

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

O.A.No.241/2005

Decided on : August 2, 2005

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN**

P.K.Churian son of Late Shri P.C.Kurudilla, aged about 51years, resident of Quarter No.21 IV, CPWD Quarters, Sector 7, Vidhyadhar Nagar, Jaipur and presently holding the post of Psychologist, Office of Assistant Director, Vocational Rehabilitation Centre for Handicapped, R-SA-23, Surya Path, Jawahar Nagar, Jaipur-302004.

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Applicant

By : Mr.C.B.Sharma, Advocate.

Versus

1. Union of India through its Secretary to the Government of India, Directorate General of Employment and Training, Ministry of Labour & Employment, Shram Shakti Bhawan, New Delhi-110001.
2. Director General, Directorate General of Employment and Training, Shram Shakti Bhawan, New Delhi-110001.
3. Dy. Director General (Employment), Directorate General of Employment and Training, Shram Shakti Bhawan, New Delhi-110001.
4. Shri B.K.Dubey, Assistant Director, Vocational Rehabilitation Centre for Handicapped, 4-SA-23, Surya Path, Jawahar Nagar, Jaipur-302004.

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Respondents

By : Mr.Kunal Rawat, Advocate.

O R D E R(oral)

KULDIP SINGH, VC

The challenge of the applicant in this O. A. is to the order dated 2.5.2005 (Annexure A-1) issued by the respondent no.3 by which he has been transferred from Jaipur to Agartala with the directions to

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move first and take over charge there without posting of any official vice the applicant at Jaipur. The applicant also impugns the order dated 6.5.2005 (Annexure A-2) by which the applicant has been relieved with directions to report for duty at Agartala inspite of the fact that the applicant is on medical leave with permission and was under treatment at Chennai.

The facts as ^{alleged} in brief are that the applicant had initially been appointed as Rehabilitation Counselor on 17.8.1982 at Chennai where he worked for a period of 17 years and while working at Chennai, he was promoted as Psychologist in 1999 and was posted at Jaipur. The applicant further claims that his wife is employee of the Government of India, Ministry of Defence holding the post of of Lecturer which is not transferable one and she ^{is} Asthmatic patient. Besides that, applicant has liability of his old mother also who is widow of 78 years.

The applicant submits that due to these circumstances it is not possible for him to shift his family at Jaipur and applicant after completion of period of three years at Jaipur requested that he may be posted somewhere near Chennai but he has been posted to far away place at Agartala from his family. It is further submitted that his request for transfer from Jaipur to Chennai has not been considered in a proper manner though the applicant has been making his requests right from the day he had been transferred and posted at Jaipur.

It is further stated that the one Shri S.Z.H.Zaidi was holding the post of Assistant Director at Jaipur who was transferred on promotion as Deputy Director in the month of February, 2004 to Mumbai and thereafter the applicant was allowed to hold the post of Assistant Director, in Charge and DDO in absence of regular incumbent and

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thereafter in the month of December, 2004, respondent no.4 who was holding the post of Assistant Director, Regional Vocational Training Institute for woman Jhalana Doongari, Jaipur, was ordered to hold dual charge of the post of Assistant Director, Vocational Rehabilitation Centre for Handicapped, Jawahar Nagar and since then respondent no.4 was holding the said post.

It is further stated that on joining of respondent no.4, he started harassing the applicant in connection with the day to day working and on various occasions respondent no.4 misbehaved by misusing his powers in day to day working as well as on personal claim of the applicant. The applicant applied for withdrawal of Rs.1,75,000/- from G.P.F. which the respondent no.4 did not pursue intentionally and the matter for payment of same is still pending. He harassed the applicant by not releasing his pay and allowances for the month of March and April, 2005. It is further stated that the applicant made a request to respondent no.4 for payment of GPF withdrawal which was essential for construction of house at Chennai but respondent no.4 intentionally did not pursue the same and on 3.2.2005, he mishandled the applicant in the office hours and also used unparliamentary language against which the applicant filed an FIR against the respondent no.4 on 3.2.2005 which is pending for further action. So, it is submitted that respondent no.4 has misled the higher authorities for transfer of the applicant from Jaipur and the higher authorities without going through the facts ordered transfer of the applicant from Jaipur to Agartala. The applicant had also made a request for cancellation of transfer order narrating his family circumstances but the respondents conducted an inquiry behind the back of the applicant and he has not been given



any opportunity to explain his position. When the inquiry was conducted the applicant was on leave at Chennai. The applicant further says that he is not interested to stay at Jaipur and he is pursuing the matter of his transfer from Jaipur right since his joining in 2002 due to family circumstance as his wife is in employment at Chennai but under the pressure of respondent no.4, the applicant has been transferred to a far off place to Agartala in spite of the fact that an FIR has been registered against the respondent no.4 and is pending action at Jaipur.

