

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
(CIRCUIT AT INDORE)

O.A. NO.1089/2004

This the 9th day of March, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI A. S. SANGHVI, MEMBER (J)

Vijay Matvankar S/O Shri Vishwanath,
R/O Suyash Vihar, Nandanagar,
Indore (MP).

... Applicant

(By Shri D. M. Kulkarni, Advocate)

-versus-

1. Union of India through
Director General, Employees'
State Insurance Corporation,
Kotla Road, Panchdeep Bhawan,
New Delhi.

2. Regional Director,
Employees' State Insurance Corporation,
Regional Office, Panchdeep Bhawan,
Nandanagar, Indore (MP).

3. Asstt. Director,
Employees State Insurance Corporation,
Regional Office, Panchdeep Bhawan,
Indore (MP).

... Respondents

(By Shri Vivek Saran, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A):

Apart from challenging the order of his transfer from Indore to Mandideep vide Annexure A-5 dated 17.10.2003, applicant has challenged order dated 1.12.2004 (Annexure A-10), whereby his representation made in pursuance of Tribunal's orders dated 21.10.2004 in O.A. No.928/2004 has been rejected.

2. The learned counsel of applicant stated that applicant was earlier posted as Cashier in the year 1999 at Nagda. As per the prevailing practice in the Corporation, the Head Clerk is posted as Cashier against which applicant has been posted as Cashier again at



Mandideep. The learned counsel further stated that vide order dated 10.3.2004 applicant was promoted to the post of Assistant on ad hoc basis but he refused to accept the promotion and as such by order dated 30.6.2004 (Annexure A-7) his promotion order was cancelled and he was debarred from promotion for a period of one year. On his transfer ^{not} to Mandideep applicant was relieved for proceeding to Mandideep as he was assigned election duties during the Vidhan Sabha elections. The learned counsel stated that applicant has been discriminated against in the sense that other two employees, namely, Diwan Singh Kandhari and Surendra Kumar Jain who were transferred out, have been retained at Indore on representations while applicant's representation has been rejected. The learned counsel stated that respondents have transferred the applicant in mala fide exercise of their powers. The learned counsel further stated that applicant has been in position as the Tribunal has directed maintenance of status quo as ^{interim basis} on 6.12.2004 vide impugned orders dated 6.12.2004.

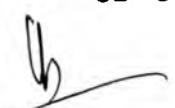
3. The learned counsel of respondents stated that applicant had been relieved from Indore on 2.12.2004 itself as is clear from Annexure R-2. He thus maintained that having been relieved prior to 6.12.2004, it cannot be stated in terms of order dated 6.12.2004 made by this Tribunal that the applicant was in position at Indore since 2.12.2004. The learned counsel further stated that applicant has not established any mala fides against the respondents. He further stated that even if other colleagues of the applicant were retained on the basis of their representations at Indore, it cannot be said that applicant was discriminated against as the facts of the present case and the cases of other employees may be different.

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4. We have considered the respective contentions made on behalf of the parties as also perused the material on record.

5. Vide Annexure A-9 dated 21.10.2004 applicant's earlier O.A. No.928/2004 challenging the transfer orders dated 17.10.2004 and 10.3.2004 was disposed of directing the respondents to consider applicant's representation dated 1.7.2004 within a period of one month by passing a detailed and reasoned order and in the meanwhile the applicant should be permitted to work at Indore. In pursuance of these directions, respondents have passed orders dated 1.12.2004 (Annexure A-10) whereby applicant's representation was considered but rejected.

6. Annexure R-2 dated 2.12.2004 was received by the applicant on 2.12.2004 itself. These are orders of relief of the applicant. He stood relieved as per Annexure R-2 in the afternoon of 2.12.2004 itself. As such, order dated 6.12.2004 of the Tribunal directing the respondents to maintain status quo as on date becomes ineffective, applicant having already been relieved on 2.12.2004. Obviously, applicant has remained absent unauthorisedly after 2.12.2004 and not joined at Mandideep, the place of transfer, till now. In the impugned orders respondents have stated in detail how the aforesaid two employees who were transferred along with the applicant were ultimately not transferred. Just because the transfer orders of others were not put into effect does not establish that applicant had been discriminated against. The facts and circumstances of transfer, cancellation or non-cancellation of transfers can be different in different cases. Applicant cannot draw any benefit from the cancellation of transfer of others. A vague allegation of mala fide has been



made during the course of the arguments on behalf of the applicant. There is no such averment in the O.A. nor have any of the respondents been made parties in the O.A. by name alleging mala fides against them. Furthermore, the allegation of mala fide has to be established by rendering strict proof. Not even an averment much less strict proof has been rendered in the O.A. This plea is unacceptable, therefore.

7. In our considered view, respondents have passed a detailed and reasoned order in pursuance of Tribunal's directions dated 21.10.2004 made in O.A. No.928/2004. Respondents have given detailed reasons for rejection of applicant's representation. Applicant has failed in establishing his claim in this O.A. As a matter of fact, in our view, applicant had filed this application on frivolous grounds.. He had also obtained interim orders on 6.12.2004 by misrepresenting that he had not been relieved. In terms of Annexure R-2 dated 2.12.2004 which had been received by the applicant on the same day, he stood relieved and has remained absent unauthorisedly eversince.

8. Having regard to the discussion made and reasons stated above, this O.A. is dismissed being bereft of merit. Here is a case in which applicant has resorted to legal process on frivolous grounds and remained unauthorisedly absent from duty on one pretext or the other and ultimately by misrepresenting facts before the Tribunal. Thus public interest has been hurt grievously. It is a fit case where cost must be imposed on the applicant so that it serves as a deterrent. In this backdrop, cost amounting

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to Rs.5000/- (Rupees five thousand) is imposed upon the applicant to be recovered from his salary at the rate of Rs.1000/- (Rupees one thousand) per month.

A. S. Sanghvi
(A. S. Sanghvi)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

9.3.05

कृष्णवंडन सं. ओ/न्या.....जवलपुर, दि.....
पत्रिलिपि दार्दे दिल्ली:-

(1) रसिक, उच्च उपराज्यकार्यालय, दार्दे दिल्ली, जवलपुर
(2) आवेदक श्री/श्रीमती/न्या.....दो. दार्दे दिल्ली
(3) प्रत्यक्षी श्री/श्रीमती/न्या.....दो. दार्दे दिल्ली
(4) चंद्रपाल, लोपाम., जवलपुर राज्यकार्यालय
सचिवा एवं आवश्यक व्याख्याती

D. M. Kulkarni
D. M. Kulkarni
Vivek Saran
Vivek Saran

Issued
On 16. 03. 05
By