

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00477/18**

Date of Order: 26/10/2018

C O R A M

**HON'BLE MR. K.N. SHRIVASTAVA, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

Sadanand Sharma, son of Sri Anant Deo Sharma, aged about 50 years, resident of Sharma Niketan, near K.K. School, Rangamath, Sindri, Dhanbad-828122 (Jharkhand).

..... Applicant.

- By Advocate: - Mr. A.K. Rashidi

-Versus-

1. Union of India through the Secretary, Ministry of Mines, New Delhi.
2. The Council of Scientific and Industrial Research through its Director General, Anusandhan Bhawan, Rafi Marg, New Delhi-110001.
3. The Director general, Council of Scientific and Industrial research through its Director General, Anusandhan Bhawan, Rafi Marg, New Delhi- 110001.
4. The Central Institute of Mining Fuel Research (CIMFR) represented through its Director, Barwa Road, Dhanbad (Jharkhand)-826001.
5. The Director, Central Institute of Mining Fuel Research (CIMFR), Barwa Road, Dist. Dhanbad (Jharkhand)- 826001.
6. The Administrative officer, central Institute of Mining Fuel Research, Barwa Road, Dhanbad- 826001.

..... Respondents.

By Advocate: - Mr. Abhay Prakash

ORDER

Per Mr. J. V. Bhairavia, J.M.:- The applicant aggrieved by his transfer order dated 23.04.2018 (Annexure A/20) preferred this OA and sought relief for setting aside the said transfer order.

2. The brief facts of the case are as follows:-

2.1 The applicant was appointed as Junior Scientific Assistant at Central Institute of Mining and Fuel Research (erstwhile Central Fuel Research Institute) in short now CIMFR, Digwadih, Dhanbad. Thereafter, the applicant was promoted as Senior Scientific Assistant.

2.2. While he was working at Miner's Health and Safety Department he was served with transfer order dated 23.04.2018 whereby he was transferred from CIMFR Headquarters, Dhanbad to Regional Centre, Roorkee.

2.3 It is contended by the applicant that the transfer of the applicant is an outcome of malafide intention and the said order is motivated by his superior. As the applicant had pointed out to the Vigilance the manner of corruption prevalent in the organization in respect to distribution of the consultancy project and distribution of the honorarium for the said project and had

also complained against the higher officials of the Department in this regard. The applicant has also raised the grievances with respect to non-grant of his TA/DA bills by way of various applications/representations. He relied upon certain correspondences of Vigilance Department as well as correspondences with the CSIR-CIMFR (Annexure 1 to 16 refers).

2.4 It is further contended that without any reason the Director, CSIR-CIMFR had constituted a Three Member Committee comprising the Chairman, Member and Convenor of CSIR-CIMFR to investigate into the matters related to applicant's contributions for the last 10 years vis-à-vis the salary drawn by him during the said period and also about his conduct which tantamount disturbing factors in maintaining harmonious and peaceful working environment in the Division/Research Group. In this regard, the Controller of Administration had issued Office Memorandum dated March 14, 2017, CSIR-CIMFR (Annexure A/17refers). The applicant had submitted his reply before the Convenor of the said Committee on 28.03.2017 (Annexure A/18 refers).

2.5 It is further contended that the applicant had filed information petition under Section 39 of Cr Pc on 25.04.2017

before the Court of SDM, Dhanbad being Misc. Case No. 674 of 2017 and ventilated his apprehension that his immediate higher authority, i.e. opponent 1 and 2 of the said Information case may constitute false and fabricated materials against the applicant/informer and put his life and service in danger (Annexure A/19 refers).

2.6. The applicant was served with transfer order vide OM dated 23.04.2018 (Annexure A/20 refers) whereby he was ordered to perform his duty at Roorkee Centre of CSIR-CMFIR. The said order is impugned in the present OA. The applicant had submitted representation against the said transfer order vide letters dated 26.04.2018, 30.04.2018, 16.05.2018 along with an application for medical leave (Annexure A/21-23 refers).

3. The learned counsel for the applicant submitted that the impugned transfer order dated 23.04.2018 is the result of personal vendetta. As because the applicant has informed to the competent authority about modality of parallel clandestine trade carried out by the third party in connivance with Senior Personnel of the Institute and with the purposive malafide intention to harass the applicant. It is further submitted that the impugned transfer order whereby the applicant has been ordered to be

perform his duty at Roorkee regional Centre, Uttarakhand where there is no scope of Chemistry/chemical work. In this regard, the applicant has also submitted that since 21 years he is performing his duty only at Dhanbad and in fact there is no work in the field of Fuel Science and Chemical at Roorkee. However, just to harass the applicant the respondents have issued the impugned order. It is further contended that the applicant is specialized in chemistry field and accordingly he was performing his duty as Senior Technical Officer in the field of Fuel, Science and Chemical at Dhanbad. Since there is no such work at Roorkee there is no purpose except to harass the applicant by transferring him at non working place. The said impugned decision of the respondents is motivated and is required to be quashed and set aside.

