

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 489/2001

P.C. Sen, aged about 53 years,
S/o. Shri F.L. Sen, Highly
Skilled Grade II (Fitter),
Grey Iron Foundry, Jabalpur (MP),
R/o. Quarter No. 3094, Type III,
Sector 1, Vehicle Factory Estate,
Jabalpur (MP).

... Applicant

V e r s u s

1. Union of India,
through the Secretary,
Ministry of Defence,
Department of Defence Production,
Government of India, North
Block, New Delhi.
2. Director General,
Ordnance Factory Board,
10-A, Shaheed Khudiram Bose
Road, Kolkata - 700 001.
3. General Manager,
Grey Iron Foundry,
Jabalpur.

... Respondents

Counsel :

Shri S. Nagu for the applicant.
Shri P. Shankaran for the respondents.

Coram :

Hon'ble Shri Justice N.N. Singh - Vice Chairman.

O R D E R

(Passed on this the 7th day of January 2003)

By Hon'ble Shri Justice N.N. Singh - Vice Chairman :-

This Original Application is directed against the order dated 20/07/2001 (Annexure A-3) by which the applicant was transferred from Grey Iron Foundry, Jabalpur to Ordnance Factory, Kanpur allegedly in arbitrary exercise of power. The applicant further requested to direct the respondents to accommodate him on any of the vacancies existing in any of the Ordnance Factories situated at Jabalpur.

M. N. S.

* 2 *

The case of

2. [the applicant is that this applicant was working on the post of Chargeman Grade-II (Technical) at P.S. Section, Grey Iron Foundry (GIF for short), Jabalpur and was awarded penalty of compulsory retirement, against which, he filed OA No. 226/1999 which was disposed of by this Tribunal by order dated 06/11/2000 (Annexure A-1) holding the penalty as harsh and remanded the matter to the Revising Authority for reconsideration on the question of quantum of penalty. It was claimed that the Revising Authority refused to modify the penalty, leading to the filing of contempt petition No. 16/2001 and that thereafter the penalty of compulsory retirement was modified to that of reversion from the post of Chargeman Grade-II to Workman Highly Skilled Grade-II (Fitter) by order dated 14/06/2001 (Annexure A-2). It was claimed that the said order was received by the applicant on 18/07/2001 and the applicant joined the service as Fitter Highly Skilled Grade-II at GIF, Jabalpur on 19/07/2001. The case of the applicant is that on the very next date i.e. on 20/07/2001 a copy of order dated 20/07/2001 was served upon the applicant, by which he was transferred from GIF, Jabalpur to Ordnance Factory, Kanpur (Annexure A-3). It was claimed that by circular dated 04/07/2001 issued by the General Manager, GIF invited options to transfer the Industrial and Non-industrial employees from GIF, Jabalpur to Ordnance Factory, Khamaria to cater^{to} the need of enhanced work load in the Ordnance Factory, Khamaria (Annexure A-4). It was claimed that as the applicant fulfilled the condition, he could have easily been accommodated on any of the post for Industrial Employees category and that the respondents ought to have accommodated the applicant at Ordnance Factory, Khamaria without waiting for an express request from the side of the applicant. It was further

claimed that as this circular dated 04/07/2001 was issued earlier to the decision of transferring the applicant to Kanpur, the impugned action of transfer was intentionally taken to harass, victimise and punish the applicant for having dared to fight for his rights. It was also pointed out that ~~the~~ relieving the applicant on the same date also indicated about victimisation. The applicant claimed to have preferred a representation dated 23/07/2001 (Annexure A-5). According to the applicant, the seniority of the applicant, who belonged ^{to} / workman category was maintained at ^{and as such} the factory level / no employee of the workman category can be transferred from one factory to another. The applicant also claimed that he was first person of his category to be considered for promotion to next higher grade which he will lose, if he is sent to Ordnance Factory, Kanpur. On these grounds it was prayed to set-aside the impugned order of transfer.

