

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01065/2016

Jabalpur, this Monday, the 5th day of February, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prithvi Raj Sinha, S/o Shri Damodar Prasad,
D.O.B.-15.01.1974, Present Post-Education Officer,
Central Board of Workers Education, Bhopal, R/o HIG 250,
Sector-K, Housing Board Colony, Ayodhya Nagar, Bhopal-462041
(M.P.) **-Applicant**

(By Advocate –**Shri S.K.Nandy**)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg, New Delhi-100001
2. The Chairman, Central Board of Workers Education
Renamed as 'Dattopant Thengadi National Board for
Workers Education & Development'7/10,
Room No. 21/22, Jamnagar House, Mansingh Road,
New Delhi-110001
3. The Director, Central Board of Workers Education
Renamed as 'Dattopant Thengadi National Board for
Workers Education & Development'
Ministry of Labour and Employment,
Govt. of India, North Amazari Road,
Near VNIT Gate, Nagpur-440033 (M.H.)
4. Shri J.P.Phogat (In-charge),
The then Director, Central Board of Workers Education
Ministry of Labour and Employment,
Govt. of India, North Amazari Road,
Near VNIT Gate,

Nagpur-440033 (M.H.)
Now Posted At-CBWE, Zonal Directorate,
North Zone, New Delhi, Employment Exchange Building,
Pusa Road, Pusa Complex,
New Delhi-110012

- Respondents

(By Advocate –**Shri S.P.Singh**)

(Date of reserving the order:-03.01.2018)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved by his transfer from Bhopal to Udaipur. Hence this Original Application.

2. Brief facts of the case are that the applicant was appointed on the post of Education Officer w.e.f. 18.12.2001 with Central Board of Workers Education (renamed as Dattopant Thengadi National Board for Workers Education and Development (DTNBWED). Presently, he is posted at Bhopal Centre. Respondent-Department vide order dated 27.06.2016 (Annexure A-1) have transferred 13 Education Officers, which includes the applicant being transferred from Bhopal to Udaipur.

3. The following relief has been sought for in this Original Application:-

“8(i) Summon the entire relevant record including the transfer file from the respondents for its kind perusal.

(ii) Set aside the order dated 27.06.2016 Annexure A/1 upon holding that the action of the respondents in transferring the applicant’s services is bad in law and the applicant be

allowed to continue in the present place of posting i.e. Regional Directorate, Bhopal with all consequential benefits.

(iii) Further command the respondents to forthwith take action to comply the order dated 07.09.2016 passed by the Ministry.

(iv) Any other order/orders, which this Hon'ble Court deems, fit proper.

(v) Award the cost of the litigation to the applicant."

4. The applicant has submitted that the transfer order has been issued by Director I/C, who is not competent to issue such orders. He is holding the post of Director not in a substantive capacity and simply holding the post as in-charge.

4.1 Further, the applicant is the junior most person in Bhopal and another Education Officer Dr. G. B. Bhalerao has not been transferred, though he has completed 17 years in Bhopal.

4.2 Though the impugned order (Annexure A-1) states that the transfer order has been issued to balance the Education Officer throughout the country, another order was issued on same date (Annexure A-2) transferring Dr. Sudhir Wadiwa from Udaipur to Bhopal on own request. Hence, the applicant claims it is "swapping" and not "balancing". The applicant claims that Dr. Sudhir Wadiwa has spent less than 5 years in Udaipur.

4.3 The applicant avers that no choice place of posting have been asked, as is prescribed by DOPT. There is no transfer policy

in place, without which transfer in malafide manner cannot be made.

4.4 He further pleads that both of his parents are suffering from cancer and children are school going, whose studies will get affected in midsession transfer.

4.5 The applicant has submitted a representation dated 11.07.2016 (Annexure A-3) requesting the respondent department to restore him at Bhopal.

5. Respondents have filed their reply and have submitted that the applicant was relieved on 01.07.2016 (Annexure R-1), a fact which the applicant concealed when he approached this Tribunal and obtained interim relief on 11.11.2016.

5.1 Respondents aver that the applicant is having all India transfer liability. He has been continuously serving in Bhopal for the last 14 years. The transfer orders have been issued in public interest.

5.2 Respondents have brought out that Dr. G.B.Bhalerao Education Officer (Selection Grade) has been entrusted with the responsibilities of Regional Director, and therefore, his status is different from that of the applicant.

5.3 The Transfer orders have been issued by the Director I/C after the proposal has been approved by the Chairman of the Board,

who is the appointing authority and competent authority to transfer.

In support, the respondents have filed the noting sheet of proposal/approval of the transfer orders (M.A. No. 200/816/2017).

5.4 The respondents further submits that all the Education Officers have carried out the transfer order (Annexure A-1) except the applicant and one more officer by name Shri P. Moorthy. Application filed by Shri P.Moorthy with CAT/Madras Bench vide O.A. No. 310/01457/2016 has been dismissed on 21.10.2016.

6. Heard the arguments from the learned counsel of both the parties and perused the documents available on record.

7. The learned counsel for the applicant made strong averment questioning the competency of the Director I/C to issue the transfer orders as the incumbent is three post junior than the regular Director and looking after the said post as stop gap arrangement. Further, the transfer of the applicant by the respondent department is totally vindictive. It is done only to accommodate Shri Sudhir Wadiwa. Several other issues relating to wrong practices in DTNBWED have been raised.

8. Learned counsel for the respondents argued that DTNBWED is an autonomous organization. The Chairman of the Board is competent to approve transfer orders, and the same has been done.

It is the right of the Department to transfer the employees in administrative interest.

9. We notice that the proposal for transfer orders have been prepared by the respondents clearly listing the number of years an officer has been there in present posting. The applicant has been at Bhopal for 14 years. So he can not complain about him being transferred out in a short time. Also Dr. Sudhir Wadiwa has spent 7 years at Udaipur, so considering his “own request transfer” to Bhopal cannot be called malafide.

10. It would be relevant to quote judgment of Hon’ble Supreme Court in the matter.

10.1 In the matters of **Union of India Vs. S.L. Abbas**, (1993) 4 SCC 357 the Hon’ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide.

10.2 In the matters of **State of M.P. Vs. S.S.Kourav**, (1995) 3 SCC 270 the Hon’ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or

by extraneous consideration without any factual background or foundation.

10.3 In the matters of National Hydroelectric Power Corp. Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574, the Hon'ble Supreme Court has held that “unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned”.

10.4 In the matters of N.K.Singh vs. Union of India, (1994) 6 SCC 98, it is held that transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by malafides of

infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated.

10.5 In the matters of **State of U.P. Vs. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Supreme Court has held that “[E]ven 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 and 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 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”.

11. We are of the view that there is no malafide or illegality committed by the respondent-department in issuing the transfer orders as has been made out by the applicant. The proposal for transfers has been approved by the Chairman, who is competent to do so. The applicant has already spent more than 14 years (as on 24.06.2016) at Bhopal and he has no case to continue at the same place. The judicial pronouncements quoted in Para 10 above are very clear and unambiguous that courts and tribunals shall not interfere in transfer orders issued on administrative account.

12. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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