It is further stated that transfer policy and guidelines also provide for posting/transfer at choice stations after completion of prescribed tenure for which applicant made request on various occasions and also made request for deputation at Chennai, but the request of the applicant has not been considered and instead on the pressure of the respondent no.4, the applicant has been posted to Agartala. It is submitted that the transfer of the applicant is against the guidelines and as such the impugned orders are liable to be quashed. It is further submitted that the transfer of the applicant is not a routine transfer but it has been made with mala fide intentions and on extraneous considerations.

Respondents are contesting the O.A. The respondents in their reply plead that subsequent to the issue of transfer order by the Ministry, the applicant has been relieved on 6.5.2005 and Rehabilitation Officer was directed to take over the charge of Psychologist and hence the reliever of the applicant was available. The applicant had initially applied for 5 day's leave for the period from 21.2.2005 to 25.5.2005 on medical grounds which was extended from time to time and for quite some time, the department was uninformed



about his whereabouts.

As regards the giving of dual charge to respondent no.4 is concerned, it is submitted that due to unsatisfactory work performance and non-control over the situation on the part of the applicant, he was advised to improve himself but he failed to improve and thus the Department had to reallocate the powers of Head of Office to other officers which were delegated to applicant, due to transfer of regular Assistant Director(R)/HOO w.e.f. 6.2.2004. Accordingly, Shri B.K.Dubey, was asked to look after the work of Head of Office of VRC, Jaipur, till a regular officer is posted.

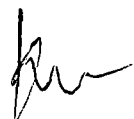
It is submitted that on the one hand the applicant has requested for his transfer back to Chennai and on the other hand he has applied for a post of Senior Research Officer in CIRTES New Delhi. Service at CIRITES is not transferable. It is further stated that request of the applicant for the post of Sub Regional Employment Officer, CGC, Chennai was not forwarded keeping in view the policy decision by D.G.E. & T because there is acute shortage of officers in Centres and resultant vacancy would not be filled up due to technical reasons. He himself had been requesting for his transfer to VRC, Chennai whenever a vacancy arises there and in fact there had been no vacancy of Psychologist at VRC, Chennai during the period from June, 1999 till date.

The allegation of harassment of applicant by respondent no.4 are also disputed. It is pleaded that the applicant has shown insubordination on different occasions as he refused to give his report as Psychologist in the case of one Shri R.S.Yadav and he has been showing his tendency of non compliance on previous occasions also.



The applicant was included in the Self employment Cell of VRC, Jaipur to review the progress in the cases of handicapped persons referred to the Banks for Financing of projects of handicapped entrepreneur but he expressed his inability to attend the said assignment and did not attend the meeting called on different dates including on 31.10.2001. Thus he has showed his tendency of disobedience to his senior officers but also showed lack of commitments for the welfare of Handicapped persons for which he has been appointed by the Government of India.

As regards delay in release of GPF withdrawal, it is submitted that the same could not be taken up as the delay has been caused mainly due to non submission of relevant documents along with his application which is rather mandatory and partially by keeping himself unavailable for disbursement of DD which is now very much available with DDO for disbursement. It is further submitted that transfer of the applicant has been ordered on the basis of recommendations of the Special Team of three officers which also consisted Under Secretary to the Government of India and Deputy Director (Emp), DGET, New Delhi, sent by the Ministry to review the situation prevailing at V.R.C., Jaipur after the above mis happening. The said Committee recommended the transfer of all the four persons including the respondent no.4 and thus the Ministry has already issued transfer orders, posting applicant at VRC Agartala, Shri Bachchoo Singh at VRC, Ahmadabad and Shri Dulal Rewani at VRC, Guwahati. The person at Agartala has completed his tenure and to relieve him, someone is required to be posted there immediately. In so far as FIR is concerned, it is submitted that the police has submitted the final report ^{as did not file challan as} which reveals that consequent upon the withdrawal of powers of Head of office of VRC, Jaipur, the



applicant was frustrated and was not performing his duties properly and infact it was applicant who had hurled abuses in filthy language against the respondent no.4. There being no vacancy, the applicant could not be transferred back to Chennai. It is thus, prayed that the O.A be dismissed.

I have heard learned counsel for the parties at length and gone through the pleadings as well as record produced by the respondents.

By now it is well settled that in the matter of of transfers and posting it is the management who is the best judge to see as to where, an employee working under it, is to be posted and in which office. The Courts and Tribunals have been forbidden to interfere in the transfer orders unless the transfer is made in violation of the statutory provisions or the transfer order is tainted with malafide or has been made as a measure of punishment. The transfer guidelines have no statutory force. These views have been taken in the cases of Abani Kanta Roy Vs. State of Orissa (1996) 32 ATC, Page 10; State of M.P. Vs. S.S.kaurav, 1995 SCC (L&S), Page 666; State of Rajasthan Vs. Prakash Solanki, 2003 (7), SCC, 409; V.Jagannadha Rao Vs. State of A.P., 2001 (10) SCC, 414 & State Bank of India Vs. Anjan Sanyal, 2001 (5) SCC, 514; Union of India & others Vs. S. L. Abbas, AIR 1993 SC Page 2444.

