

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/536/2018

Date of Reserve: 14.03.2019

Date of Order: 19.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Prakash Dash, IIS, aged about 37 years, S/o. Shri Srinibash Dash, Asst.Director (News), Doordarshan Kendra, Chandrasekharpur, PO-Sainik School, Bhubaneswar-751 005.

...Applicant

By the Advocate(s)-Mr.K.C.Kanungo

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Information & Broadcasting, Room No.655, Wing-A, Shastri Bhawan, New Delhi-110 001.
2. Prasar Bharati Broad Casting Corporation represented through the Director General (News), Door Darshan Bhawan, Copernicus Marg, New Delhi-110 001.
3. The Director General, Press Information Bureau, Shastri Bhawan, New Delhi-110 001.
4. Deputy Director general (E) and Head of Office, Prasar Bharati, Doordarshan Kendra, Bhubaneswar, PO-Sainik School, Chandrasekharpur, Bhubaneswar-5, Odisha.

...Respondents

By the Advocate(s)-Mr.S.Behera
Mr.A.N.Dash

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) To quash the order No.126/2018-IIS (File No.PF/2562/IIS) dated 25.09.2018 as mentioned in Annexure-A/4.
- ii) To quash Memorandum No.A-56011/8/2018-IIS/640 dated 26.11.2019 (Annexure-A/8)

2. Succinctly stated, the facts of the matter are that while the applicant was on leave with a view to attending on medical treatment of his daughter at New Delhi, he was relieved of his duties as Assistant Director (News), RNU, Doordarshan Kendra, Bhubaneswar with effect from 26.09.2018(AN) vide order dated 26.09.2018, with direction to report for duty at PIB, New Delhi, immediately, thereby curtailing the Earned Leave already granted to him. Aggrieved with this, he had approached the Central Administrative Tribunal, Kolkata Bench in O.A.No.1516/2018. The said O.A. was disposed of by CAT, Kolkata Bench vide order dated 09.10.2018 granting liberty to the applicant to prefer a representation to the appropriate authority ventilating his grievance within 15 days from the date of receipt of the said order. It was directed that in the event such a representation is preferred, the same shall be considered and disposed of by the appropriate competent authority with a humanitarian approach within a period of 4 weeks from the date of receipt of such representation and till one week thereafter, the transfer of the applicant shall remain stayed.

3. In obedience to the aforesaid order, the applicant was allowed to resume his duties at Bhubaneswar with effect from 04.11.2018. He also submitted a representation dated 14.11.2018(A/7) to the Secretary, Ministry of Information & Broadcasting, Government of India, New Delhi Res.No.1 ventilating his grievance with a prayer for his retention at Bhubaneswar. In consideration of the representation, a Memorandum dated 26.11.2018(A/8) was issued to the applicant whereby his request for retention at Bhubaneswar was turned down. The relevant part of the Memorandum dated 26.11.2018 reads as follows:

“That Shri Prakash Dash has placed the grounds of ill health of his daughter who is suffering from Global Developmental Delay/West

Syndrome/Unknown Etiology and health issues of other family members for being allowed to remain posted in Bhubaneswar.

That from the representation made by Shri Prakash Dash it is apparent that in respect of the treatment of his daughter the SVPPG Institute of Paediatrics, Government of Orissa in September, 2017 had taken the view that she needs to go higher centre for further treatment as further investigation and advanced intervention is not available in the State of Orissa.

That according to the representation, Shri Prakash Dash's daughter was being treated at AIIMS, New Delhi and since the treatment at AIIMS was not leading to further improvement she required detailed evaluation at a higher institution, for which she was referred by CGHS, Bhubaneswar on 16.10.2017 to Nutech Mediworld, New Delhi for expert advice and treatment. Further, vide letter dated 12.09.2018, CGHS, Bhubaneswar permitted Shri Dash to continue the treatment of his daughter at Nutech Mediworld, New Delhi.

That from the above submissions and documentary evidence, it is abundantly clear that treatment of his daughter for the complicated disease/ailment is being undertaken at a specialised hospital in New Delhi over the last one year and accordingly his transfer to Delhi which is ordered vide this Ministry's Order No.126/2018-IIS dated 25.09.2018 would not come in the way of continued treatment of his daughter at New Delhi, rather it may be beneficial.

That this Ministry has instituted an enquiry against Shri Prakash Dash on an allegation of sexual harassment at workplace and therefore, it would be in public interest that the officer is not posted in the office and the station where the complaint relating to sexual harassment has originated.

Now, therefore, having regard to facts and circumstances of the case, the Ministry is of the opinion that the representation of Shri Prakash Dash for cancellation of the order dated 25.09.2018 for posting him to PIB, New Delhi deserves to be rejected and that he may be ordered to join at his new place of posting in New Delhi with immediate effect".

