

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD**

Orders reserved on : 08.01.2018

Orders pronounced on : 29.01.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

M.A.No.330/02156/2017

in

O.A. No.330/1242/2017

Ashish Pandey

..... *Applicant*

(By Advocate : Shri Shyamal Narain)

Versus

Union of India and others.

..... *Respondents*

(By Advocate : Shri L.M. Singh and Shri L.P. Tiwari)

O R D E R

Delivered by Hon'ble Mr. Justice Dinesh Gupta, J. M.:

The applicant has filed the aforementioned OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) quash and set aside the impugned transfer order dated 06.06.2017 (Annexure No.A-1 to Compilation No.I), granting all consequential benefits to the applicant.
- b) Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the present case.
- d) Award the costs of this Original Application in favour of the applicant, throughout."

The applicant has also prayed for interim relief that "this Hon'ble Tribunal be pleased to stay the effect and operation of the impugned transfer dated 06.06.2017."

2. This Tribunal while admitting the OA, vide Order dated 12.10.2017, as an interim measure passed the Order that "it is provided that till the next date the effect and operation of impugned order dated 06.06.2017 shall remain stayed."

3. The respondents have filed the instant Misc. Stay Vacation Application NO.2156/2017 along with their short counter affidavit and prayed that their stay vacation application shall be heard. Consequently, we heard the learned counsel for the parties on the said Stay Vacation Application.

4. In the Stay Vacation Application, the respondents have contended that the respondents are filing their short counter affidavit along with the stay vacation application and that they will file their detailed counter affidavit in due course. In the short counter affidavit, the respondents have stated that the applicant while serving in the office of respondent no.3 was constantly involving himself in trade union activities claiming as working President of INTUC, whereas the fact is that he was neither the member of any registered trade union of OEFC nor supported by any recognized federation.

4.1 It is further stated that there are three recognized federations in the Ordnance sector and all these three

federations have affiliated three unions at Ordnance Equipment Factory, Kanpur but the applicant claims for representing defence employees is with no official confirmation. More so, Ministry of Defence vide order dated 4.5.2017 withdrew its earlier letters regarding participation of office superintendent in trade union activities and copy of this letter was forwarded by the Ministry to all the recognized federations and also CDRA for taking further necessary action in the matter and disallowing all office superintendents for participating in union activities. The applicant, in spite of knowing this order of Ministry, did not disassociate himself in all such activities unauthorizedly. This is a clear defiance of the orders of the Ministry and also shown unbecoming of a Government servant on the part of the applicant.

4.2 Further it is stated that in recent past, on 30.5.2017 at 11.00 a.m., when the vehicle of the Economic Advisor of the Ministry of Defence was approaching towards the main gate of the office of Respondent no.3, the applicant after breaking the security cordon, came in front of the vehicle and created obstruction and also shown him black flag in protest. The applicant, along with the outsiders, lay in front of the staff car of the Economic Advisor on the road with the black flag, thus obstructed his entrance to the factory which could be cleared with the help of the security personnel including the Security Officer of the factory. The applicant, after holding demonstration, addressed media criticizing the Government

policies. This news was widely published in the local newspapers.

4.3 The respondents also stated that there were other incidents also reported by the Security Officer of the factory. That on 2.6.2017, a surprise check was carried out by the Security Officer in the Labour Welfare Section (where the applicant was posted) and it was found that the applicant was missing from his section/place of duty at 09.20 hours. Later, he turned up in his section. During the period of absence, he was engaged in conducting meeting in the T-2 section at shop floor by collecting few workers who were engaged in their daily production work and delivered a speech in that section against the Government policy. The applicant also instigated employees to march to the residence-cum-office of the Commissioner, Kanpur near Bhagwad Das Ghat Colony after 5.30 p.m. and also to submit a memorandum for the Prime Minister of India on core-non-core issue to him. The applicant earlier involved himself in the distribution of pamphlets/typed letters to the factory employees against the Government policy of non-core items and organised Dharna/demonstration and political meetings at the approach road to the factory Main Gate unauthorisedly.

4.4 The respondents also stated that on 6.6.2017, it was observed that the unauthorized activities of the applicant, went so far that he started creating disturbance in the vital

defence production activities of the factory by organizing meetings even inside the sections gathering the employees working there. Hence, the management decided to transfer him on administrative ground in public interest to Ordnance Clothing Factory, Avadi on 6.6.2017 to save the factory's working and discipline at the normal stage, since for the post of Office Superintendent, General Manager is the Controlling/Administrative Authority for taking any administrative action. Accordingly, the applicant was ordered to be transferred to OCF, Avadi vide transfer order dated 6.6.2017 (afternoon) after due consultation with the G.M. OCF, Avadi, i.e., respondent no.4. Subsequent to transfer order, the papers related to the applicant, i.e., service records, duly vetted by local accounts office, have already been sent to the office of respondent no.4 on 29.7.2017.

4.5 Respondents further stated that since in doing the above activities, the applicant violated Rule 3 (1) (ii), (iii), 7 (i), 8(i) & 9(i) of the CCS (Conduct) Rules, 1964, just after issuing transfer order of the applicant, the Ordnance Factory Board, Koklata was informed about the administrative action taken by General Manager, OEF, Kanpur regarding transfer of the applicant and also the complete case for deciding suspension and issuance of charge sheet, as a measure of disciplinary action for his misconduct, was sent to the OFB, Kolkata vide letter dated 19.6.2017. Further since DGOF is the disciplinary authority for the post of Office Superintendent,

the respondent no.4, i.e., OFB, Kolkata having gone through the seriousness of the misconduct, charge sheeted the applicant under Rule 14 of the CCS (CCA) Rules, 1965 and charge memorandum was sent to OCF, Avadi, i.e., respondent no.4, who is the present controlling officer of the applicant for serving him the same avoiding the suspension of the applicant, since it was not applicable as he had already been transferred out/struck off from the strength of OEF, Kanpur.

4.6 Thereafter vide order dated 21.7.2017, major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 was ordered and the same was sent to General Manager, OCF, Avadi, i.e., respondent no.4. The General Manager, OEF, Kanpur, i.e., respondent no.3 is fully competent to order for transfer in public interest on administrative grounds of an office superintendent being his appointing/controlling authority. It is further pointed out that the post of Office Superintendent, (NIE-non Industrial Employee) is a promotional post in the grade pay of Rs.4200/- which is analogous to the post of Chargeman (a non Gazetted Officer (NGO post Grade Pay of Rs.4200). The DPC minutes in respect of the applicant from the post of UDC to Office Superintendent was put up for approval of the General Manager and the GM signed on the DPC minutes dated 31.3.2017, thereby approving the promotion to the post of Office Superintendent. Since it is an analogous post to that of Chargeman, whose appointing authority/controlling authority

is also the GM, i.e., respondent no.3 and is competent to order for its transfer (transfer of chargeman), hence the same ratio of that of the Chargeman holds good in the case of the Office Superintendent.

4.7 The respondents further stated that it is a clear delegation by the OFB to the GMs/Sr. GM/Head of Units of the factories that GMs can decide the inter-factory-transfers for the post of chargeman (analogous to the post of Office Superintendent) after mutual consultation amongst them. In pursuance of this authority letter, GM, OEF, Kanpur made a consultation with the GM/OCF, Avadi and ordered transfer of the applicant from OEF, Kanpur to OCF, Avadi on administrative grounds in public interest, i.e., in the interest of the factory, since GM is the controlling/administrative authority for the post of Office Superintendent.

4.8 The respondents also stated that interim stay order granted by this Tribunal vide Order dated 12.10.2017 passed in the aforesaid OA is not possible to be made operative on technical reasons, as the factory order dated 6.6.2017 is fate accompli having been already given effect/made operative w.e.f. 6.6.2017 (afternoon). As the applicant is now in the strength of GM, OCF, Avadi, Chennai, i.e., respondent no.4 for pay and allowances since 6.6.2017, a fresh transfer order is required from GM/OCF, Avadi, if he is to be taken on the

strength of OEF, Kanpur. As such, scope for any action from GM, OEF, Kanpur on the interim order is not clear.

4.9 It is further stated that in the matters of transfer on administrative grounds in public interest, i.e., in the interest of unit, the scope of judicial review is very limited. It does not give to the applicant any legally enforceable right to challenge it under Article 226 of the Constitution of India.

4.10. In the Stay Vacation Application, the respondents also relied upon the judgments of the Apex Court in the cases of *State of U.P. and others vs. Goberdhan Lal*, reported in (2004) 11 SCC 402 and *S.C. Saxena vs. Union of India and others*, reported in (2006) 9 SCC 583.

4.11 Lastly it is stated that in view of the facts and circumstances stated in the short counter affidavit, the impugned order of transfer dated 6.6.2017 has already been given effect to and the applicant does not remain the employee of OEF, Kanpur since 6.6.2017 itself. As such, the interim stay order dated 12.10.2017 passed by this Tribunal has been inoperative and no order etc. has been passed after the interim order dated 12.10.2017 and therefore prayed that the interim order dated 12.10.2017 be vacated.

5. Counsel for the applicant opposed this Misc. Stay Vacation Application and submitted that the applicant has challenged the impugned transfer order dated 6.6.2017 on the grounds that firstly it has not been approved by OFB,

Kolkata, secondly, the impugned transfer order is punitive in nature and thirdly, there was no administrative reasons for transferring the applicant. Counsel further submitted that this Tribunal after considering the contentions of the applicant passed the interim order dated 12.10.2017 in favour of the applicant and at this stage there is no reason to interfere with the aforesaid interim stay order granted by this Tribunal and the present Misc. Stay Vacation Application is liable to be rejected by this Tribunal.

6. It is not disputed that interim order was granted on 12.10.2017 after considering the facts and legal position stated by the applicant also. The respondents have pressed the stay vacation application on the ground that GMs of both the factories have authority to mutually transfer the employee(s) to each other and the impugned transfer order was on administrative grounds and in the interest of public as the applicant was creating hindrance in the working of the said factory in which he was unauthorizedly indulged in union activities being Office Superintendent and lastly that the said impugned transfer order has already been given effect to on 6.6.2017 (afternoon) itself.

7. We are unable to accept the contentions raised by the learned counsel for the respondents, we find no good ground to vacate the interim order granted by this Tribunal vide Order dated 12.10.2017 as the grounds taken by the

respondents for vacation of the said interim stay order affects the merits of the case and the said grounds shall be considered only after obtaining the detailed counter affidavit by the respondents and at the time of final hearing of the OA. So without commenting much on the merit of the case, the present Misc. Stay Vacation Application NO.2156/2017 is dismissed at this stage.

8. The respondents are granted four weeks' further time to file their detailed counter affidavit.
9. List this case on 6.3.2018.
10. Interim order granted vide Order dated 12.10.2017 to continue till the next date of hearing.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Member (J)

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