

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 373 of 2005

Jabalpur, this the 22nd day of July, 2005

Hon'ble Shri Madan Mohan, Judicial Member

Ashwini Sharma, aged about 44 years,
S/o. Shri S.K. Sharma, R/o. G-8, ESI
Colony, New Subhash Nagar,
Bhopal.

.... Applicant

(By Advocate – Shri P.C. Chandak)

V e r s u s

1. Union of India, through Secretary,
Ministry of Labour, New Delhi.
2. Director General, Employees' State
Insurance Corporation, Kotla Road,
Panchdeep Bhawan, New Delhi.
3. Regional Director, Employees' State
Insurance Corporation, Nandanagar,
Indore (MP). Respondents

(By Advocate – Shri Terrence Burrows on behalf of Shri B.da.Silva)

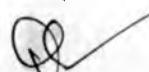
O R D E R

By filing this Original Application the applicant has claimed the following main reliefs :

“i) to set aside the order dated 18.6.2004 (Annexure A-4) transferring the applicant and affirmed by order dated 14.12.2004 (Annexure A-13) both being passed by the respondent No. 3,

ii) direct the respondent No. 2 to finally decide applicants' application (Annexure A-7) as directed by this Tribunal through its order dated 24.9.2004 (Annexure A-8) to finalize the transfer,

iii) direct the respondents to consider the transfer of applicant in light of its' own administrative decisions dated 22.11.2004 (Annexure A-10) and 16.2.2005 (Annexure A-15) for transfer by



"on turn basis" and by options apart from other facts and circumstances submitted aforesaid."

2. The brief facts of the case are that presently the applicant is serving as Upper Division Clerk in the respondents' Department at Bhopal. He is one of the victims of the Bhopal Gas Tragedy of 1984. He undertakes special medical treatment which is available only in Bhopal. After formation of the new regional office at Raipur an administrative instruction (Annexure A-2) was taken up by the office of the respondent No. 2 and according to it only those employees who are working at regional office, Indore would be transferred to Raipur. In the seniority list issued by respondent No. 3 dated 30th June, 2003, the name of the applicant does not appear as he was promoted in the post after publication of this list Annexure A-3. The applicant could not have been transferred in the light of the policy that had been formulated by the respondent No. 2 and according to it transfers would be initially made of the junior most and subsequently on turn basis. According to the policy the junior most in the cadre should have been selected for transfer and the list would move upwards. But the applicant has been transferred vide order dated 18.6.2004 (Annexure A-4). The applicant filed a representation against it but it was rejected. Thereafter the applicant submitted a representation to the respondent No. 2 with the grounds that he is a victim of Bhopal Gas Tragedy and that his transfer is against the consensus reached between the employees' union and respondents' organization and that it is made during mid session of the schools. When this representation was not decided on merits by the respondents, the applicant filed OA No. 793/2004 and the Tribunal vide order dated 24.9.2004 directed the respondents to decide the representation of the applicant. The respondent No. 3 has not given any cogent reasons for transferring the applicant and the case of the applicant is not being considered as per the rules. The respondent No. 3 refused to consider the application for not transferring the applicant to Raipur. Against this the applicant submitted a detailed reply. As per the administration directions of the respondent No. 2,

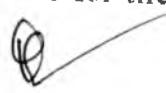


options have been invited for those who are interested in transfer to Raipur. Hence, the applicant cannot be forcibly transferred when he has not submitted any such option for transfer to Raipur. The representation made by the applicant to the respondent No. 2 (Annexure A-7) is still not decided in-spite of the direction given by the Tribunal. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that according to the letter dated 31st March, 2003 (Annexure A-2) it is clear that for the new office of Chattisgarh at Raipur employees who are posted at the regional office at Indore are to be transferred but the applicant who is serving at the local office at Bhopal has been transferred. It is apparent violation of the aforesaid letter by the respondents themselves. My attention is drawn towards the circular Annexure A-15 dated 16th February, 2005 and in its paragraph 7 it is provided that “[O]nce transferred and posted in the new regions, the employees will form part of the separate cadre of those new regions. And, their links with the regions from which they migrated will automatically, remain cut off”. He further argued that the Tribunal had directed to decide the representation of the applicant by respondent No. 2 i.e. the Director General and not by the respondent No. 3. He also argued that in the seniority list dated 30th June, 2003 (Annexure A-3) the name of the applicant is not mentioned anywhere. According to the letter dated 22.11.2004 (Annexure A-10) the principle of last come first go and thereafter it should already on turn basis in every cadre is not followed by the respondents. Hence, this transfer order is malafide and in contravention of the rules. Therefore, the applicant is entitled for the reliefs claimed.