3. Hence, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as mentioned above.

4. In support of his case, the applicant has pleaded that since there was no apparent improvement of her daughter at New Delhi, he took her to Capital Hospital, Bhubaneswar where the Doctors observed that there is no desired

result after her treatment at New Delhi. They observed that the patient requires constant monitoring both at home and hospital because the stem cell treatment has not given desired result. The Doctors have also advised for the visit of the patient after two months and when required. In this connection the applicant has annexed to the O.A. at A/10 the detailed treatment of his daughter at Capital Hospital, Bhubaneswar.

5. Further, the applicant has pointed out that only when his representation was disposed of by Respondent No.1 in pursuance of the direction of CAT, Kolkata Bench, he could come to know about the allegation of sexual harassment made against him. According to applicant, he had been earlier harassed by one lady (outsider) alleging/blackmailing him the detail facts of which he had brought to the notice of the authorities concerned at the time of preferring his representation dated 14.11.2018. According to him, the fact finding report enclosed thereto is very clear in which it has been reported that the applicant was the victim of conspiracy since he was taking reformatory steps while he was functioning in All India Radio & DFP. The applicant has submitted that he and his colleagues in the office were being harassed by unknown lady styling her as a casual news reader levelling allegation of sexual harassment for which an Internal Complaint Committee (ICC) was set up which submitted its report after thorough inquiry that the applicant as well as other named in the complaint were absolutely innocent and the allegation was false and fabricated. It has been pleaded by the applicant that as per the settled principle of law, on the ground of mere allegation, transfer of an employee is not legally sustainable. In this connection, the guidelines issued by the DOP&T dated 26.07.2015 on Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013, stipulate that the

Committee which functions under the ambit of law is legally competent to recommend transfer either of the aggrieved woman or the charged official, if they are satisfied that such step is warranted and such a course of action could be taken only after conducting a primary inquiry. According to applicant the order of transfer does not disclose anything in that behalf and therefore, the same is not tenable in terms of DOP&T & CVC guidelines (OM No.11013/2/2014-Estt.(A-III) dated 16.07.2015(A/12).

6. Per contra, respondents have filed a detailed counter. According to respondents, the applicant is posted at Cuttack and Bhubaneswar in one capacity or another for last seventeen years except a brief spell of over one year at Sambalpur since his joining on 26.12.2001. He has been posted in his home town for continuous seventeen years and not for a single day outside his native state. Respondents have pointed out that the applicant's daughter was getting her treatment at Newtech Mediworld, New Delhi as she did not respond to the specialized treatment at AIIMS, New Delhi. Therefore, the applicant was transferred to New Delhi in order to facilitate the treatment of his daughter.

7. Respondents have submitted that on the basis of a complaint lodged by one lady news reader, without however disclosing her name, before the Union Minister of Information & Broadcasting on 26.03.2018 stating that she has been sexually harassed by the applicant many a times. On 30.08.2018, the victim also sent a detailed allegation including whatsapp message sent by the applicant to the Ministry of I & B. Consequently, the Ministry of I & B vide order dated 25.10.2018 nominated Ms.Ranjana Dev Sarma, ADG, PIB, New Delhi to look into the matter along with the other officials of Doordarshan Kendra, Bhubaneswar. Thereafter, a Committee of seven members was

constituted and conducted enquiry regarding complaint of sexual harassment against the applicant. On 11.12.2018, the Committee proposed that since sexual harassment case is going on against the applicant, he should not prepare the duty assignments for the news reader till the enquiry is over. The ICC handed over the matter to the Cyber Crime to investigate and find out the authenticity of the charge regarding complaint of sexual harassment against the applicant.

8. According to respondents, Para-2 of DOP&T OM No.AB 14017/41/90-Estt.(RR) dated 15.02.1991 states that "considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a chaise in the place of posting is likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice, Ministries/Department are requested to take a sympathetic view on the merits of each case and accommodate such requests for posting to the extent possible". According to Respondents, in the light of this DOP&T guidelines, the applicant was transferred to New Delhi to facilitate treatment of his daughter.

9. Respondents have further submitted that transfer being an incident of service, the court/tribunal should not interfere with it and accordingly, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

10. This matter came up for admission on 03.12.2019, when this Tribunal stayed the operation of the impugned orders at Annexure-A/4 and A/8 to the O.A. with direction to respondents not to relieve the applicant till the next date. This interim order is in force as on date.

11. M.A.No.119/2019 has been filed by S/Shri Suvendu Mohanty and Dharendra Nath Mallick stating that they have substantial interest in this case and hence, are necessary parties. Therefore, they have prayed to intervene in the O.A. for the effective adjudication of the dispute.

12. On 14.03.2019 when the matter was heard, no one had appeared on behalf of the proposed interveners. On a perusal of M.A.No. 119/2019 for intervention, this Tribunal is of the opinion that the proposed interveners by no stretch of imagination are going to be prejudiced in any manner whatsoever even if the present O.A. is decided in favour of the applicant. Therefore, they being not the necessary parties do not have *locus standi* to intervene in this O.A. Accordingly, the prayer made in M.A.No.119 of 2019 for intervention is rejected.

