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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.2482/2003

New Delhi, this the 13 day of January, 2004

Hon'ble Shri S.K. Naik, Member (A)

Ms. Parminder Kaur
RZD 6A, West Sagarpur
Near Gandhi Market, New Delhi
(Shri Jog Singh, Advocate)

..Applicant

versus

Union of India, through

1. Director General
Narcotics Control Bureau
Department of Internal Security
Ministry of Home Affairs
West Bloc I, R.K.Puram
New Delhi
2. Shri Rakesh Goyal
Zonal Director
Narcotics Control Bureau
H.No.80, Sector 2
Chandigarh Zonal Unit
Chandigarh

..Respondents
(By Advocates: Shri M.K.Bhardwaj for Shri A.K.Bhardwaj
for respondent No.1
and Shri P.P.Khurana, senior counsel
for respondent No.2 and Ms. Seema Pandey
is along with him)

O R D E R

By virtue of this OA filed on 10.10.2003, the applicant seeks quashing of order dated 30.9.2003 passed by respondent No.1, the Narcotics Control Bureau (NCB) vide which she has been transferred from Chandigarh Zonal Unit to Jammu Zonal Unit, and further seeking a direction from the Tribunal to the respondents to post her in Delhi. The applicant, however, has not annexed any copy of the said impugned transfer order and has, in her averments, stated that she has come to know about the said transfer order from her colleagues and has also

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stated therein that she has not been served with any transfer order or relieving order.

2. When the application came up for consideration before the Tribunal on 10.10.2003, i.e., the very day of the filing of the application, an ex-parte order was passed directing the maintainance of status quo, as it was alleged by the applicant that she was harassed at the hands of respondent No.2 and that was the reason behind her transfer. The status quo order continues until now.

3. Briefly stated, the facts of the case are that on being selected for appointment to the post of Data Entry Operator (DEO) against the vacancies advertised for Mumbai, Ahmedabad, Chandigarh and Jammu, the applicant was posted at Chandigarh Zonal Unit after a few months of attachment with the Headquarters of NCB at Delhi. The applicant joined at Chandigarh Zonal Unit under the control of respondent No.2 on 20.5.2002. It is the case of the applicant that ever since her joining at the Zonal Unit at Chandigarh, respondent No.2 has been harassing her sexually and mentally which has compelled her to make several representations/complaints against him to the authorities concerned. She has also made complaints in the matter before the National Human Rights Commission, as also before the Women and Child Support Unit of the Chandigarh Police. Besides her father also made a representation before the Minorities Commission alleging therein that since his daughter (the applicant) belonged to a minority community, respondent No.2, belonging to another community, has not only been casting aspersions

Verdict

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on the minorities, but also has been subjecting her daughter to ridicule and had sought redressal from the Commission. While the Organizations stated above proceeded in the matter according to their procedure, the respondent-Department constituted a Committee known as the 'complaints committee to look into the complaints of sexual harassment by working women' and had the matter inquired into.

4. This Committee of the respondents is headed by a woman officer of the level of Joint Secretary and comprised of another three members, all of them women. Of the three others, one of them belonged to a Non-Governmental Organization involved in the affairs of the welfare of women.

5. The respondents vide communication dated 31.7.2003 had informed the applicant about the formation of the complaints committee and she had been directed to appear before the committee on 4.8.2003. The applicant, however, expressed her inability to appear before the committee but requested for a change of the Chairperson of the Committee on the ground that the Chairperson of the said committee and respondent No.2 belonged to the same Service and were related to each other. The respondents finding no truth in the allegation that the Chairperson was so related and also finding no merit in her plea that both the Chairperson and respondent No.2 belonged to the same Service, rejected her request for a change of the Chairperson. Subsequently, the applicant appeared before the committee.

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6. The committee during the course of investigation adopted broad methodology of giving a thorough hearing to the applicant and seek the comments of the respondents thereon and thereafter verify the statements of the two via independent witnesses before arriving at the conclusion. After a number of hearings and discreet inquiries into the matter through twelve different witnesses, the committee submitted its report finally concluding that the twelve witnesses whom the committee summoned did not come out with any evidence, even corroborative to indicate any action on the part of respondent No.2, ^{that} would amount to sexual harassment of the applicant. They, therefore, held that the complaint could not be sustained. On the basis of the report of this complaints committee and holding that continuance of the applicant at Chandigarh Zonal Unit was not advisable in view of the strained relations with the Zonal Director, respondent No.1 decided to transfer her from Chandigarh to Jammu resulting in the issuance of the order dated 30.9.2003. While the applicant had been representing for her transfer to Delhi ever since her posting at Chandigarh, the sudden transfer to Jammu has come to her as a 'shock' and hence the present OA.

7. Counsel for the applicant while re-stating the averments in the OA contended that the harassing attitude of respondent No.2 from the very beginning of applicant's joining at Chandigarh Zonal Unit has been the main cause of the complaint against him. Initially the applicant made a representation without any overt expression of the difficulties for her transfer from Chandigarh to Delhi

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where her parents live but when things went from bad to worse, she had no other option but to make complaints to various authorities outside the Department as her request for transfer was not acceded to. Counsel for applicant has laboured at length and argued that in order to harass the applicant, respondent No.2 kept the computers, on which the applicant was to work, in his room and resorted to behaviour indicative of inappropriate advances towards the applicant. Calling this as a hostile environment, the counsel has cited para 17 from the judgment of Hon'ble Supreme Court in Vishaka & others v. State of Rajasthan & others, (1997) 6 SCC 241 in which it has been held as under:-

"Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards woman at work places and no working employees should have reasonable grounds to believe that she is disadvantaged in connection with her employment".

8. The counsel has further contended that it is only after the Women and Child Support Wing of Chandigarh Police swung into the action that respondent No.2 made necessary changes in the office set up by transferring the computers to the officially assigned seat of the applicant.

9. The counsel has reiterated the stand taken in the application that so-called inquiry by the committee was only a cover to save respondent No.2, as respondent No.2 had considerable influence at Delhi Headquarters and was openly threatening that Smt. Abha Kishore, the Chairperson is his sister and nothing is going to happen.

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The counsel has contended that when respondent No.2 continued to remain at the helm of affairs, it was very easy for him to manipulate the witnesses and when the applicant was not provided with any opportunity to cross-examine the witnesses, the entire inquiry proceedings stand vitiated for violation of the principles of natural justice. The applicant, therefore, had rightly requested for a change of Chairperson.

10. Counsel has further contended that in matters of sexual harassment, as has been held by the Hon'ble Apex Court in State of Rajasthan v. N.K., AIR 2000 SCC 1812, the testimony of the victim could not be brushed aside just because there may not be any corroborative evidence and the testimony of the complaint has to be appreciated on the principles of probabilities. The counsel has, therefore, submitted that the allegations by the applicant against respondent No.2 should have been taken to be correct in the background of the case and the authorities should have not only taken action against respondent No.2 but should have protected the applicant by transferring her to Delhi where her parents reside.

11. Counsel has termed the decision of respondent No.1 transferring her from Chandigarh to Jammu as malafide, as they did not take any measures to prevent mental and sexual harassment of the applicant at the hands of respondent No.2 despite repeated representations.

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12. Counsel for official respondent No.1 has, at the very outset, raised a preliminary objection with regard to jurisdiction. He has contended that while the applicant was posted at Chandigarh and the cause of action and dispute pertains to the territorial jurisdiction of the Chandigarh Bench of the Tribunal, the applicant has rushed to Principal Bench and filed this OA which is not maintainable. Further, he has contended that the applicant has not approached the Tribunal with clean hands inasmuch as she misled the Tribunal by advancing the plea of transfer on account of the harassment even though she had not annexed the copy of the impugned transfer order. The fact of the matter was that she had herself refused to accept the order of transfer on 6.10.2003 at Chandigarh and rushed to Delhi and obtained the order of status quo. This amounts to misleading the Court as she stood relieved from the Chandigarh Zonal Unit on 6.10.2003 itself and the application should be dismissed on these grounds. ~~also~~.

13. On the merits of the case, the counsel has contended that the allegations of harassment much less sexual or otherwise are totally false and a fabrication by the applicant in order to achieve her goal of getting a posting at Delhi, ^{where} her parents reside. He has contended that while the applicant knows very well that she was appointed against the vacancies advertised for Mumbai, Ahmedabad, Chandigarh and Jammu and being a lady and belonging to Delhi, she was specially accommodated for being posted at Chandigarh while other three employees were posted at other places. Just because she along with others had worked at the Headquarters at Delhi for a few

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months, she has been aiming for getting back to Delhi at any cost and the course of events ever since she joined at Chandigarh amply prove to that effect. In support of this contention, the counsel has stated that while the applicant joined at Chandigarh only on 20.5.2002, within a period of three months, she applied for transfer to Delhi on 28.8.2002 followed in quick succession by ~~another~~ ^{earlier} representation dated 10.1.2003. However, she was informed by the NCB vide letter dated 18.9.2003 that there are no vacancies at Headquarters, Delhi. All these only indicate that even though she was appointed against the vacancies outside Delhi, she had been making out a case for getting to Delhi only as otherwise there is no reason as to why when she has been transferred to Jammu on the administrative grounds, she should feel aggrieved.

14. Counsel has drawn my attention also to the peculiar conduct of the applicant as also her father in this case. He has contended that while the father of the applicant calculatedly brought up the issue of minorities before the Minorities Commission and hoped that the authorities will transfer her daughter, ^{to Delhi} (the applicant) on that pretext, the applicant herself chose to write to the National Human Rights Commission. The matter was also taken up with the Women and Child Support Wing of the Chandigarh Police. All these representations were filed with the single objective of pressurising the respondents for a posting at Delhi as the allegations had no substance and she had to fabricate the allegations to make out a case. The counsel has also contended that the applicant had gone to the extent of levelling allegations of involvement by one of her female colleagues with 3

respondent No.2 so as to add credibility to her fabricated charges, which the complaints committee has found to be totally baseless. The allegations of harassment, including the one enjoining ~~of~~ the applicant to over-stay in the Office beyond unexpected hours, also has been duly explained. The applicant has tried to make a big issue out of it even though during her working beyond the office hours, she was accompanied not only by her colleagues in the Office but even her father was present in the premises. The allegation that respondent No.2 had kept the computers in the premises in which he sat, the counsel has contended that the arrangements existed even prior to the posting of the applicant and it could not be said that it was only to harass the applicant that such an arrangement had been made. In fact, the moment respondent No.2 came to know of the discomfiture expressed by the applicant, the arrangement was shifted to another room where two female colleagues were assigned the duty and he passed an Office order stating that in case of the applicant she should always be accompanied by another employee when she visited the respondent. He has also pointed out that conduct of the applicant speaks for itself when she can venture into levelling false allegation that respondent No.2 was related to the Chairperson of the complaints committee.

15. Counsel for respondents has further contended that mere levelling of allegations, if accepted to be true, and if action is taken on that basis against the supervisory authorities that the whole system of supervision and discipline in an Organisation will fall apart. Under orders of the Apex Court therefore, the

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provisions of the constitution of the complaints committee has been prescribed and in the present case the said committee has inquired into the details and has found that the allegations made by the applicant have not been substantiated. The counsel has further contended that the decision of respondent No.1 to transfer the applicant from Chandigarh to Jammu is fully justified and has been made in public interest and in the interest of the applicant herself, as in the prevailing atmosphere at Chandigarh, it would not be appropriate for her to continue there. Citing the decision in Dr. C.C. Kar alias Dr. Chandi Charan Kar v. State of West Bengal, 1986 (2) SLR 251 Cal (DB), the counsel has stated that the Calcutta Bench of the Tribunal has held that in the matter of transfer, the Government is the best judge and the transfer is the incidence of service. Citing the decision in Rajinder Roy v. Union of India, 1993 (1) SCC 148, the counsel has stated that a Central Government employee, who has been transferred, has no option but to abide by transfer orders, except when the order is contrary to statutory rules or is malafide.

16. In the instant case, the counsel contends that the attempt on the part of the applicant to allege malafide having been thoroughly gone into, the decision of respondent No.1 to transfer the applicant to Jammu cannot be said to have been done with any malafide intention but only on administrative ground and in the exigencies of service. In justification thereof, the counsel has further cited the decision in Neena Diwan v. Union of India, 1987 (5) ATC 444 in which in a case pertaining to an Associate Professor in Medical College

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of Delhi, who had strained relations with the Head of Department and they started trading allegations on each other, the order to transfer the petitioner to Calcutta to bring normalcy was upheld in the judgment. The counsel has, therefore, submitted that the application is totally devoid of any merit and should be dismissed.

