

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.237 of 2002

Jabalpur, this the 30th day of January, 2003.

Hon'ble Mr.R.K.Upadhyaya, Member (Admnv.)

Sushil Kumar Sharma, aged 44 years,
S/o Shri Tarkeswar Sharma, Occupation-
Service, Asstt. National Research Centre
for Weeds Science, Maharajpur, Adhartal,
Jabalpur, M.P.

-APPLICANT

(By Advocate- Mr.A.K.Tiwari)

Versus

1. The Union of India through the
Secretary Indian Council of Agricultural
Research, Krishi Bhawan, New Delhi.

2. The Director, National Research
Centre for Weeds Science,
Maharajpur, Adhartal, Jabalpur
Distt. Jabalpur.

3. The Director,
ICAR Research Complex for Eastern
Region, Walmi Complex, Patna.

-RESPONDENTS

(By Advocate- Mr.B.Dasilva)

O R D E R (ORAL)

The applicant has filed this application with request to quash the impugned order dated 23.3.2002, by which he has been relieved on transfer from Jabalpur to Patna alongwith his post.

2. It is stated by the applicant that he was initially appointed as Junior Clerk by order dated 3.12.1982 in the office of Senior Administrative Officer Central Institute of Agricultural Engineer (ICAR) GTV Complex T.T.Nagar, Bhopal. On his request, the applicant was transferred to Jabalpur in the office of the Director, N.R.C. for Weeds Science, JNKVV Campus, Jabalpur in the year 1989. In due course, he was promoted as

Contd...P/2.

Chandram

Senior Clerk in 1990 and subsequently further promoted to the post of Assistant in the year 1999. By the impugned order, he has been transferred to Patna. Against the order of transfer, the applicant made a representation dated 23.3.2002 (Annexure A/7). During the pendency of this O.A., the respondents were directed to dispose of the representation, which has now been decided by an order dated 2.7.2002 rejecting the claim of the applicant for being retained at Jabalpur.

2.1 The learned counsel for the applicant states that the impugned order dated 23.3.2002 is not a transfer order at all, it is merely an order of relieving the applicant. He also invited attention to transfer guidelines dated 15.1.2002 (Annexure R/III) filed alongwith short reply of the respondents, wherein it has been stated that 'the group 'C&D' staff of the Institute/Regional/Sub-stations are ordinarily recruited through local advertisements or by inviting applications from Regional Employment Exchange and so they should not be transferred from Regional Station to the Hqrs. of the Institutes & vice-versa. In case the transfer of such staff is still unavoidable, prior permission of SDM at ICAR Hqrs. may be obtained before resorting to intra-institutional transfers.' According to the learned counsel, the impugned order dated 23.3.02 (Annexure A/5) does not indicate ^{that} such prior permission has been obtained. It was further submitted by the learned counsel for the applicant that the respondents in the return have stated that the transfer is on account of complaints, but no such complaints have been made known to the applicant and he has not been given an opportunity to put his views in respect of those alleged complaints.

Chandram

According to him, this transfer order appears to be malafide one based on complaints in substitution of punishment. Therefore, the same deserves to be quashed.

3. The learned counsel for the respondents invited attention to the terms of appointment as contained in the letter dated 2.12.1982 (Annexure R/1) filed alongwith short reply, in which Clause IV states as under:-

"His Head Quarters will be at Bhopal for the present. But he will be liable to serve in any Institute/ Office of the ICAR located anywhere in India."

According to the learned counsel for the respondents the applicant holds the liability of transfer anywhere in India. Therefore, his transfer from Jabalpur to Patna is justified. He invited attention to the reply filed on behalf of the respondents, wherein it has been stated that the applicant would be eligible for his next promotion some time in the month of Sept., 2007. 'The impugned order thus neither effect the seniority of the applicant nor does it jeopardize his rights of promotion'. He also invited attention to the letter dated 22.1.2002 (Annexure R/11) filed alongwith detailed reply wherein it has been stated that Shri Sharma may be transferred to ICAR Research Complex for Eastern Region, Patna alongwith the post as desired by the Instt., and the order of transfer of the applicant alongwith post to ICAR Research Complex for Eastern Region, Patna was to be issued at the Institute level under intimation to the Council. According to the learned counsel the provisions of transfer guidelines ^{complied.} regarding permission have been ~~complied~~ ^{order of} ~~complied~~ Therefore, there is no infirmity in the ~~transfer~~ ^{order of} transfer. It was explained by the learned counsel for the respondents that Annexure A/5

