

OA No. 712/2013 with MA No. 438/2013

03/01/2014

Mr. R. P. Sharma, Counsel for applicant.
Mr. T. P. Sharma, Counsel for respondents.

Heard learned Counsel for the
parties.

O.A. and M.A. are disposed
of by a separate order on the
separate-sheets for the reasons
recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

Recd. file
NW
62/5-C/2012
12m (AM) 31
Oct 2012
3/1/14

(Dr. R. P. Acharya)
DY- Secy
DAE
MUMBAI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 712/2013
WITH
MISC. APPLICATION NO. 438/2013

Jaipur, the 03rd day of January, 2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Jamuna Prasad son of Late Shri Sukh Ram, aged about 57 years, resident of 52/203, Sector No. 5, Pratap Nagar, Sanganer, Jaipur. Presently working as Scientific Officer in the office of Atomic Minerals Directorate, Pratap Nagar, Jaipur.

... Applicant

(By Advocate: Mr. R.P. Sharma)

Versus

1. Union of India through the Chairman, Atomic Energy Commission and Secretary, Department of Atomic Energy, Anu Shakti Bhawan, Chatrapati Shivaji Maharaj Marg, Mumbai.
2. The Director, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy, 1-10-153-156, Begum Pet, Hyderabad.
3. Shri Pratap Singh Parihar, Director, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy, 1-10-153-156, Begum Pet, Hyderabad.
4. Regional Director, Atomic Minerals Directorate for Exploration and Research, Western Region, Department of Atomic Energy, Sector-5, Extension Pratap Nagar, Sanganer, Jaipur.

... Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

The present OA has been filed by the applicant being aggrieved by his transfer order dated 05.09.2013 (Annexure A/1) vide which he has been transferred from AMD, Western Region, Jaipur to DCS&EM, Mumbai for further assignment. According to the learned counsel for the applicant in a routine and ordinary

Anil Kumar

manner, no employee/officer working under Atomic Energy Department is transferred from one unit to another unit as every unit makes recruitment for smooth working as per requirement of that unit. Officials/Officers are transferred from one unit to another unit on their own request. But in violation of the transfer policy of the respondent department, the applicant has been transferred from AMD, Western Region, Jaipur to DCS&EM, Mumbai. The learned counsel for the applicant submitted that the applicant has been agitating before the competent Courts/Tribunals for redressal of his grievances. He filed an OA No. 494/02 because he was not assigned any work by the respondents and the applicant was sitting idle. He subsequently filed another OA bearing No. 476/2003 to allocate work commensurate to his technical skills/qualifications, status and experience.

2. Subsequently, the applicant also filed an OA No 233/2010 and 18/2010 for seeking the directions to promote the applicant w.e.f. 01.08.2006 because his juniors namely, S/Shri S.K. Sharma and Ramesh Sharma were promoted to the grade of Scientific Assistant "F" but the applicant was denied promotion.

3. The applicant also filed OA No. 222/2012 against the adverse remarks recorded in his ACR for the year 2008-2009. When the appeal of the applicant was not decided by the respondents within the prescribed time limit of three months, he filed Contempt Petition No. 69/2012, **Jamuna Prasad vs. Pratap**

Anil Kumar

Singh Parihar, which caused resentment in the mind of the respondent no. 3, who is Director, AMD, Hyderabad and is the Controlling Authority of the applicant. After filing of the Contempt Petition, the respondent no. 3 rejected the appeal of the applicant. Subsequently, the applicant filed an OA No. 304/2013.

4. The applicant also filed another OA No. 15/2012 against the adverse remarks in his ACR for the year 2007-2008.

5. The learned counsel for the applicant submitted that since the applicant was agitating before the Tribunal for his legal rights, therefore, the respondents being prejudiced against the applicant have transferred him from AMD, Western Region, Jaipur to DCS&EM, Mumbai.

6. The learned counsel for the applicant further stated that the applicant has just 28 months to retire and his wife is under treatment at Jaipur for several diseases like Diabetes, Hyperthyroid, Osteoporosis and hyper tension etc.

7. He also drew my attention to the relieving order dated 06.09.2013 (Annexure R/1). In this relieving order, it has been stated that the applicant would be relieved on 09.09.2013. He argued that this relieving order has been issued in advance. Therefore, it is arbitrary and illegal.

Anil Kumar

8. The learned counsel for the applicant further submitted that respondent no. 3, Shri Pratap Singh Parihar, Director, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy, Hyderabad has been made party by name but he has not filed reply, denying the allegation against him. The learned counsel for the applicant further submitted that in order to take revenge being aggrieved by filing of the Contempt Petition against respondent no. 3, he misfed the respondent no. 1 and subsequently, the applicant has been transferred from AMD, Western Region, Jaipur to DCS&EM, Mumbai.

9. The learned counsel for the applicant argued that the applicant is a Civil Engineer and he has the necessary experience to supervise the work of civil construction but one Shri G.S. Sharma (Geologist) who did not have any working knowledge, technically qualified experience or skill of working for the civil construction work was made Incharge of all civil construction work at Western Region, Jaipur. The applicant raised objection on this point. Therefore, the respondents became annoyed with the applicant. Hence he was transferred from Jaipur to Mumbai. Therefore, the transfer order dated 05.09.2013 (Annexure A/1) is absolutely arbitrary, illegal, unjust and improper and thus it should be quashed and set aside.

10. On the other hand, the learned counsel for the respondents submitted that the transfer order of the applicant has been passed by the competent authority after considering the exigency of

Anil Kumar

service. There is no malafide intention on the part of the competent authority.