13. Coming to the merit of the matter, we would like to note that it is the well settled principle of law that the Court/Tribunal should not interfere in the orders of transfer unless such transfer arises out of *bias and malafide* and/or it has been made in violation of statutory mandatory rules. There is no doubt that the applicant carries the All India transfer liability. But the fact remains whether the circumstances under which the respondents have issued orders transferring the applicant involves exigency of service or public interest. This fact is amply clear from the Memorandum dated 26.11.2018(A/8) the relevant part of which has already been quoted above. It is quite clear therefrom that one of the grounds of transfer of the applicant is purportedly for availing better treatment of her daughter at New Delhi and to substantiate this, they have relied on to DOP&T guidelines dated 15.02.1991 in this regard. This in our considered view, cannot be translated into action on its own motion or in the absence of any request made by an employer in

that behalf. There is no such request made by the applicant to post him on transfer at New Delhi for the better treatment of her daughter. Therefore, the plea of the respondents for transferring the applicant to New Delhi for the purpose of availing better medical treatment of her daughter does not hold any water.

14. As regards the allegation of sexual harassment made against the applicant, it has been pointed out that earlier such a complaint having been made by an imposter, the matter was enquired into and the Internal Complaint Committee had reported that the applicant along with others were innocents. This submission of the applicant has not been repudiated by the respondents in their counter. Regarding the further allegation of sexual harassment, the respondents themselves have pointed out that consequent upon an anonymous complaint of sexual harassment by a news reader, the matter is being enquired into by the ICC and as it appears from the counter, on 11.12.2018, which is the date after the date of relief of the applicant vide A/4 dated 26.09.2018 and the decision communicated to the applicant vide Memorandum dated 26.11.2018(A/8) in pursuance to order of CAT, Kolkata Bench, the Committee only proposed that since sexual harassment case is going on against the applicant, he should not prepare the duty assignments for the news reader till the enquiry is over. However, the Respondents have submitted a report of the ICC dated 7.2.2019(R/6) to the Misc. Application No.159 of 2019 for vacation of interim order of stay passed by this Tribunal on 03.12.2018. The relevant parts of the report are as under:

"4.Further, in view of the recommendation made during 1st meeting of ICC and absent of 2 female Newsreader during 2nd meeting to record their views in writing, the matter was referred to Cyber Crime. Two officers from the crime Branch (Cyber) visited DDK, Bhubaneswar and discussed with the Chairperson

and some Members of the ICC.. The Cyber Crime report is still awaited.

Further, in view of CAT Order to complete the inquiry within three weeks, it has been decided by the committee that the above mentioned case of sexual harassment against Shri Dash, Asst.Director(News), DDK, Bhubaneswar may be treated as procedure completed due to non-availability of conclusive evidence and also subject to the outcome of Cyber Crime report.

However, it may be pertinent to mention here that about half of the newsreaders are female and also complaints of the same nature against Shri Prakash Dash have been received earlier and investigated by the ICC.

Therefore, taking all these above points into consideration it may be appropriate if a lady officer is posted as Asst.Director, News in DDK, Bhubaneswar to create confidence among the female employees. The basic responsibility of any organization is to create a conducive, safe and secure work environment as per the law of prevention of sexual harassment at work place, 2013.

It is also recommended that appropriate action may be initiated by the competent authority in accordance with Service Rules”.

15. From the above report, it is clear that there is no evidence at all against the applicant on the allegation of sexual harassment. Therefore, the inescapable conclusion that could only be drawn is that there has been a deliberate plotting and scheming to oust the applicant from the present place of posting under the pretext of sexual harassment. There is no doubt that it is the well settled principles of law that the Courts/Tribunals should not ordinarily interfere with the orders of transfer. In this connection, the decision of the Hon’ble Supreme Court in Shilpi Bose & Ors. Vs. State of Bihar & ors. (AIR 1991 SC 532) lays down as follows:

“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 the 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”.

16. We have examined the facts of the present case in the light of the decision of the Hon'ble Supreme Court in Shilpi Bose case(supra). In the instant case, admittedly, the transfer order has not been issued in violation of any statutory rules or instructions nor by an authority incompetent to pass such an order. But from the facts adduced before us lead us to a definite conclusion that applicant's transfer arises out of malafide inasmuch as his transfer is grounded upon anonymous allegations of sexual harassment. Since the ICC in its report has submitted that there is no conclusive evidence against the applicant on sexual harassment and on the other hand, the authorities having stressed on the allegation of sexual harassment have issued order of transfer, by no stretch of imagination such an action of the respondents can be said to be above board. It is well settled principles of law that bias vitiates everything. Since the applicant's transfer is an outcome of bias and malafide, we quash the relieving order dated 26.09.2018 (A/4) and the Memorandum dated 26.11.2018(A/8) passed by the Respondent No.1. The applicant be immediately allowed to join in his post at Bhubaneswar.

17. In the result, the O.A. stands allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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