

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.021/0164/2017 &  
MA No. 178/2018**

**Reserved on: 23.10.2018**

**Order pronounced on: 24.10.2018**

Between:

Sri Dinesh Singh, S/o. Laxman Singh,  
Aged about 54 years, Occ: Asst. Director of Official Language (ADOL),  
Raj Bhasha Branch, ESI Corporation,  
Regional Office, Adarsh Nagar, Near MLA Quarters, Hyderabad,  
R/o. H. No. 2-4-50/10, Upparapally, PO Hyderabad, Hyderabad,  
Hyderguda, Attapur, Hyderabad – 500 048.

...Applicant

**And**

1. Union of India, Rep. by the Director General,  
Employees State Insurance Corporation,  
Headquarters, Panchdeep Bhavan,  
CIG Marg, New Delhi – 110 002.
2. The Deputy Director,  
ESI Corporation, Headquarters,  
Panchdeep Bhavan, CIG Marg, New Delhi – 110 002.
3. The Regional Director,  
ESI Corporation, Adarshnagar,  
Near New MLA Quarters, Hyderabad.

...Respondents

Counsel for the Applicant      ...      Mr. R. Yogender Singh

Counsel for the Respondents      ....      Mr. M.C. Jacob, Advocate  
For Mr. B.N. Sharma, SC for ESIC

**CORAM:**

*Hon'ble Mr. B.V. Sudhakar*      ...      *Member (Admn.)*  
*Hon'ble Mr. Swarup Kumar Mishra*      ...      *Member (Judl.)*

**ORDER**

**{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}**

The OA is filed against orders issued by the respondents vide letters dt  
16.2.2017 and 22.2.2017 in regard to transfer of the applicant to Bommasandra,

Karnataka on being promoted as Asst. Director (AD), official language (O.L) on adhoc basis from Hyderabad.

2. Brief facts of the case are that the applicant joined the respondents organisation as Junior Hindi Translator on 3.6.1991 and got promoted as Sr. Hindi Translator in Dec 2010. On 1.1.2016 the applicant was promoted on adhoc basis as A.D.(O.L) and posted to Bommasandra, Karnataka. The applicant represented to accommodate him at Hyderabad in the promoted post but was not considered and hence this O.A.

3. The contention of the applicant is that among the 12 employees promoted on adhoc basis, 4 were displaced and rest 8 were retained at their original work station. Smt J.Vishaka Mohini who worked for a longer duration at Hyderabad and junior to the applicant was favoured by promoting her as A.D.(O.L) and retaining her at Hyderabad. Consequently, he has been forced to work under a junior colleague as Sr. Hindi Translator. As per rule an A.D post is sanctioned only when there are not less than 100 members. Bommasandra sub office *per se* has less than 100 but to show the requisite number the respondents have added staff members working in the branches under jurisdiction of the sub office, which he claims against rules. The applicant informs that he has gone on transfer to Vizag previously and that as the only son he has to take care of his octogenarian father who is sick and surviving on a ventilator. Further when the respondents did not comply with the directions of this Tribunal in O.A. 437/2016 vide order dt.29.4.2016 to dispose of applicant's representation dt. 2.2.2016, 19.2.16 & 29.2.2016 within two weeks, the applicant filed the present O.A 164 and got his transfer stayed by Tribunal order dt.3.3.2017. Finally the applicant also states that as per the minutes of the meeting of the All India Official language Conference held at Dwaraka, Gujarat, to create the post of A.D in ESIC

medical Colleges and hospitals a circular dt 16.9.2016 was issued. The applicant prays that he can be considered for posting to this post.

