

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00059/2019

Jabalpur, this Monday, the 6th day of May, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Vijay Vyas, S/o Late Shri R.C.Vyas, Aged about 50 years,
Presently working as Computer Operator Gr-II,
PSSCIVE, RIE Campus, Shyamla Hills, Bhopal,
R/o E-3/318 Arera Colony, Bhopal (M.P.)

- APPLICANT

(By Advocate – Shri Swapnil Ganguly)

Versus

1. Union of India,
Ministry of Human Resources & Development,
Shastri Bhawan, New Delhi-110 001 Through its Secretary.

2. Director, National Council of Educational Research & Training,
Aurobindo Marg, New Delhi-110 016

3. Joint Director, Pt. Sundar Lal Sharma Central Institute of
Vocational Education, RIE Campus, Shyamla Hills,
Bhopal (M.P.)-462001

- RESPONDENTS

(By Advocate – Shri Ashish Giri)

(Date of reserving the order: 08.04.2019)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved by an order dated 28/29.12.2018
(Annexure A-1) by which he has been relieved from the post of Computer
Operator Gr.II PSSCIV/RIE, Bhopal to join at RIE Mysuru, in terms of
the transfer order dated 28.12.2018 issued by the National Council of
Educational Research & Training (for brevity 'NCERT').

2. The brief facts of the case as submitted by the applicant are as under:-

2.1 The applicant was appointed as Computer Operator Grade-II vide order dated 04.10.1995 (Annexure A-4) issued by Pt. Sundarlal Sharma Central Institute of Vocational Education, (for brevity 'PSSCIVE') (NCERT), Bhopal.

2.2 He is a Class-III employee and his entire establishment and seniority is maintained at the institute level.

2.3 He is in-charge of ICT Centre (Information Communication & Technology) which is a Bhopal Centre Specific Unit and there is no parallel unit at RIE, Mysuru.

2.4 There is no post of Computer Operator Grade-II at RIE Mysuru.

2.5 The impugned order of transfer has been issued because of the then Joint Director Prof. R.G.Chouksey, who was repatriated and subjected to regular departmental enquiry by the Ministry of Human Resources. Said Prof.Chouksey had filed a writ petition and Prof.Mridula Saxena and the applicants were appointed as Officer-in-charge for the court case by the NCERT. The loss of litigation by Prof.Chouksey led this applicant and Prof.Mridula Saxena to incur the wrath of Prof.Chouksey.

2.6 The present Joint Director R.P.Khambayat and Ex. Joint Director Prof. Chouksey were old colleagues at NITTR Bhopal.

2.7 The present Joint Director started making several false and fabricated complaints to NECRT, New Delhi. The NCERT New Delhi deputed Vigilance and Security Officer (for brevity 'VSO') to Bhopal. The applicant submitted a detailed reply dated 24.10.2018 (Annexure A-6) to the VSO.

2.8 Being aggrieved by the impugned order of transfer, the applicant preferred a representation. But, when no decision had been taken, the applicant had approached this Tribunal by filing Original Application No. 200/00003/2009, which was disposed of vide order dated 02.01.2019 (Annexure A-8) with a direction to the respondents to consider and decide the applicant's representation by passing a reasoned and speaking order.

2.9 The Respondent No.1 vide order dated 11.01.2019 (Annexure A-9) decided and rejected the applicant's representation.

3. The applicant has, therefore, prayed for the following reliefs in this Original Application:-

“(8.i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

(8.ii) Quash and set aside the impugned relieving order dated 28/29.12.2018 (Annexure A/1) & rejection order dated 17.01.2019 (Annexure A/2).

(ii-A) quash and set aside the order dated 28.12.20148 (sic- 28.12.2018)(Annexure A/11) and this Hon'ble Tribunal direct the

respondent not to adversely affect the service of applicant in pursuance to the transfer order dated 28.12.2018;

(8.iii) *Direct the respondents to allow the applicant work on the present place of posting as Computer Operator Gr.-2 at PSSCIVE, Bhopal;*

(8.iv) *Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant;*

(8.v) *Award cost of the instant list to applicants".*

4. On the other hand, the respondents have submitted as under:-

4.1 The applicant is an employee placed as Computer Operator Grade II at respondent No.3 working under the supervisory control of respondent No.2. The Director, NCERT is the supreme final authority to take all final academic and administrative decisions in the interest of the body and its constituent units.

4.2 The applicant has been put to face enquiry before sexual harassment committee of the Institute. A case was also lodged against him at National Commission for Scheduled Caste on complaint lodged by one of the employee of the Institute. Presently also a preliminary enquiry was held against him by the VSO, NCERT Delhi.

4.3 The applicant has been transferred to RIE Mysuru as per recommendations of VSO, NCERT in its report dated 15.11.2018 in public interest. The seniority of the applicant for promotion purposes will not be affected at PSSCIVE.

4.4 In compliance to the directions of the Tribunal dated 02.01.2019 in OA No.03/2019, the representation of the applicant has been considered and rejected vide order dated 17.01.2019 (Annexure A-2).

