

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/01149/2016

Jabalpur, this Thursday, the 19th day of July, 2018

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

Santosh Kumar Raikwar, S/o Shri J.P. Raikwar, DOB: 10.10.1984,
Working as Lab Attendant, R/o H.No.1655, Machhau Compound,
In front of Arya Kanya School, Russel Chowk, Jabalpur 482001
(M.P.)

-Applicant

(By Advocate – **Shri Vijay Tripathi**)

V e r s u s

1. Union of India through its Secretary, Ministry of Women and Child Development, New Delhi – 110001.
2. Dy. Technical Advisor (WR), Food & Nutrition Board, Kendriya Sadan, A-301 (C) Wing, Sector 10, CBD Bilapur, Navi Mumbai 400614.
3. Officer-in-Charge, Food & Nutrition Board, Ministry of Women and Child Development, L-2/1 Corner Duplex, Kachnar City, Gate No.2, Vijay Nagar, Jabalpur 482003 (M.P.).
4. Shri Manish Yadav, Laboratory Assistant/Officer-in-Charge, Food & Nutrition Board, Ministry of Women and Child Development, L-2/1 Corner Duplex, Kachnar City, Gate No.2, Vijay Nagar, Jabalpur 482003 (M.P.).
5. Shri Divyesh M. Ahir, Lab Attendant, Ahmedabad, Through Dy. Technical Advisor (WR), Food & Nutrition Board, Kendriya Sadan, A-301 (C) Wing, Sector 10, CBD Bilapur, Navi Mumbai 400614

-Respondents

(By Advocate –**Shri S.K. Mishra for official respondents**)

(Date of reserving order : 16.07.2018)

ORDE**By Navin Tandon, AM.-**

The applicant is aggrieved by the order dated 21.12.2016 (Annexure A-1), so far as it relates to him, whereby he has been transferred from Jabalpur to Ahmedabad. He is further aggrieved by order dated 22.12.2016 (Annexure A-2), whereby he has been relieved from Jabalpur with immediate effect.

2. He has sought for the following reliefs:

“8.1 Summon the entire relevant record from the possession of official respondents for its kind perusal;
8.2 Quash and set aside the order dated 21.12.2016 (Annexure-A/1) and relieving order dated 22.12.2016 (Annexure-A/2), so far it relates to the applicant, with all consequential benefits;
8.3 Command and direct the official respondents to permit the applicant to work in the Office of CFENU, Jabalpur as if the transfer order dated 21.12.2016 (Annexure-A/1) is never passed;
8.4 Any other order/orders, direction/directions may also be passed.
8.5 Award cost of the litigation to the applicant.”

3. The applicant was appointed as Lab Attendant vide order dated 05.05.2012 in the office of CFNEU, Jabalpur.

3.1 The applicant submits that there are only three staff working in the office, namely; Lab Assistant, Lab Attendant and Sweeper. The respondent No.3 is taking work of Lab Attendant from the Sweeper and the applicant has been assigned the duty of Watchman.

3.2 The impugned order of transfer has been issued in order to accommodate the respondent No.5 and nobody has been posted in place of the applicant.

3.3 Further, the transfer order is not arising out of any administrative exigency or public interest and it has been carried out on the basis of the complaints lodged by respondent No.4 to the superior officers to victimize the applicant.

4. The respondents Nos.1 to 3, in their reply, have stated that though the applicant has arrayed the respondent No.4 as party respondents, however, respondent No.4 is neither appointing nor transferring authority of the applicant and the transfer of the applicant has been done in administrative need as also in the public interest.

4.1 The respondents have further stated that there is no vacant post of Lab Attendant at CFNEU, Bhopal. The applicant is having all India transfer liability and he cannot insist his transfer on choice place.

4.2 It has also been submitted by the respondents that there were number of complaints (filed as Annexure R-1 to R-13) against the applicant regarding his misconduct and he has been creating hurdle in functioning of the department.

5. The respondent No.4 has filed his reply separately and has supported the stand taken by the official respondents. He has also submitted that the night duty was assigned to the applicant on the instructions of respondent No.2 to avoid the recurrence of theft. Since the applicant is a Multi Tasking Staff, he can perform the night duty also.

6. The applicant has also filed rejoinder to the reply filed by official respondents as well as private respondent No.4 and has reiterated the averments made in the O.A. It has been again submitted that the transfer order has been issued at the behest of respondent No.4 to harass the applicant. He has attached

some photographs to show that he is working in various demonstrations.

7. We have heard the learned counsel for the parties and also gone through the pleadings and documents available on record.

8. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Apex Court in the case of **Somesh Tiwari vs. Union of India and others**, (2009) 2 SCC 592 and has submitted that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. Since the applicant has been transferred out from Jabalpur to Ahmedabad in view of complaints made by respondent No.4, therefore, the impugned order of transfer is liable to be set aside.

9. On the other hand, learned counsel for the official respondents submitted that the order of transfer can only be interfered with only on three grounds namely; (i) if there is malafide on the part of the authority is proved, (ii) the authority, who has passed the order of transfer is not

competent enough to do so, (iii) the order of transfer is against the rules. In the present case, the applicant has been transferred in the public interest, therefore, it cannot be said that he has been transferred in lieu of punishment, which warrants interference of this Tribunal.

10. We have given our thoughtful consideration to the entire matter.

11. The main ground of challenge in the Original Application is that the impugned order of transfer has been issued with the connivance of respondent No.4, who is the immediate superior of the applicant. On perusal of reply filed by the respondents (Annexure R-1 to R-13), it can be seen that there were number of complaints against the applicant regarding his misconduct with the staff as well as with respondent No.4 going back to the year 2013. It is not the case of the applicant that certain anonymous complaints were made against him and on the basis of which, he has been transferred. The record itself makes it clear that the applicant misbehaved with the staff as well as with his immediate superior

(respondent No.4) number of times and the complaints were made not only on behalf of respondent No.4 but also from the other staff as well that the atmosphere in the office is being vitiated. Therefore, it cannot be said that the impugned transfer order is based on anonymous complaints, which warrants any interference.

12. It is a settled position that the Courts or Tribunals should not ordinarily interfere with the transfer order unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors.**, AIR 1991 SC 532, the Hon'ble Supreme Court has held as under:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day

transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

13. No other grounds regarding competency of the authority, who has issued the impugned transfer order or violation of any statutory provision/rule in issuing the transfer order, have been made. Thus, we do not find any reason to interfere with the transfer order dated 21.12.2016 (Annexure A-1) qua the applicant as also in the relieving order dated 22.12.2016.

14. In the result, the O.A is dismissed, being devoid of merit. No cots.

(Ramesh Singh Thakur)
Judicial Member
am

(Navin Tandon)
Administrative Member