5. In reply the learned counsel for the respondents argued that the regional office at Indore is the controlling office for the implementation of



the ESI scheme and the same is administered through a network of about 26 local offices, 6 inspection offices and pay offices. The staff working in the regional office and the local offices are all forming part of a single independent unit and are interchangeable and are liable to be posted anywhere in the region. The staffs required for Chhattisgarh region have to be deputed from the staff of the parent region of the erstwhile Madhya Pradesh. He also argued that in the circular Annexure A-15 in its paragraphs 9 & 10 and in the transfer order dated 18th June, 2004 (Annexure A-4) it is clearly mentioned that the employees are being transferred for a period of one year and they have an option for re-posting in Madhya Pradesh. Hence, the relations of the staff will not automatically remain cut off. He further argued that the Tribunal vide its order dated 24th September, 2004 passed in OA No. 793/2004 has only directed the respondents to consider and decide the representation of the applicant. The Tribunal has not specifically directed the respondent No. 2 to decide the representation of the applicant. No representation of the applicant is pending and the said pending representation of the applicant was disposed of by them vide order dated 14.12.2004 after considering all the facts and circumstances raised by the applicant in that representation. It is clearly mentioned in this order that the transfer is made only of those employees who are junior most and it is made in accordance with the policy. The transfer of the applicant has been made in administrative exigency and keeping in mind the public interest. Thus, the Original Application is liable to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, I find that according to the letter dated 31.3.2003 (Annexure A-2) the employees who were posted in regional office, Indore are to be transferred to Raipur Chhattisgarh. In this regard the argument advanced on behalf of the respondents that the staff working in the regional office and the local office are all forming part of a single independent unit and are interchangeable and are liable to be posted



anywhere in the region and the staff required for Chhattisgarh Region have to be deputed from the staff of the parent region of erstwhile Madhya Pradesh, seems to be legally correct. The applicant cannot take any legal benefit of the fact that he is not serving at the regional office at Indore and is presently serving at the local office at Bhopal. I have perused the circular dated 16.2.2005 (Annexure A-15) and in its paragraph 9 and 10 it is provided as under :

“9. If they are not willing to continue in the present new regions, they will be considered for transfer back to their parent region after their present tenure is over as per the existing procedure.

10. However, they must also convey to their respective Regional Directors their unwillingness to continue in the newly created regions in writing before 1.3.2005.”

I have also perused the transfer order dated 18th June, 2004 (Annexure A-4) and in this the respondents have clearly mentioned that the employees are being transferred for a period of one year only and they shall have an option for re-posting in Madhya Pradesh and in that case the employees shall move representations before one month. I have also perused the order passed by the Tribunal dated 24th September, 2004 in OA No. 793/2004. In this order this fact is not mentioned anywhere that respondent No. 2 is only directed to consider and decide the representation of the applicant. I have seen the letter dated 14.12.2004 (Annexure A-13) deciding the representation of the applicant by respondent No. 3. I find that he has considered the all contentions of the applicant raised in his representation and he has clearly mentioned in this letter that only those employees are ordered to be transferred vide order dated 18.6.2004 who are junior most. This transfer order is passed in accordance with the policy and is passed in public interest and keeping in mind the administrative exigency. The arguments advanced on behalf of the respondents that the Hon’ble Apex court has in catena of judgments have held that Tribunal/Courts should not interfere with the transfer matters unless it is malafide or violation of the rules, seems to be legally



correct. The applicant has not shown any malafide or any violation of the rules.

7. Considering all the facts and circumstance of the case, I find that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.



(Madan Mohan)
Judicial Member

“SA”

पृष्ठांकन सं ओ/न्या..... जवलपुर, दि.....

पतिलिपि अव्यो दिल :-

- (1) सरिय, उत्तर उद्यायान्वय नाम राजेश्वरिनगर, जवलपुर
- (2) आकेश्वर श्री/ श्रीमती/ न्या के वार्तालाल
- (3) प्रदायकी श्री/ श्रीमती/ न्या के वार्तालाल
- (4) बांगलाल, दोपूरा, जवलपुर उद्यायान्वय
राजना एवं आकर्षण कार्यगारी हेतु

P.C.Chandak
R.W. 03/08
B. D. 25/1/08
R.W. 28

उप रजिस्ट्रार

25/7/08
T.S. 25/7/08