4. The respondents in their brief reply statement have stated that the applicant was posted to Bommasandra on promotion as AD on adhoc basis since it was the nearest to Hyderabad and also as there was no vacancy to retain him at Hyderabad. The respondents confirm that this tribunal has directed them to dispose of the representation of the applicant and pass appropriate orders in O.A 437/2016 on 29.4.2016. Further, they intimate that the representation of the applicant was disposed of on 19.9.2016 and followed up by orders vide letters dt 16/2/2017 & 22.2.2017 directing the applicant to join within 15 days lest the promotion will be cancelled. The applicant moved the Tribunal and got the orders stayed on 3.3.2017. As there was only one post available another official was posted at Hyderabad, the applicant had to necessarily move to Bommasandra, lest his promotion is at stake. Moreover for the two regional offices of the States of Telangana and Andhra there is only one post of AD which is stationed at Hyderabad. The official is working as Sr. Hindi Translator after getting the stay and hence is eligible only for the pay of a Sr. Hindi Translator and not that of an A.D. Transfer of the official was decided by a Transfer Committee and approved by the competent authority. Creation of posts is decided based on administrative requirements and authorities competent to decide such matters will look into the same and that they cannot be created to suit the convenience of the applicant. The respondents also point out that the applicant has not challenged the transfer order but letters issued in continuance of the same have been challenged. Further if the applicant does not join the post on promotion the next in line shall be promoted and his promotion orders will be

cancelled. Respondents claim that there was no malafide intention in ordering the transfer of the applicant.

5. Heard the learned counsel and perused the documents on record in detail. Both the counsel mostly stuck to their written submission. However, learned counsel for the applicant was repeatedly praying for early relief from the harassment met out to the applicant by the Respondents, by considering the merits of the case. The learned counsel for the respondents valiantly defended the case based on facts available.

6. A study of the case based on the averments made and the submissions of the learned counsel does indicate that the respondents are fully competent to transfer employees. This Tribunal is in full agreement with the respondents on this count. Further the respondents stance that posts cannot be created to suit the convenience of the employees is understandable and is an accepted administrative norm. The claim of the applicant to pay salary of A.D though he has not joined the post has been rightly rejected by the respondents. We concur with the decision of the respondents as no one can demand salary of a given post in which they have not worked. The submission of the applicant in the rejoinder that transfers are effected by a transfer committee and not by a DPC is wayward. There being only one vacancy the respondents could not accommodate the applicant at Hyderabad apparently appears to be genuine but a ripping analysis of the history of the case will reveal the other side of the story as is portrayed here under:

- a. This tribunal has directed the respondents to dispose of the multiple representations by the applicant within two weeks in O.A 437/2016 vide order dated 29.4.2016. Disobeying this order the respondents disposed of the applicant's representations on 19.9.2016 as per their

reply statement ie after more than 4 months instead of 2 weeks allowed. The respondents were conspicuously silent on this count in their reply statement. This is an open contempt of the Tribunal and we take serious note of the same. Being a model employer indulging in such flagrant violation of the orders of this tribunal calls for stringent retributive action against all the three respondents. However, we refrain from doing so to give an opportunity to the respondents as to not to repeat the same in future.

- b . The second distinct feature we have observed is that the respondents have not given any reasons as to why Smt J.V.Mohini was posted as A.D. Hyderabad overlooking the request of the applicant. The applicant has lucidly pointed out that Smt Mohini stayed for longer period in Hyderabad than the applicant and that the said Smt Mohini was junior to him. Usually during transfers the juniors are moved first and thereafter the seniors and also the stay of an employee at a particular station is reckoned while issuing transfers. The longer the one stays he/she is the one who is first moved. During the submissions made by the learned counsel it was informed that Smt Mohini was stay put at Hyderabad for 30 years and the applicant for 27 years. Moreover, the applicant did a stint at Vizag on transfer but Smt Mohini did not do any external stint whatsoever. The respondents exhibited stoic silence in regard to these submissions. Hence it gives a cue that all is not well with the transfer order issued.
- c . The respondents claim that they have followed established procedure in issuing the transfer order. If this were to be accepted then how can they favour a junior namely Smt J.V. Mohini who was long standing at

Hyderabad be accommodated overriding the request of the applicant who is senior to the said Smt Mohini and spent lesser years at Hyderabad. Further, if the respondents had followed an established procedure they should have been confident enough to append the transfer guidelines which they have followed or at least quoted the relevant provisions in the reply statement. Here again we found the respondents badly wanting, although the tribunal gave them ample opportunity to reason out their stand vide this tribunal orders and in particular the one dt 26.9.2018. Instead of availing the opportunity the respondents came up with a plea seeking one month time on 23.10.2018 to give reasons for their actions. The history of the case does reveal that the respondents have not been acting on the orders of the tribunal in O.A 437/2016 and the applicant had to file a M.A. Even to respond to the M.A the respondents were only seeking time and the applicant had to perforce file the present O.A. Therefore it is seen that the respondents are only procrastinating the issue without placing the facts as they are. Thus the above deliberations make it obvious that the applicant was blatantly discriminated in transferring him out of Hyderabad.

