

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/00035/2019

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

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

Ashok Kumar, S/o Shri B.N.Choudhary,
Aged about 58 years, R/o 467, Scheme No.51,
Near Sangam Nagar, Indore M.P. Pin-452006

- APPLICANT

(By Advocate –Shri M.Chandurkar)

Versus

1. Union of India through the Secretary,
Ministry of Micro, Small & Medium Enterprises,
Udyog Bhavan, New Delhi-110 001.

2. The Development Commissioner and Chairman (MSME),
Govt. of India, 7th Floor, Nirman Bhavan, Maulana Azad Road,
New Delhi Pin-110108

3. General Manager Incharge MSME TECHNOLOGY CENTRE
(Indo German Tool Room), 291/B-302A, Sanwer Road,
Indore M.P. Pin-452001 - **RESPONDENTS**

(By Advocate – Shri Prateek Patwardhan)

(Date of reserving the order: 26.04.2019)

OR D E R

The applicant is aggrieved by the order dated 22.12.2018 by which he has been transferred from Indore to Jabalpur.

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

2.1 The applicant was appointed on the post of Manager in the erstwhile Indo-German Tool Room (IGTR) at Indore vide order dated 27.12.1996 (Annexure A-1).

2.2 Due to exigency of work, the applicant was transferred to IGTR Jabalpur vide order dated 11.10.2014 (Annexure A-3).

2.3 The applicant is having only girl child who is married. He and his wife have settled at Indore due to long stay.

2.4 On 23.10.2015 (Annexure A-5) he made a request to transfer him from Jabalpur to Indore. Accordingly, he was transferred from Jabalpur to Indore vide order dated 16.06.2016 (Annexure A-6).

2.5 Vide order dated 12.05.2017 (Annexure A-8) he was directed to look after the entire gamut of activities related to production as Manager (Prodн.) and made in charge of Production and PPC activities with existing responsibilities of co-ordination of the Extension Centre, Jabalpur.

2.6 He was served with a show cause notice dated 27.12.2017 (Annexure A-9) regarding below level performance. He submitted his reply to show-cause notice on 06.01.2018 (Annexure A-10). Vide communication dated 12.01.2018 (Annexure A-11) he was informed that his reply to the show cause notice was found to be not satisfactory. By the said communication it was further intimated to him that his

“performance will be reviewed after 31st March, 2018 and if no improvement is visible, appropriate action will be initiated”.

2.7 Another show cause notice dated 10.10.2018 (Annexure A-12) was issued to him, regarding his performance, to which he submitted his reply on 22.10.2018 (Annexure A-15).

2.8 However, without considering his reply, the impugned order of transfer dated 22.12.2018 (Annexure A-16) was passed directing the applicant to join at Jabalpur on or before 02.01.2019.

2.9 He is going to retire in April 2020 and according to transfer policy within 2 years from superannuation, no officer be transferred from existing posting place. Thus the transfer is against the policy.

2.10 His wife is in extremely critical condition as she has fracture in her left leg and got operated with fixing of rod in her near hip joint and there is no member in the family except him to take care of her.

3. The applicant has, therefore, sought for the following reliefs:-

“(8). In view of the facts and grounds mentioned above, the applicant prays that this tribunal be pleased to quash the transfer order dated 22.12.2018 issued by the Respondent No.3 and direct him to continue the applicant at Indore till his retirement.

Any other order which this Hon’ble Tribunal deems fit and proper, may also be passed in the interest of justice”.

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

4.1 After perusing performance of the applicant at Jabalpur during the period 2014 to 2015 it was found that the applicant has been able to perform well in bringing up the Training Centre of respondent No.3 at Jabalpur and activities were expanded by the applicant. From the past experience, the applicant was found most suitable person for initiating and completing these activities at Jabalpur.

4.2 There is no relation between the applicant's transfer and show-cause notices issued to him. The applicant has been transferred for the sake of functional/ administrative requirement of the organization.

4.3 IGTR does not have Rotational Transfer Policy as the IGTR transfer the services of the employee only IGTR extension centre on functional requirement basis.

4.4 The transfer policy was framed by the respondent for smooth administration of the organisation. Hon'ble Supreme Court in the matters of **Bank of India Vs. Jagjit Singh Mehta**, (1992) 1 SCC 306 has held that "*transfer policy is not sacrosanct. Deviation as per requirement convenience and sake of administration is permissible*".

5. By way of filing M.A.No.200/384/2019, the respondent No.3 has brought on record following subsequent facts –

5.1 In pursuance of the order passed by the Tribunal, the representation of the applicant has been decided vide order dated 08.02.2019 (Annexure-A) and the same has been rejected on the ground that transfer was made on ground of administrative exigency and looking to fact that performance of ITI Hi Tech Centre, Jabalpur was below the mark and it required supervision by senior office of the level of Manager like applicant. Therefore, in the interest of organisation and public at large, the applicant has been transferred from Indore to Jabalpur.

5.2 The applicant has also submitted joining at Jabalpur on 11.02.2019 (Annexure-B). As the applicant has accepted the order of transfer and submitted his joining at Jabalpur, the present OA has rendered infructuous and same be dismissed accordingly.

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

7. We find that it is the specific stand of the respondents, which has not been controverted by the applicant by filing any rejoinder, that the

impugned order of transfer was made by the respondents on the ground of administrative exigency and looking to fact that performance of ITI Hi Tech Centre, Jabalpur was not up to the mark and it required supervision by senior office of the level of Manager like applicant. Therefore, in the interest of organisation and public at large, the applicant has been transferred from Indore to Jabalpur.

8. 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.

9. 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 malafides or by extraneous consideration without any factual background or foundation.

10. 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”.

11. In the instant case we find that there is no allegation of mala fide against any officer of the respondents nor any allegation with regard to competency of the officer who has passed the impugned order of transfer.

The applicant has already complied with the order of transfer and joined at Jabalpur on 11.02.2019. Therefore, we do not find any ground to interfere with the impugned order of transfer.

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

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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