11. The post on which the applicant is working is a transferable post and an employee can be transferred from one post to another for which no prior consent of the employee is required. In the instant case, the transfer order has been issued keeping in mind the public interest of the Organization.

12. The learned counsel for the respondents denied that the applicant has been transferred because he has been pursuing his legal rights before the Tribunal.

13. The learned counsel for the respondents submitted that the applicant was not willing to work under Shri G.S. Sharma (Geologist). Therefore, he has been transferred to Mumbai under the Construction Division. The applicant is a Civil Engineer and his services can be better utilized in the Construction unit at Mumbai. There is neither any arbitrariness or illegality in the transfer order nor it is based on any malafide intention.

14. The learned counsel for the respondents was directed by this Tribunal vide order dated 22.11.2013 to produce the Rules/Policy relating to internal/inter unit transfer of Scientific Officers working with the respondents department. He was also directed to produce the concerned file of dealing with the transfer of the applicant.

Anil Kumar

15. With response to the Rules/Policy regarding the transfer of Scientific Officers working with the respondent department, the learned counsel for the respondents submitted that there is no specific policy. The Scientific Officers are transferred either at their own request or in the exigency of work. The transfer is an incident of service. The applicant is working on a transferable post. He himself stated that he has not been assigned work commensurate with his qualification and experience and, therefore, keeping this fact in mind and the fact that he did not wish to work under a Geologist i.e. Director, AMD, Western Region, Jaipur, the applicant was transferred from Jaipur to Mumbai.

16. The learned counsel for the respondents produced the original file No. 12/5(2)/2012-I&M (AMD) dealing with the transfer of the applicant, as directed by this Tribunal vide order dated 22.11.2013. The learned counsel for the respondents submitted that since the transfer order has been passed by the competent authority without any malafide intention and in public interest, therefore, this OA has no merit and it should be dismissed with costs.

17. The learned counsel for the applicant has filed rejoinder where it has been stated that in ordinary case, an employee is not sent on transfer to another unit functioning under the Department except in exceptional circumstances. The present one is a glaring

Anil Kumar

example where the transfer has been made out of unit without showing any justified reason. The transfer of the applicant is punitive in nature having been made on the recommendation of respondent no. 2, who is personally biased against the applicant.

18. Heard the learned counsel for the parties and perused the documents on record. It is not disputed between the parties that the applicant has been agitating his grievances from time to time by filing OAs before the Tribunal. The applicant has alleged bias/malafide against respondent no. 3, Shri Pratap Singh Parihar. He has not filed any reply to the allegation. The applicant has leveled the allegation of bias and malafide against the Respondent No. 2 because he had filed a Contempt Petition against him. He has made him party by name but respondent no. 3 has not filed any reply.

19. The learned counsel for the respondents submitted that the transfer of the applicant has been issued by the respondent no. 1, who is the Chairman, Atomic Energy Commission and Secretary, Department of Atomic Energy. There is no allegation of bias or malafide against him. Therefore, it cannot be said that the transfer order dated 05.09.2013 (Annexure A/1) has been issued on the basis of bias, prejudice or malafide. I have carefully perused the original file relating to the transfer of the applicant, produced by the respondents. I do not find that the applicant has been transferred because of any malafied/bias on the part of the respondents. The notes on the file shows that the applicant was

Anil Kumar

transferred to Mumbai because DCS&EM, Mumbai has well structured Civil Engineering Wing and the applicant can work constructively to the best of his efficiency. Moreover his performance can be evaluated by the senior Civil Engineers and thus the grievance of the applicant to this extent is redressed. Thus from the noting of the file, I do not find that the transfer order of the applicant has been issued because of any malafide on the part of the respondents.

20. It is settled law that an employee who has a transfer liability can be transferred in public interest or in administrative exigency. In this case, it is not disputed that the applicant has all India transfer liability. From the perusal of the file of the applicant, it is evident that the applicant was not satisfied to work under the Geologist, therefore, the respondents have transferred him to Mumbai where his experience and qualifications can be better utilized by the Department and the applicant would also be satisfied that he is working under the qualified Civil Engineers and not under a Geologist as was the case in Jaipur.

21. Hon'ble Supreme Court in Para Nos. 8 & 9 of its judgment in the case of State of U.P. vs. Goverdhan Lal (supra) has held that

"8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or

Anil Kumar

passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

"9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

Hon'ble Supreme Court in Para No. 9 has held that even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

Anil Kumar

22. In the present OA, the applicant has not leveled malafide or bias against respondent no. 1 who is the competent authority to transfer the applicant. Even otherwise, from the perusal of the file relating to the transfer of the applicant, it cannot be concluded that the applicant has been transferred because of malafides. The transfer has been issued by the competent authority and it is not in violation of any statutory provision, Act or Rule. Therefore, there is no justifiable ground to interfere with the transfer order (Annexure A/1).

23. The learned counsel for the applicant had argued that relieving order of the applicant dated 06.09.2013 (Annexure R/1) has been issued in advance. I have carefully perused the relieving order of the applicant dated 06.09.2013 which states that the applicant would stand relieved of his duties w.e.f. 09.09.2013. I do not find infirmity in this relieving order. In fact it states the date of relieving of the applicant from Jaipur office so that the applicant could complete necessary formalities for his being relieved from Jaipur office like surrender of CGHS Card and other Government articles, if any, issued to him from Western Region, Jaipur Office before proceeding to new Headquarter.

24. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

25. The documents annexed with MA No. 438/2013 are taken on record. However, in view of the order passed in the OA, the

Anil Kumar

prayer of the applicant for interim relief in the MA is rejected. The MA is disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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