3. The respondents have filed reply contesting the claim of the applicant and asserting that the applicant has been transferred from GIF, Jabalpur to Ordnance Factory, Kanpur purely on administrative reasons and in the circumstances the order of transfer does not suffer from any legal infirmity. It was further claimed that being a holder of a transferable post the applicant should not have refused to obey the order and he cannot demand to be posted at any particular post or place as it is the prerogative of the competent authority to decide the place of posting in the interest of administration. It was denied that the order of transfer was issued intentionally to harass, victimise or punish the applicant. It was further claimed that the service record of the applicant

M. N. R.

* 4 *

indicated that he had not shown any improvement and as such it was decided by the competent authority that while implementing the order of Revising Authority it would be in the interest of administration if the applicant was posted out from the respondents factory to any one of its 39 factories located in the Country. It was pointed out that in identical case in the case of ^{one} Shri R.K. Jain who had also challenged his order of transfer in OA No. 395/1996 (R.K. Jain Vs. Union of India and others), this Tribunal did not find the action of the respondents to be malafide and arbitrary and the order of this Tribunal was also confirmed by the Hon'ble Supreme Court. As regards the plea raised by the applicant that his transfer order should have been cancelled, and he should have been posted at Ordnance Factory, Khamaria regarding which applications were invited, the respondents pointed out that such circular required consideration of applications from volunteers on the basis and conditions contained therein in which the competent authority had to look into the interest of administration before accepting the request for transfer to Ordnance Factory, Khamaria. It was emphasised that according to the revised SRO No. 185 of 94, even those Industrial employees who are liable for service in the same factory or office in the Ordnance Factory Organisation could be also transferred to equivalent post in any other factory or office of the Ordnance Factory Organisation in public interest. On these grounds it was prayed to dismiss the Original Application filed by the applicant.

4. A rejoinder was filed by the applicant stating therein that the decision of the case of R.K. Jain Vs. Union of India and others decided by this Tribunal on

M. M. M.

* 5 *

23/10/1996 did not apply in the facts and circumstances of this case especially with regard to Annexure A-4 by which option for transfer to Ordnance Factory, Khamaria from employees of GIF, Jabalpur were invited which was not a case in the case of Shri Jain. The case of the applicant, as placed in the rejoinder, was that carrying his seniority to the transferred place ^{is} in-consequential, as here the applicant was the senior most workman in Highly Skilled Grade-II, whereas he will be placed junior to a large number of Highly Skilled Grade-II workmans in Ordnance Factory, Kanpur.

5. I have heard learned counsels of both the parties and have gone through the record. By order dated 16/05/2002 the respondents were given liberty to dispose of the pending representation of the applicant against the order of transfer. The learned counsel for the respondents informed that the representation dated 23/07/2001 filed by the applicant was disposed of by the competent authority vide order dated 01/11/2002 rejecting the prayer for applicant's adjustment in the Ordnance Factory, Khamaria. It was also submitted that MA No. 1642/2002 was filed annexing the order of rejection of the prayer of the applicant.

5.1. This is admitted case of both the parties that the applicant who was working in GIF, Jabalpur on the post of Chargeman Grade-II (Technical) and that in departmental enquiry punishment of compulsory retirement was awarded to him against which he filed OA No. 226/1999 in this Tribunal and this Tribunal vide order dated 06/11/2000 (Annexure A-1) remanded the case for reconsideration by the Revising Authority on the point of quantum of punishment. Thereafter

[Handwritten signature]

the Revising Authority modified the penalty from compulsory retirement to reversion from the post of Chargeman Grade-II to Workman Highly Skilled Grade-II (Fitter) by order dated 18/07/2001 (Annexure A-2). The applicant joined as fitter HS-Grade-II at GIF, Jabalpur on 19/07/2001 and on 20/07/2001 by the impugned order Annexure A-3 he was transferred from GIF, Jabalpur to Ordnance Factory, Kanpur against which he has filed this OA claiming that he has been victimised and that in Ordnance Factory, Kanpur he will be junior to a number of persons and would loose his promotional prospects. The applicant further raised a point that he was transferred on 20/07/2001, whereas a circular dated 04/07/2001 was issued seeking option from the employees of Grey Iron Foundary, Jabalpur to be transferred to Ordnance Factory, Khamaria. It was claimed by the applicant that he could have been considered under that circular and should have been transferred to Ordnance Factory, Khamaria. The other stand taken by the applicant is that he is low paid employee and should not have been transferred from this factory. Thus the applicant has based his challenge primarily on the ground that he had earlier assailed the action of the respondents before this Tribunal and pursuant to the order of the Tribunal the punishment awarded to him was modified to that of reversion from the post of Chargeman Grade-II to Workman HS-Grade-II. The applicant alleged that ^{he} ~~that~~ was transferred just after he joined on being reinstated, which was malafide and discriminatory.

