

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****Pronounced on : 13.03.2019****Reserved on : 18.02.2019****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)****OA No. 060/00968/2017
MAs No. 060/00404/2018 &
060/1364/2017**

Anurag Sachdev, aged 53 years w/o late Sh. Mahesh Kumar, working as Controller of Administration, Group 'A' Council of Scientific & Industrial Research-Central Scientific Instruments Organization, Sector 30, Chandigarh.

...Applicant

BY ADVOCATE: **Sh. R.K. Sharma****Versus**

1. Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi – 110 001 through its Secretary.
2. President, Council of Scientific & Industrial Research, Prime Minister's Office, South Block, 152, Raisina Hill, New Delhi-110 011.
3. Vice President, Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi – 110 001.
4. Director General, Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi – 110 001.
5. Dr. Girish Sahni, Secretary, Department of Scientific & Industrial Research and Director General, Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi – 110 001.
6. The Joint Secretary (Administration), Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi – 110 001.
7. Director, CSIR-Central Scientific Instruments Organization, Sector 30, Chandigarh – 160 030.

...Respondents

BY ADVOCATE: **Sh. I.S. Sidhu**

ORDER**BY MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant, who joined the respondents as an Assistant, was last promoted as Controller of Administration on 31.08.2016. Applicant admits that temporary posting orders were issued by the fourth respondent and applicant joined duty at Chandigarh on temporary basis on 08.09.2016.
2. Applicant argues that female staff on promotion, have in the past, been allowed to continue in the same station and cites the example of four such lady officers who have been posted for 20-25 years. To buttress her argument, she submits that it is the general policy of the Government to accommodate female Government employees at their choice stations subject to the condition of a minimum tenure.
3. The applicant submits that the post of Controller of Administration was vacant at the time of her promotion. However, during arguments, the counsel for respondents informed the Bench that the post of Controller of Administration was filled by a suitable incumbent. Vide order dated 18.11.2016, applicant was posted out of CSIO Chandigarh to Institute of Genomics & Integrative Biology (IGIB) at New Delhi. Applicant is a widow with one son. Applicant admits that her son is an adult and working at Chandigarh, and it is presumed that she is not covered by the clause of stay on the ground of education of children.

4. At the time of admission, the applicant's transfer to Delhi had been stayed on 23.08.2017.

5. Due to an accident on 23.12.2016, applicant suffered fracture on her upper right arm which is one of the reason she cites for her continuance in Chandigarh.

6. Applicant made representation to the President, CSIR who happens to be the Hon'ble PM of India and to the Vice President of the CSIR who happens to be the Minister of Science and Technology and Earth Sciences. This was followed by other representations. In reply to the applicant's representation, it has been clearly informed that the one post of COA in Chandigarh Station is occupied by one Parad Saxena who is transferred from CBI Roorkee in November 2016 on medical grounds. Hence, the said post of COA to which the applicant is seeking a posting is not vacant.

7. After the accident, the applicant resumed duty on 15.06.2017. Applicant filed OA No. 060/756/2017 which was disposed of by this Tribunal vide order dated 12.07.2017 with a direction to the respondents to decide the representation of the applicant sympathetically and in accordance with law. The respondents, in compliance of the CAT order, issued a six page order turning down the request of the applicant for retention in Chandigarh.

8. The prayer of the applicant is for quashing Annexure A-1 compliance of above CAT order and Annexures A-2, A-3, A-4 and A-5 orders which are reply to her representation. Applicant also prays for being allowed to continue in Chandigarh without any interruption.

9. The respondents in the reply statement submit that the post of Senior Deputy Secretary/Deputy Secretary/Controller of Administration upto the level of Section Officer form a common cadre of officers. As per sanctioned strength of this common cadre of officers, there are five posts of Senior Controller of Administration, 33 posts of Controller of Accounts, 48 posts of Under Secretaries (AO) and 195 posts of Section Officers in the CSIR Headquarter and laboratory/institute. There is no separate sanction for the above mentioned posts and the posts are utilized in the Headquarter and the laboratory institute as per requirement. The applicant has been in the service of CSIR since 1989 and is aware of the rule position in this regard.

10. Heard learned counsel for the applicant and respondents and perused the written submissions made.

11. The main argument of the applicant is that she has been transferred to the post of AO whereas she has been promoted to the post of Controller of Administration.

12. The respondents submit that on 25.08.2014, the incumbent officer of the post of COA Sh. Y.K. Sharma in CSIR, IGIB was transferred to the Headquarters of the CSIR as Senior Deputy Secretary. Similarly, one Ms. D. Vijaylakshmi, Deputy Secretary in CSIR Headquarter was posted as Controller of Administration in CSIR/IGIB and the orders for such postings are produced as Annexures MA 1 & MA 2. Thus, such inter-changeability of posts and officers amongst the posts is a routine occurrence and practice, and

there is no service rule which prevents such posting. Hence, the claim of the applicant for being retained in Chandigarh on the ground that inter-changeability of posts is not admissible, is not justifiable.

13. Applicant has been posted in Chandigarh for 28 years from the date of her appointment in 1989 as an Assistant and upto her promotion as Controller of Administration, which post she is continuing to hold on the basis of a stay order from the Tribunal. Thus, this is not a case where the applicant is a victim of frequent transfer or that the applicant is not eligible as per rules for an All India transfer liability.

14. The respondents also quote several Apex court orders wherein it has been held that transfer is a part of the service conditions of an employee and to contend that once appointed or posted at a particular place, applicant should continue in such place for as long as she desires, is not an acceptable argument. The respondents hold that transfer is not only an incident inherent in terms of an appointment, but is also an essential condition of service unless it is shown to be an outcome of malafide exercise of power or violative of any statutory provision.