4. The respondents have filed their written statement and denied the averments and contentions made by the applicant.

4.1 The learned counsel for the respondents submitted that the main function of the respondents' Institute is related with the areas of mining, technology and fuel science with emphasis on Coal and Lignite. Number of projects has been sponsored by the Government department and other public, private sector/organization too. It is further contended that in CSIR the

entire scientific and technical staff (including engineering and architectural staff) are divided in five groups, namely Group I & II (Support Staff), Group –III Technical, Group –IV R&D-Scientific and Group-V (Engineering/Architectural).

4.2 It is submitted that the applicant initially joined as Technical Assistant Group-III(1) in the pay scale of Rs. 1400-2300/- with effect from 02.12.1997. Subsequently, he has been promoted to the various higher grades of Group-III and presently the applicant is holding the grade of Group-III (4) with GP Rs. 5400/- w.e.f. 02.12.2010.

4.3 It is submitted that as per the terms and conditions of offer of appointment in respect of each and every employee of the respondents that transfer may be made to any of the Labs/Institutes of CSIR and its regional centres in public interest. The applicant is Group-III Technical staff and do not possess any expertise and any specialization like a Scientist working in this Institute. He may be posted/transferred from one section to another section in order to assist the Scientist in the respective laboratory as per requirement of the Institute.

4.4 It is submitted that the applicant has been transferred from CSIR-CIMFR, Dhanbad only as per requirement

and in the interest of the Institute. There is no loss on the part of applicant as his transfer is in public interest and he is entitled for Transfer TA, Joining Time etc. as per the extant rules.

4.5 It is submitted that the applicant is working since last 21 years at Dhanbad. He was promoted to the higher grade as per his eligibility in consonance with extant rules and the respondents have always maintained equity amongst their employees including the applicant. Consequent upon assignment of national level project to CSIR-CIMFR Regional Centre, Roorke deployment of manpower in Group-III category desired by Scientist-In-charge, Roorke Regional Centre to collect field data for time bound completion of the recently taken up project of national importance the Committee has recommended to transfer the applicant vide its order dated 23.04.2018 in public interest. Therefore, the allegation as levelled by the applicant that he has been transferred with malafide intention and same is motivated is far from truth and the said allegation has been levelled just to earn the sympathy of this Tribunal to continue at Dhanbad.

4.6 It is further submitted that the applicant is working as Technical Staff placed in Group-III and he has to assist the Scientists of the Institute as per requirement of the Institute. It is

further submitted that the applicant has not only been transferred but other staff members falls under the category of Group-I and II, Group-III and Group-IV have also been transferred to other Sections/Departments located in Nagpur, Bilaspur, Roorkee and Ranchi periodically as per necessity of requirement by the respective Heads of Sections/Departments.

4.7 The learned counsel for the respondents submitted that the CSIR Headquarters has already considered the issues raised by the applicant in his representation against the transfer order and after deliberating on the issue has passed the reasoned order dated 03.08.2018 (Annexure R/1 refers). The impugned decision is in consonance with the Rule-53-A of CSIR Rules and Regulations and Bye-Laws. As such, there is no malafide intention in the transfer of the applicant and it is purely an administrative decision taken by the respondents in public interest. Therefore, the applicant is not entitled for any relief as sought in this OA.

4.8 The learned counsel for the respondents placed reliance on the judgment passed by Hon'ble Apex Court in the case of **Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others** reported in 1991 Supp(2) SCC 659 and the judgment in the case of **State of UP and Another Vs. Siya Ram and Anr.** [(2004) 7

SCC 405] and submitted that the decision for transfer of applicant is purely in public interest which do not have any relevance with respect to grievances of the applicant for non-distributing the consultancy work and previous TA/DA qua the applicant. It is also submitted that the Government servant holding a transferable post has no vested right to remain at the same place and he is liable to be transferred from one place to another. The respondents have not violated any provision of service conditions. Therefore, the applicant is not entitled for any relief as claimed in this OA.

5. The applicant has filed rejoinder and supplementary affidavit. The learned counsel for the applicant additionally submitted that vide Office Memorandum dated 09.05.2018 the respondents CSIR have issued guidelines for transfer and posting of Group-III Engineers from Group-III(1) to Group. III(7) for all CSIR National Labs/Institutes, CSIR HQ and other CSIR Establishments across India based on the recommendations of the Committee constituted by DG, CSIR to formulate the rotation policy for Group-III Engineers. According to the said guidelines, the CSIR has been divided into four zones and Roorkie, Uttarakhand Unit falls under Zone No. 1 whereas Dhanbad, Jharkhand Unit falls under