Chinmayam

transfer-cum-
~~xx~~ can be treated as a relieving order only, if read as a whole. This order dated 23.3.2002 (Annexure A/5) states that "in compliance of Council's letter No.14-14/2001-IA-II Sh.S.K.Sharma, Assistant hereby stands relieved alongwith the post held by him from the afternoon of 23.3.2002. Sh Sharma is directed to report to the Director, ICAR Research Complex for Eastern Region, Patna. The transfer is made in public interest and he is entitled for joining time and T.A. on transfer."

According to the learned counsel, the order dated 23.3.2002 (Annexure A/5) is transfer-cum-relieving order. He also stated that the applicant has not been transferred as a ^{measure} ~~major~~ of punishment on the basis of complaints. A separate charge sheet dated 19.8.2002 has been issued and regular enquiry is ~~to be held~~ to be held. The learned counsel also placed reliance on the order of Allahabad Bench of this Tribunal in the case of Balwant Rai Vs. Union of India & others in OA No.1230/1996 decided on 14.5.1998 (Annexure R/VIII). According to him, the case before Allahabad Bench was similar to that of the applicant and this Tribunal should normally follow the same decision in this case also.

4. I have heard the learned counsel for both the parties and have perused the material available on record carefully.

5. The applicant has been transferred from Jabalpur to Patna in 'public interest'. The Hon'ble Supreme Court in the case of National Hydroelectric Power Corporation Limited Vs. Shri Bhaqwan & another, 2002 (1) SLJ 86 SC, have held that transfer is an incidence of service and none has right to continue ^{at} one place. The Apex Court has further held as

Chingam

follows:-

"Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of Management as against such orders passed in the interest of administrative exigencies of service concerned".

It is for the administration to decide as to which person should be given what post at which place. This Tribunal cannot substitute its judgement for the administration. The Allahabad Bench of this Tribunal in the case of Balwant Rai (supra) has dealt with in detailed some arguments raised in this case. For example, ^{vw} paragraph 12 of the order, the contention regarding transfer order ^{being} ~~is~~ punitive in nature has been examined. In that case also the transfer was alleged to be a means of harassment and punishment to the employee. Tribunal after examining the contentions and decisions of the Courts came to the conclusion that separate disciplinary proceedings ^{having} ~~are~~ already ^{been} ~~instituted~~, mere transfer does not amount to transfer as a punishment. In this case also, proceedings by issuing a charge sheet on 19.8.2002 are separately instituted. Once the administration comes to the decision that the person is not desirable at that station because of administrative reasons, his shifting from that place cannot be said to be unjustified. The ^{is unwarranted as} fear of the applicant that he is going to lose seniority ~~xxx~~ the respondents have categorically stated that the applicant is not going to lose his seniority on his transfer and is likely to get his next promotion, if otherwise found suitable. The representation of the applicant for being retained at Jabalpur and cancellation

Ch 37 am

of transfer to Patna has been considered by the respondents and has been rejected, because of exigency of service.

6. In view of the reasons mentioned in the preceding paragraph, this application is dismissed without any order as to costs.

(Signature)

(R.K.Upadhyaya)
Member (Admnv.)

'MA'

...

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिदिशि कर्मोपिमत -

(1) नवीन जमाना कायदा अदालत, जबलपुर

(2) नवीन जमाना कायदा अदालत, जबलपुर

(3) नवीन जमाना कायदा अदालत, जबलपुर

(4) नवीन जमाना कायदा अदालत, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

(Signature)
उप-रजिस्ट्रार
2/10/3

A.K. Dwivedi - Adm

B. Ch. Selva - Adm

Issued
on 5-2-03
BS