15. Transfer in CSIR, according to the respondents, is on a functional need basis. A meeting of the Transfer Posting Committee (TPC) comprising of Director, CSIR-IMNT as Chairman Joint Secretary Administration CSIR and Financial Advisor, CSIR as members was held on 03.11.2016. The Committee considered 22 cases of transfer postings of CCOs on promotion. The Committee also considered the incumbency position and history of postings of CCOs before the

posting order of 22 officers including the applicant were made. Hence, this is not a case where the applicant alone has been targeted or that her transfer was made with any malafide intention. The counsel explaining the system of working of the respondents organization submits that on promotion, all empanelled CCOs including the applicant are posted wherever they are working till such time as the meeting of the TPC is convened. Such a posting includes an undertaking to abide by the transfer posting orders whenever the same are issued. Applicant has submitted such an undertaking, produced as Annexure R-1. There is no doubt that the applicant had been posted in the same station, Chandigarh, for over 28 years. The applicant's contention that one Geetha was posted in Hyderabad for a very long time is also contested by the respondents by submitting that Ms. Geetha was transferred to Bangalore Laboratory on 03.07.2017. We find that both the applicant and the respondents have in their written submission, given various examples of persons who have been retained in the same station as argued by the applicant or transferred out after a long stay as argued by the respondents.

16. At this stage, it is necessary to reproduce the norms, periodicity and tenure of transfer rules which are as follows:-

- (i) All the common cadre officers will ordinarily be considered for transfer after five years of stay in a Laboratory/Institute. While doing so, it will be ensured that all the three heads of Administrative Wings i.e. Gen. Admn., F&A and S&P in a Lab. will not be moved simultaneously.
- (ii) To the extent possible every Group-A CCO should have a minimum tenure of five years in two different zones.

- (iii) Every Common Cadre Officer will be required to serve at least one tenure (two years) at one of the difficult stations. After the difficult stations choice posting to the extent possible will be considered even across Zones.

On the basis of all the above three indicated norms, the applicant's transfer is justified and the argument of malafide is therefore not supported. The argument that some persons have been retained for many years would not hold or support the applicant, as officers would be considered for transfer on administrative exigency or after five years of stay in Laboratory/Institute. Due to this stated policy of tenure of five years, applicant who has spent 28 years at Chandigarh should not have a grievance if she is transferred out of Chandigarh station.

17. The only fact which is disturbing the applicant is having been promoted as COA, she argues that she is posted at Delhi to the post of AO. One of the pleasures of promotion is working in a higher post with higher responsibility. Hence, if there is no such post in Delhi as the one to which the applicant had been promoted, i.e. COA, the transfer of applicant to Delhi would not be justified. Being made to work in a lower post would certainly reek of malafide. That other ladies being posted at the same station due to family reasons would not be applicable, in the case of the applicant, who has a working son and such a consideration may not be wholly justified.

18. The applicant in the replication, does submit that when she met with an accident, her job as COA was managed by an AO, thereby, supporting the contention of the respondents that the posts are inter-changeable. But, the fact that she had been promoted would

be a good reason to allot a suitable slot of COA to the applicant. During arguments, it was mentioned that the post of COA in Chandigarh had been filled by another officer who was brought in on medical ground. Hence, disturbing such an officer recently posted to accommodate the applicant would not be an appropriate relief.

19. We also note from Annexure A-1 that all the contentions raised by the applicant in this OA, which may have been raised by her in her representations raised earlier, have been fully answered and we feel no need to reproduce the same in our order. The applicant's earlier representations for retention on medical grounds were also sympathetically considered by the respondents and she was allowed to continue at Chandigarh Station. Since the sole post of COA at Chandigarh is now occupied by a person who has been transferred there on medical grounds, the movement of the applicant out of Chandigarh cannot be said to reek of malafide as the same was effected on compassion being shown to Sh. Parag Saxena.

20. The Apex Court in **Rajendra Singh Vs. State of UP, (2009) 15 SCC 178**, has correctly opined in Para 5 that a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No government can function if the government servant insists

that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. In **Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532)**, the Apex Court has held that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order; instead the affected party should approach in representation to 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. Further, applicant has completed five years tenure in Chandigarh Station.

21. In **N.K. Singh Vs. UOI, 1994 SCC(6) 98**, the Apex Court has held that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision. We find that both are not attracted in this case.

22. Transfer or posting is not a matter which the applicant can claim as a matter of right. It is neither legal nor proper for the Tribunal to issue directions or advisory summons to the executive as to which post should be occupied by which officer in the Cadre. This is an administrative decision and the Tribunal cannot sit in judgement as to who would best fit in a particular post. Unless an order of transfer is shown to be an outcome of malafide exercise of power, or in violation

of statutory provision prohibiting any such transfer, it would not be proper for the Tribunal to interfere with transfer orders as a matter of routine. The competent authority is vested with the right to distribute available man power in exigencies of administration. The appellate jurisdiction of the Tribunal in the matter of transfer is extremely limited. Who should be transferred, where and when, is a matter for the appropriate authority to decide and the Tribunal cannot take on this responsibility.

23. For the foregoing discussion and the Supreme Court law prevailing on the point of limited interference in transfer matters, we feel ourselves constrained to offer limited relief to the applicant. Since the applicant is before us, we direct that she submit within 15 days three choice stations where posts of COA are vacant and the respondents will within two weeks accommodate her in one such station, opted for by the applicant in the order of options exercised subject to condition that the option is exercised for a vacant COA post in a station. The stay on transfer is accordingly vacated. MAs pending, if any, are also disposed of accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*