- d. The Respondents also did not answer as to why they had to include the branches under the jurisdiction of Bommasandra sub office to show the strength of the employees beyond the requisite number of 100 to have an A.D nor did they come out as to what is their stand in regard to the proposal of creating AD post for ESI medical colleges and hospitals made at All India Official languages conference held at Dwaraka, Gujarat. The reply statement was bereft of required facts and lack of

seriousness to respond in time on behalf of the respondents was evident.

- e . The transfer is arbitrary since a junior was favoured who had a longer stint at Hyderabad. The respondents did not even consider it appropriate to place on record their transfer policy, if they had one, to defend their action. Sole reason given was that the post has been filled up and that there is no vacancy to post the applicant at Hyderabad. Therefore the transfer order issued is grossly malafide, as is borne out by the facts of the case namely discriminating the applicant to favour a junior colleague, dodging the issue by not coming straight on facts, callousness in implementing the orders of the Tribunal, veiled threats to the applicant that his promotion will be cancelled during the adjudication of the case, not revealing their transfer policy and adopting dilatory tactics in answering the tribunal.
- f . The Respondents claiming that the applicant has not challenged the transfer is illogical as the main prayer of the applicant is to retain him at Hyderabad on being promoted as AD ( O.L)
- g . The Honourable Supreme Court has held in *Shilpi Bose v State of Bihar* (1991 Supp.(2) SCC 659 and in *Union of India v S.L Abbas* (AIR 1993 C 2444) that Court should not interfere with a transfer order unless it was issued against a statutory rule or on the ground of malafide. In the present case the malafide ground is established and the respondents failed to clarify despite given many opportunities as to what transfer policy they have followed. Their defence was to adopt dilatory tactics and giving vague replies rather than rebutting the points raised in the O.A.

- h. The respondents instead of attempting to resolve the grievance of the applicant in a fair manner has in a subtle manner pressurised the applicant to accept the transfer or the promotion will be cancelled vide the impugned letters.
- i. Therefore facts of the case as expounded above vividly prove that the transfer order issued was arbitrary, discriminative and malafide. The respondents miserably failed to bring out in their reply statement as to the rules they followed in ordering the transfer. Therefore the transfer order issued is illegal as it is violative of the norm laid by Honourable Supreme Court since it is a proven case of malafide. Although the respondents were given ample opportunity to prove it otherwise they did not for reasons known well known to them.

7. To conclude, as it is well established that the transfer issued is malafide, illegal, arbitrary and to top it the respondents failing to back it by any specific rule, the impugned orders dated 16.2.2017 & 22.2.2017 are quashed. The applicant has made out a case for the O.A to succeed. As a result the respondents are directed to consider the following:

- i) To consider retaining the applicant at Hyderabad on promotion as AD (OL) on adhoc basis by adopting the accepted principles of transfer without being discriminative and malafide by following a well established transparent, uniform and non discriminative transfer policy. If need be by displacing those who have been favoured in an illegal, discriminative and arbitrary manner or in the post of A.D which was proposed to be created for ESI Medical Colleges and Hospitals as per the



minutes of the All India Conference of official language held at Dwaraka, Gujarat.

- ii) Protecting the seniority of the applicant from the date he was promoted as A.D (OL) on 1.1.2016 on a notional basis and any consequential benefits like increment fixation, drawing up seniority list etc that flow by doing so to be extended. Pay and allowances in A.D grade to be drawn from the date of his joining in the said post.
- iii) Time calendared to comply with the order is 3 months from the date of receipt of this order.

8. In the result, the OA is allowed with the above directions. Parties will bear their own costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 24<sup>th</sup> day of October, 2018

*evr*