malafide can be established or proved.


10. It appears from the perusal of records that though the applicant was transferred vide order dated 02.12.2014 (Ann.A/1)

and interim stay was also granted vide order dated 05.12.2014 but after taking note of the fact that applicant already stood relieved and his LPC and Service book and leave account having being sent to Gandhi Nagar, Gujarat the IR was vacated by the Tribunal vide order dated 09.10.2015. It is also noted from the perusal of Ann.R/1 to R/4 that the applicant is habitual in refusing the field duties mainly on the medical and health grounds without fully substantiating the position and the department had to resort to outsourcing of Drivers, incurring not only additional expenditure but facing problems at the last minute when the team was ready to proceed for field duties. There is no doubt that field work is an important duty of the respondent department. Further, it cannot be said that the transfer has been made out of malafide out of annoyance of the authorities only because the applicant filed a complaint dated 14.11.2014 (Ann.A/4) regarding wrongful deployment/promotion of Shri S.L.Dangi, Driver to the post of UDC, and the same has been cancelled by the higher authorities subsequently. Further it is also clear that the applicant is not General Secretary of the Drivers Union and merely because he has been asked by the General Secretary to perform certain duties that cannot make him the General Secretary and become entitled to any claims/rights that accrue to the General Secretary of a Union. It is also noted that the applicant has been transferred to Headquarters in Gandhi Nagar and the applicant has also joined there, as brought out by the counsel for respondents.

11.In view of the aforesaid discussion, there appears no force in the contention of the applicant that the transfer has been made with malafide intention and there are, therefore, no grounds to set aside the transfer order (Ann.A/1) dated 02.12.2014. The OA is accordingly dismissed with no order as to costs.

However, it is always open to the applicant to approach the respondent authorities for resolution of any of his genuine difficulties and problems.

Adm/

 28/04/2016.
(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER