

**Central Administrative Tribunal
Madras Bench**

OA/310/00497/2019

Dated 30th April Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr.R.Ramanujam, Member(A)
&
Hon'ble Mr. P.Madhavan, Member(J)**

R.Anurajan
S/o E.K.Ramakrishnan,
No.333/5A, Tharomi,
jagathala Village & Post,
Aruvankadu 643 202. .. Applicant
By Advocate **M/s.Row & Reddy**

Vs.

1. Union of India
M/o Defence, rep by its
Defence Secretary,
South Block,
Cabinet Secretariat, Rasina Hill,
New Delhi.
2. The Director General of Ordinance Factory,
No.10A, S.K.Bose Road,
Kolkata 700 001.
West Bengal.
3. The General Manager,
Cordite Factory, Arunvankadu,
The Nilgiris.
4. The General Manager,
Ordinance Factory, Itarsi,
Madhya Pradesh. .. Respondents

By Advocate **Mr.SU.Srinivasan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“(i) to set aside the order bearing No.01/DS/109979/2019 dated 28.3.2019 passed by the 2nd respondent in rejecting the request of the applicant to retain him in Aruvankadu and also to set aside the transfer order of the 2nd respondent in order bearing No.PER/I/TRANSFER.CFA/ANURAJAN dated 08.3.2019 and the order of the 3rd respondent in reference no.142 dated 08.3.2019 in transferring him from Cordite Factory, Aruvankadu (CFA) to Ordinance Factory Itarsi (OFI)

(ii) for a consequential direction to the 2nd and 3rd respondent to retain him in Cordite Factory Aruvankadu (CFA) owing to above reasons and circumstances and;

(iii) to pass such other orders or directions as this Tribunal may deem fit and proper in the circumstances of the case, award costs and thus render justice.”

2. The short point to be decided is whether the transfer of the applicant dated 28.3.2019 from the Ordinance Factory (Cordite) Aruvankadu to Itarsi is vitiated by malafide.

3. According to the applicant, ever since his appointment in 1999 he is working as a Chemical Process Worker and his wife is also working in the same factory and his children are studying nearby. He is an active organiser of Cordite Factory Labour Union (CFLU) affiliated to All India Defence Employees Federation and he was also nominated to JCM-Level IV (Joint Consultative Machinery) from 2009.

4. Since he belongs to a Group C employee his inter-factory transfer is not proper

and his transfer is vitiated by malafides. According to him, the respondents ought to have retained him at Cordite Factory as his spouse is also working in the same factory and as per guidelines spouses should be accommodated in the same place. The respondent ought to have retained him at the present place as he is an office bearer of the Trade Union.

5. The counsel for the respondent appeared and filed a statement contending that the applicant was transferred on administrative grounds. There is no malafide in the transfer. According to the respondents, the applicant was transferred from Cordite Factory owing to his various acts of misconduct. He is in the habit of instigating workers and create issues over a non-issue. His behaviour had set a bad example to other employees. The applicant was non-co-operative in production related issues and he frequently violate the gate discipline and goes outside the factory under various pretexts and it has become difficult to establish discipline owing to his behaviour. The JCM Level IV Committee is not at all functioning in the factory from 2010 onwards. It is on public interest and administrative grounds, the applicant was transferred to Itarsi. There are many disciplinary cases pending against the applicant for his misconduct and even after issuing charge memos, there is no change in the attitude and behaviour of the applicant. The respondent had passed a speaking order on his representation as per order of the CAT, Madras Bench, in OA 375/19 on 28.3.19.

6. Heard the counsel for applicant and SU.Srinivasan appearing for the respondents. The main contention of the applicant is that the respondents are

victimising him and the transfer is vitiated by malafide.

7. We have anxiously perused the pleading and considered the submission made from both sides. It is already a settled law that the Tribunal can interfere in matters on transfer only on grounds of malafide. Whether the applicant has brought out any malafide before the Tribunal has to be looked into. On a reading of the pleadings of the applicant, it can be seen that he has been working in the Cordite Factory from 1999 onwards. Even the pleadings of the applicant would show that various charge memos are pending against him for alleged misconduct on his part. It can also be seen that the OFB has not finalised any transfer policy till date. The proposal for not effecting Group C & D employees from transfer to other units is also not finalised by OFB even though counsel would contend that transfer of Group C & D employees cannot be transferred on administrative grounds. There is no material to show that any of the respondents are against the functioning of Cordite Factory Labour Union in the factory premises. There is no material produced to show that workers of CFLU are targetted and transferred from the factory. There is also nothing brought before the Tribunal to show that the respondents have any malice against the applicant to see that he is sent out of the factory. It is the specific case of the respondent that the behaviour of the applicant inside the factory is not proper and he has a habit of instigating employees and create indiscipline among them. According to the respondents, this creates difficulties in the smooth functioning of the factory. Being a worker of the trade union, it is also the duty of the applicant to see that his activities does not effect the general discipline of the employees. The various charge memos

issued against the applicant is also admitted in the pleadings. The speaking order dated 28.3.19 passed by the 2nd respondent clearly spells out the various misconducts and penalties imposed on him. The respondents had clearly answered almost all the points raised in the representation filed by the applicant.

8. In *Laxmi Narain Meher v. Union of India (reported in JT 1997 (3) SC 444)* the Hon'ble Apex Court had held that Tribunals should not act as an appellate authority sitting in judgment over orders of transfer. A transfer order by a competent authority do not violate any legal right of an employee. In *S.R.Venkatraman v. Union of India (reported in 1979 (2) SCC 449)* the Hon'ble Supreme Court has observed thus on the question of malice as follows:-

“An administrative authority has got a duty to show what had been taken into consideration and what are not to have been taken into consideration, based on which administrative decision taken should be put to test.”

9. The reasoned order passed by the 2nd respondent clearly show what are the facts and circumstances weighed with them while ordering the transfer of the applicant. We are unable to find any malice or malafide in the action taken by the respondents. Further there is no specific pleadings also to show that the respondents were acting with malafidies. Not one, but a series of misconduct on the part of the applicant has culminated in the order of transfer. So, we find that the applicant has not succeeded in bringing out any malafides or arbitrariness in the action of the respondents.

10. As regards the posting of spouses in same station, it is only a guideline and

such instructions does not give rise to any right to an employee. It is the right of an employer to decide when and where an employee has to be transferred. The transfer liability is already known to the employee and it is an incidence of his service.

11. So, we are of the view that the OA lacks merits and it is liable to be dismissed. Accordingly OA is dismissed. Interim order, if any, will stand vacated from this date onwards. No costs.

(P.Madhavan)
Member(J)

(R.Ramanujam)
Member(A)

30.04.2019

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