4.5 The action of the respondents by which he has been transferred to RIE, Mysuru has been taken as disciplinary proceedings against him is contemplated to be taken as per CCS(CCA)Rules to be held at RIE Mysuru and there is possibility that he may influence the witness during such proceedings, if held at Bhopal. Hence he has been directed to move from PSSCIVE Bhopal to RIE Mysuru.

4.6 The transfer policy of NCERT dated 09.01.2013 (Annexure R-01) categorically empowers the Director to be the sole competent authority to transfer any employee to any place in relaxation to any or all the provisions.

4.7 The applicant was indulged in influencing the higher authorities of the institute by seeking political indulgence which itself amounts to serious misconduct on account of which disciplinary proceedings against him are contemplated and keeping in mind the seriousness of the issue and possibility of influencing the proceedings, the applicant has been ordered to move from PSSCIVE, Bhopal to RIE, Mysore. The order of transfer has been issued by the competent authority in public interest in order to maintain working environment in the Institute.

4.8 The VSO, NCERT, New Delhi conducted a fair and confidential enquiry regarding the complaints reported about the applicant and recorded statements of various officials and employees in an independent manner. Ample opportunity of hearing to participate in the preliminary enquiry had been afforded to the applicant. The applicant himself has placed on record his reply dated 24.10.2018 (Annexure A-06) submitted before the VSO, NCERT, New Delhi during the enquiry, therefore, his contention that no opportunity was provided to him is per se contrary to record. The applicant was found guilty of grievous misconducts by the enquiry officer for which his transfer was recommended and further disciplinary proceedings against him are contemplated. Since the applicant was indulged in disturbing the working environment of the institute he has been transferred to RIE, Mysuru in the interest of smooth functioning of the institute.

4.9 In pursuance to the order dated 17.01.2019, the applicant has been relieved vide order dated 18.01.2019 (Annexure R-04). He will be entitled for joining time, TA/DA as per Central Government norms. The applicant himself has sought transfer TA/DA from the respondents vide his application dated 24.01.2019, which has been sanctioned in accordance with the norms of NCERT and credited to his bank account (Annexure R-5 colly.).

4.10 Since the applicant is abstaining from service, all official orders are being communicated to him via email in the interest of the institute and NCERT.

4.11. In reply to the contention of the applicant that he has been subjected to punitive transfer only because he is an officer-in-charge of the case pending against Prof.Chouksey, the respondents have submitted that there is no relevance of these happenings with the present case of his transfer to RIE, Mysuru. The applicant is trying to misguide on assumptive allegations.

5. In his rejoinder, the applicant has submitted as under:-

5.1 The so called complaints were in the year 2013-14 wherein the then authorities took a call as per their wisdom and judgment and digging up the already closed issues not pertaining to the tenure of either the present Director, NCERT or the Joint Director, PSSCIVE itself is malafide and amounts to framing to applicant. It is very surprising that after almost 5 years, all the Pandora box has been opened by the respondent-authorities without any reason and substance

5.2 During so called enquiry only verbal discussion was done by the VSO and complaints were not given in writing.

5.3 The VSO report is biased and under the influence of respondent No.3.

5.4 The respondent No.2 has never issued a single memo, warning or punishment in all these 24 years, notwithstanding the so called complaints and enquiry. Also no communication of any adverse comments by any reporting/reviewing officers has been made with the applicant in all these 23 years. The ACRs of last 5 years (Annexure RJ-3 colly.) indicate his overall grading as 'Very Good'.

5.5 The applicant has been transferred to RIE, Mysore where no post of Computer Operator is available and for creation of any post it is necessary to take permission and approval from Ministry of Finance but in the present case no such permission and approval has been taken.

5.6 Applicant is a Hindi speaking person and also unaware of the local language of Mysore. It will also be difficult for the applicant to communicate with the other employees of RIE Mysore.

5.7 The applicant originally belongs to Bhopal (M.P.) and residing with his family. His mother aged 92 years is suffering from various old age ailments and applicant is the only member to take care of his mother.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. The learned counsel for the applicant has submitted that the applicant has been transferred as a punishment without any show cause notice, without any memo and without following the principles of natural

justice. In this regard he has relied upon two decisions of Hon'ble High Court of Madhya Pradesh in WP No.7415/2014 (**Govindram Dading Vs. State of Madhya Pradesh**) decided on 05.02.2015 and in Writ Appeal No.490/2013 decided on 17.12.2013. He has also placed reliance on the decision in the matters of **Union of India and others Vs. Smt.Kiran Bala Sharma & another**, Writ Petition (C) No.702 of 2010 decided on 03.02.2010 for the analogy that when order of transfer is passed not on administrative exigencies but on account of being punitive, same is not sustainable.