In this case the main allegation of the applicant is that the transfer has been ordered at the behest of the respondent no.4, which fact on the face of it, appears to be wrong as from the perusal of the impugned order of transfer it is apparent that the same has been issued by the DDG from New Delhi and the order has been passed in public interest. Merely in compliance of the orders issued by the DDG,



Ministry of Labour, New Delhi, the respondent no.4 has issued relieving order and that fact itself cannot be used to say that the transfer order has been issued by the respondent no.4 or at his behest. Moreover, the respondent no.4 has also been transferred to Varanasi and thus he has no role to play in this transfer.

As far as the malafide of the respondent no.4 is concerned, the applicant had made an attempt to make out a case that since there was a quarrel in the office and applicant had lodged an FIR against the respondent no.4 which is pending consideration, so respondent no.4 became furious because of lodging of the FIR by the applicant and joined hands with the higher authorities and managed transfer of the applicant from Jaipur to Agartala. In this regard it has been pointed out that the respondent no.1 considered this issue by stating that the police have investigated the case and submitted its final report to the competent court stating therein that they are not interested to file the challan in the Court against the accused as it is non cognizable offence and no case is made out for filing the challan against ~~the~~ respondent no.4. The learned counsel for the applicant submitted that though such type of report has been submitted by the Police to the Court but applicant has a right to hearing before the competent court where final report is presented. No doubt, the applicant has a right to participate in the proceedings where the final report is pending but the same is to be accepted or fresh investigation can be ordered by the competent court but for the time being prima facie it seems that the police who has submitted the final report is not inclined to file the challan against the respondent no.4. It may be that some minor incident had taken place in the office for which the applicant had gone to the Police



Station and lodged the FIR but that does not mean that the respondent no.4 was so powerful that he had managed with the high ups at New Delhi and has pressurized them for passing the impugned order of transfer of the applicant. On the contrary the reply filed by the respondents states that a team of three officers conducted the inquiry and one of the officer included Under Secretary from New Delhi. It is on the recommendations of the said inquiry committee under the charge of the Under Secretary, Government of India, New Delhi, that to maintain peace and harmony in the office decision has been taken to shift the applicant along with other three officials who are involved in the incident. The respondent no.4 has also been ordered to be transferred to Varanasi and he has taken over the charge there. But the applicant is not satisfied and he submitted that all other persons have been given transfers near their home towns or a place of their choice but the applicant has been shifted out to a far off place at Agartala and thus there is discrimination and malafide intentions in his transfer. Even the applicant has mentioned in his O.A that he is not interested to stay at Jaipur but he wants his transfer near Chennai. In my view this contention of the applicant has no merits because the respondents have explained the position that the applicant cannot be posted at Chennai as there is no post of Psychologist at Chennai and the applicant having already enjoyed promotion to the post of Psychologist, can be transferred only against the post of Psychologist and since no post is available at Chennai, the applicant cannot be transferred to Chennai. As regards the discrimination with regard to the place of posting vis a vis other persons to their choice of station is concerned, the applicant has not been given posting near or at



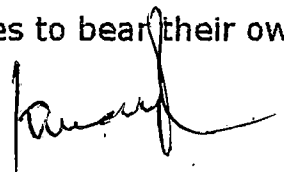
Chennai as the post is not available and thus there is no illegality committed by the respondents. Since there is no vacancy of Psychologist existing at Chennai or near Chennai, obviously the applicant cannot be posted there.

As regards the posting of applicant at Agartala is concerned it is for the competent authority to decide as to where they can post a person in the interest of Administration or their organization. It appears that through this O.A. The applicant is not challenging his transfer order from Jaipur to Agartala but he has asked for his choice posting near his native place which cannot be permitted under the garb of this O.A.

The applicant has also not referred to any statutory provision which is alleged to have been violated by passing the impugned order. It is admitted case of the applicant himself that applicant has transfer liability to All over India wherever VRC Centres are working under the Ministry of Labour and in any case the applicant cannot be given a posting at his choice station so long as the post is not vacant there or near by Chennai. As regards the malafide is concerned, the complaint made by the applicant to the police as well as to the higher authorities has been inquired into and a committee of the higher officers which included Under Secretary to the Government of India and Deputy Director (Emp), DGET, New Delhi from the Ministry has conducted the inquiry and on the recommendations of that Committee the applicant and others have been transferred which is the prerogative of the Management itself ^{as they have to} ~~which~~ has to maintain harmonious atmosphere in their office. This cannot be said to be as a measure of punishment because the applicant could be posted anywhere in India where the



post is available and where the services are required by the Management and he cannot claim as a matter of right for posting at a particular station and thus ^{the impugned} transfer can be termed to be in public interest. In view of absence of vacancy, the guidelines relating to posting of husband and wife at the same station as far as possible, are also not practicable to follow. So, I find that in this case the order of transfer passed against the applicant is in public interest. It is not actuated with malafide intentions and is not punitive in nature. Thus, no interference is called for by this Tribunal in the impugned orders and the O.A is dismissed, leaving the parties to bear their own costs.


(KULDIP SINGH)
VICE CHAIRMAN

August 2, 2005.

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