5.2. It was contended on behalf of the applicant that he should have been accommodated at Ordnance Factory, Khamaria under the Scheme issued on 04/07/2001. That circular has been filed as Annexure A-4. It was rightly pointed out by the learned counsel for the respondents that

[Handwritten signature]

* 7 *

according to condition No. 3 those optees were required to give a declaration that they would loose their seniority of Grey Iron Foundary, Jabalpur and they would be placed at the bottom in Ordnance Factory, Khamaria. This indicated that the applicant, who challenged the transfer order on the ground of loosing his job seniority, ^{also} here would not have been benefited by his request transfer to Ordnance Factory, Khamaria. Needless to say that on an administrative transfer he would carry his own seniority even to Ordnance Factory, Kanpur. Thus the ground taken by the applicant regarding his selection on the basis of Annexure A-4 does not stand on sound footing. Moreover the administration would have been at liberty to select from the optees.

5.3. There is no dispute that the applicant has All India transfer liability and his transfer to any other place on administrative ground cannot be quashed only on the ground that he was a low paid employee. It was rightly pointed out by learned counsel for respondents that in Annexure R-1, SRO No. 185 of 94, according to Note 16 even those employees, who were normally liable for service in the same factory or office in the Ordnance Factories Organisation, without prejudice to the right of the Management, in the public interest, could be transferred to equivalent posts in any other factory or office in the Ordnance Factories Organisation. On behalf of the respondents, it was emphasised that the transfer was purely for administrative reasons and it was denied that it was a case of victimisation. It was also contended that the applicant did not enjoy a good service record and during his 25 years of service between 1973 to 1998 he was awarded penalties of different magnitudes for charges related to his misbehavior with his superiors and his colleagues. The details of

Omky

* 8 *

departmental action taken against the applicant in the past was placed as Annexure R-1, in the short reply filed by the respondents. It shows that during the period mentioned above 28 punishments were awarded to the applicant. It was also contended that the applicant did not show any improvement in his conduct and as such, while implementing the order of the Revising Authority, the administration took a decision that it would be in the interest of the Department that the applicant be posted out of Grey Iron Foundary, Jabalpur and as he is holder of a transferable post, is liable for transfer anywhere in the Country.

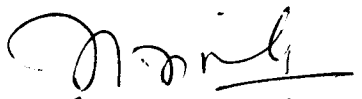
5.4. On behalf of the respondents it was asserted that in identical case where one Shri R.K. Jain was transferred immediately on his reinstatement, this Tribunal, in QA No. 395/1996, in which that transfer order was challenged, held that the transfer order was not vitiated on the ground of alleged malafide. It was also claimed that this Tribunal further held that ^{the} order did not suffer from any illegality. According to the respondents that judgment dated 23/10/1996 passed in QA No. 395/1996 was upheld by the Hon'ble Supreme Court.

6. Summing up the entire discussion made above, I find and hold that the plea of the applicant that he should have been considered for transfer to Ordnance Factory, Khamaria on the basis of circular Annexure A-4 even without his application, is not tenable on the ground that the applicant, who has based his QA mainly on the ground that at Kanpur he would be junior to some persons, as per condition in the circular Annexure A-4, would have been placed at the bottom, losing his seniority in the GIF, Jabalpur which according to the applicant was at the top. Moreover it

M. D. G.

seems hypothetical argument on the ground that he had not opted before his transfer nor his case was considered. It has been discussed above that the applicant was transferred on administrative reasons as he had not shown any improvement in his service period and being punished for 28 times mainly on the grounds of abusing, mis-behaving and causing nuisances. I further find that on identical ground in the case of R.K. Jain, who was also transferred soon after his reinstatement, and had challenged the transfer in this Tribunal and this Tribunal by order dated 23/10/1996 in OA No. 395/1996 held that the transfer cannot be said to be malafide and did not suffer from any illegality^{and} that order was said to have been confirmed by the Hon'ble Supreme Court.

7. In the result I find no merit in this Original Application and it is accordingly dismissed, but without any order as to cost.


(N.N. SINGH)
VICE CHAIRMAN

पृष्ठांकन सं ओ/न्या..... जयपुर, दि.....
प्रतिनिधि ओ/ओ/विभाग.....
(1) सचिव, जयपुर जल संयंत्र प्राधिकरण, जयपुर
(2) जल संयंत्र प्राधिकरण, जयपुर
(3) जल संयंत्र प्राधिकरण, जयपुर
(4) "SA" जयपुर जल संयंत्र प्राधिकरण, जयपुर
सूचना एवं आवाजका कक्षा, जयपुर
S. Nagu - Adm
P. Shankaran - Adm
J. Singh
9.1.03

Issued
9.1.03
BS