8. On the other hand the learned counsel for the respondents has placed reliance on the decisions of the Hon'ble Supreme Court in the matters of **Union of India and others Vs. Janardhan Debanath and another**, (2004) 4 SCC 245; **National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & another**, (2001) 8 SCC 574; **Rajendra Roy Vs. Union of India and another**, (1993) 1 SCC 148 , as well as the decisions of Mumbai Bench of this Tribunal in the matters of **Ravindra Vs. Union of India and others**, Original Application No.211/00196/2015 decided on 02.11.2016 and the decision of Madras Bench of this Tribunal in the matters of **N.Dandapani Vs. Engineer-in-Chief, Army Headquarters and others**, Original Application No.352 of 1988, decided on 30.06.1989.

Findings

9. Relevant extracts of transfer policy of NCERT's Academic and Non-Academic staff (Annexure A-7) are reproduced as under:-

“2. GUIDING / BASIC PRINCIPLES OF TRANSFER

i) The guidelines shall be applicable to all categories (Academic, Nonacademic and Ancillary Staff).

6. AUTHORITIES COMPETENT TO EFFECT TRANSFER Under Article 15(a)(3) of Education Code of NCERT, Director, NCERT is empowered to transfer, post and assign any duties to any officer or staff of its constituent units. Therefore, Director shall be competent to exercise all powers under the guidelines to affect transfer and / or grant exemption under various clauses and provisions. However, the Director may delegate power to such authorities with such further limitations for such a period, as deemed appropriate in view of prevailing circumstances either by a general or a specific order to such authorities. Power so delegated is liable to be withdrawn by the Director whose discretion in this regard shall be final.

7. POWER OF RELAXATION OF GUIDELINES Notwithstanding anything contained in the guidelines, the Director shall be the sole competent authority to transfer any employee to any place in relaxation of any or all of the above provisions.

8. INTERPRETATION OF GUIDELINES Director, NCERT shall be the sole competent authority to interpret the provisions above and pass such order (s) as deemed appropriate and essential to facilitate the implementation of the guidelines for the purpose of effective control and administration of NCERT as a whole.

9. SAFEGUARD AGAINST EXTRANEous INFLUENCE Employees shall not bring in any outside influence. If such an influence from whichever source espousing the cause of an employee is received, it shall be presumed that the same has been brought in by the employee. The request of such an employee shall not be considered. Action may also be initiated against such an employee under relevant service rules”.

9.1 From a perusal of the above guidelines it is very much clear that these guidelines are applicable for all categories (Academic, Non-

academic and Ancillary Staff) and that the Director, NCERT is empowered to transfer, post and assign any duties to any officer or staff of its constituent units. Therefore, Director shall be competent to exercise all powers under the guidelines to affect transfer and / or grant exemption under various clauses and provisions.

10. On perusal of the order dated 28.12.2018 (Annexure A-11) we find that the order of transfer of the applicant has been issued after approval by the Director, NCERT New Delhi based on the preliminary report submitted by the VSO. In the said order it has been specifically mentioned that:-

“The matter was examined with reference to the report submitted by the VSO in F.No.VSO/---PSSCIVE BPL/2018 dated 15th November,2018 and it has been decided that :-

“(1). Shri Vijay Vyas, Computer Operator Grade-II - He is transferred to RIE Mysore with immediate effect and he may be stand relieved.

(2). His seniority may not be disturbed for promotion at PSSCIVE Bhopal

Joint Director, PSCIVE, Bhopal is therefore requested to take necessary action in the matter immediately.

This issues with the approval of the Director, NCERT”.

11. The applicant in his reply dated 24.10.2018 (Annexure A-6) submitted to the VSO (NCERT) has pointed out various irregularities being committed by the Joint Director. He also made an allegation that the Joint Director encourages and instigates other computer operators and staff to complain against the applicant. In his representation the applicant

had also admitted his closed relations with some political members, who had visited the office of the Joint Director. However, the applicant had expressed his ignorance by stating that “In fact, I was not even aware of their visit till the Joint Director discussed the issue next day in a faculty meeting”.

12. In the matters of ***Janardhan Debanath***, (supra) the Hon'ble Supreme Court has clearly held that “the manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions — status, service prospects financially — and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration”.

13. In the instant case the impugned order dated clearly protects the rights of the applicant inasmuch as in the order it has been specifically mentioned that “His seniority may not be disturbed for promotion at PSSCIVE Bhopal”

14. As regards the personal hardships being faced by the applicant, because of the impugned order of transfer, we may at the out set observe that the transfer order may cause great hardship, as the applicant would be forced to have a second establishment at a far distant place, and he may not be able to manage his affairs and to look after his family. 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.

15. 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 mala fide or by extraneous consideration without any factual background or foundation.

16. 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”.

17. In the instant case we find that there is no allegation of mala fide against the Director, NCERT, who has passed the impugned order of transfer, after going through the report of the VSO. The applicant has already applied for and has been granted the transfer grant and TA/DA. By taking into account these admitted facts; we are of the considered opinion that no irregularity was committed by the competent authority in

transferring the applicant. Therefore, we do not find any ground to interfere with the impugned order of transfer.

18. Accordingly, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member