Zone No. 2. Therefore, the impugned transfer order amounts to inter-zonal transfer. It is further contended that prior to framing of guidelines, transfer and posting was regulated by para 21.4 of the notification No. CSIR D.O.1/47/81-O&M dated 29th May, 1981 (Annexure A/26 refers). In this regard, the learned counsel for the applicant submitted that as per the previous guidelines when the services of a Scientist/Technologist/Technician are needed at the Laboratory other than in which he/she is posted, in connection with the Inter-laboratory projects for more than 6 months in that case as soon as the project is over the person concerned will be transferred back to his original place of posting along with the post. Therefore, it is incumbent upon the respondents to verify the exact status of the project of Roorke as also requirement of Sr. Technical Assistant at Roorke and without such requirement the transfer could not be ordered (Annexure A/30 refers). It is further contended that vide OM dated 16.10.2018 the respondents have regularized medical leave with a condition to join his duty at the transferred place (Annexure A/28 refers). It is contended that the applicant is holding the post of Sr. technical Officer Grade-III and he is not holding supporting post. The work is attached to the Scientist and in fact there is no work available at Roorke.

Therefore, the impugned transfer order is required to be quashed and set aside.

The learned counsel for the applicant placed reliance on the order passed by Hon'ble Bombay High Court, Nagpur Bench, Nagpur in the case of the Director, CSIR-National Environmental Engineering Research Institute, Nagpur & Anr. Vs. Dr. Sanjeev Kumar Singh and another (Writ Petition No. 7588 of 2017) decided on 29.01.2018 and submitted that in the said case the Hon'ble Bombay High Court has upheld the CAT, Mumbai Bench's order whereby the transfer order of Scientist of CSIR was cancelled. The learned counsel for the applicant also relied upon the judgment passed by Hon'ble Apex Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan reported in 2001(8) SCC 574, P.U. Joshi Vs. Accountant General [2003(2) SCC 632] and order passed by CAT, Bombay Bench in the case of Dr. Sanjeev Kumar Singh Vs. Union of India.

6. The learned counsel for the respondents submitted that the applicant is working as Senior Technical Officer (1) in Grade-III(4) and his transfer to assist Scientist I/c Roorke centre in completion of projects of national importance undertaken at Roorkee. The said transfer order is in public interest and the

judgment relied by the applicant is not applicable in the case of the applicant.

7. We have heard the parties at length and perused the records.

8. It reveals that admittedly the applicant is working with the respondents' organization as Senior Technical Officer (1) in Grade-III(4). His service is transferable to any Labs/Centres of the CSIR/CIMFR.

9. It is settled principle of law transfer is an incidence of service. No government servant or a employee of a public undertaking has any legal right to be posted forever at any particular place or place of his choice since transfer of a particular employee appointed to the class and category of transferable post from one place to other is not only an incident but a condition of service, necessary too in public interest and efficiency in the public administration as held by Hon'ble Apex Court in the case of State of U.P. and Anr. Vs. Siya Ram and Anr. reported in (2004) 7 SCC 405. The Hon'ble Apex Court in the case of Shilpi Bose (Mrs) (supra) held as under:-

“ 4. In our opinion, the Courts should not interfere with a transfer Order which are 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 malafide. 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 over looked these aspects in interfering with the transfer Orders.”

10. In the present case, it is noticed that the transfer of the applicant from Dhanbad to CMFIR Regional Centre, Roorke was recommended by a duly constituted Transfer Committee to cope with the time bound project. The said action is purely an administrative decision. It is further noticed that applicant is supposed to assist Scientists at Roorke. His duty cannot be equated with the Scientists. The learned counsel for the applicant vehemently argued and relied upon the order passed by the Bombay High Court as mentioned above. We have perused the said judgments wherein the respondent Dr. Rajeev Kumar Singh was working as Principal Scientists in National Environmental

Engineering research Institute at Nagpur and mainly research work concerning environmental project as assigned to him. He was specialized Scientist in Soil Conservation and was working on several soil conservation projects at Nagpur. He was sought to be transferred to Zonal Centre, Chennai which is concerned with the Waste water Technology. There was no specialized work of soil conservation at Chennai centre as confirmed by the employer petitioner and on the basis of the said statement the transfer order was set aside. In the present case, the applicant is working as Sr. Technical Officer (1). As per the service condition, it is incumbent upon him to assist the Scientists at Roorkee Centre or any other place as per requirement of the Centre/Organisation. Only he is holding degree in Chemistry and therefore he is required to perform his duty in chemistry/chemical division. The said contention of the applicant is subject to need and supervision of the respondents. The post of applicant cannot be equated with the Scientists. Therefore, the judgment relied upon by the applicant is not helpful to the facts and circumstances in the present case.

10. It is further noticed that the allegation of malafide levelled against the respondents is without any basis and

substance. Therefore, the impugned order cannot be said to be issued with malafide intention. The Tribunal cannot determine the posting of a government servant which is purely in the domain of the respondents' Administration Department/employer. We do not find any infirmity in the impugned decision dated 23.04.2018 of the respondents.

11. We, accordingly, dismiss the OA. Interim relief granted by this Tribunal is hereby vacated. No order as to costs.

[Jayesh V. Bhairavia]/M[J]

[K.N. Shrivastava]/M[A]

Srk.