17. Respondent No.2 against whom the main accusations have been made by the applicant has also filed his counter in which the main contention raised has been that ever since the applicant came to Chandigarh, she had been making efforts to get a transfer back to Delhi and when that was not forthcoming, she started behaving in an erratic manner, often not attending the office in time, absenting frequently, perhaps making visits to her parents at Delhi and remaining absent unauthorizedly. Respondent No.2 being the Head of the Office in the supervisory capacity, therefore, had to advise her to maintain the office discipline and decorum, as it was also noticed by him during rendering advise in this regard that the applicant was impolite and indecorous with regard to response to such advisory and went to the extent of being rude to him. Issue of advisory memoranda were only in the interest of Organisation to maintain the discipline and decorum therein and that appears to have irked the applicant and she has embarked upon making complaints against him which were wholly false and was actuated with malice and meant to deter him from discharging his official duties. Respondent No.2 has denied that he was related to the Chairperson of the complaints committee. He has also stated therein that he had never worked with or under her in the IRS and also

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that the Chairperson was a very senior officer of 1982 batch. Respondent No.2 has termed the entire allegations/ accusations against him as a concoction by the applicant to further her interest of obtaining a transfer to Delhi. It has also been stated in the counter that the applicant on being served the transfer order on 6.10.2002 refused to receive it and subsequently she submitted an application for half day's casual leave complaining of stomach ache for which she went away to Delhi as if such ailments could not be treated at Chandigarh just to avoid receiving the transfer order.

18. Counsel for respondent No.2 has contended that the whole background has been calculatedly masterminded with a view to defame and thereby pressurise respondent No.2 to yield to her ultimate goal of getting the posting at Delhi. In the absence of her allegations and accusations having not been proved by the complaints committee, the counsel contends that the application be dismissed.

19. I have heard the counsel appearing for the parties and have given very careful consideration to whole facts, circumstances and records of the case. I had also called for the report of the complaints committee and have perused the same. Allegations of sexual harassment in the work place especially when it is against senior officers has to be dealt with great sensibility and one has to carefully weigh, as to whether there has indeed been an attempt on the part of the baaki

senior officer to take advantage of his position and authority and on the other to see whether such a probability did really exist.

20. In the present case, I find that the applicant within three months to her posting at Chandigarh applied for transfer to Delhi on 28.8.2002. The same was not acceded to by the NCB Headquarters and she was informed about it vide their letter dated 18.9.2002 stating that there are no vacancies at Delhi. She, however, persisted and again applied for transfer to Delhi vide her application dated 10.1.2003 which was again replied to by the NCB Headquarters vide their letter dated 25.4.2003 that her request could not be acceded to. The records reveal that she had been proceeding on leave very frequently and had been on leave for as many as eleven times, often proceeding on EL, HPL and commuted leave, etc. even though she was a fresh entrant to the service. During such repeated leaves, she appeared to have been visiting Delhi. I also find that respondent No.2 vide his letter dated 4.6.2003 addressed to the Director General, NCB had requested the Headquarters to transfer the applicant immediately as she had been repeatedly making such requests and in the background of her conduct. He in fact recommended his transfer. The NCB Headquarters, however, had to take a view in the matter as the applicant was appointed not against any post/vacancy at the Headquarters but for a post outside, as already stated earlier. The accusations and allegations of sexual harassment have to be seen in this background. The serious accusations that the applicant was made to work in the same room of respondent No.2 and

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further that taking advantage thereof respondent No.2 used to come and sit next to her and attempt to make physical contact has been inquired by the complaints committee, who have found it not substantiated. It has been stated that the computers were not placed in the room of respondent No.2 after the posting of the applicant but had been existing much before the posting of the applicant as a part of the office arrangement at the time of hiring the accommodation. The fact that soon after the applicant made noise with regard to her arrangement, respondent No.2 not only shifted the computers to another room, but also passed an order to ensure that the applicant did not meet him without an accompaniment goes to show that respondent No.2 had no motive in the matter. The fact that the father of the applicant went to the National Minorities Commission and attempted to give the episode a minority colour even though the office has a large percentage of 'Sikh' employees, also goes to show that the whole attempt of the applicant was to somehow trap respondent No.2 as she perceived a threat from him as being only a probationer she felt that respondent No.2 could harm her service interest. Since the entire issue has been looked into by the complaints committee constituted as per the directions of the Apex Court and the said committee has returned the findings that the allegations are not sustainable and in the background of the other related facts and circumstances and conduct of the complaint, I am of the considered view that the allegations made by the applicant are not genuine and are motivated. They appear to have been orchestrated to make out a case for a posting at Delhi, as otherwise there is no reason as to

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why the applicant should not abide by the order of transfer to Jammu, which respondent No.1 has very thoughtfully considered and ordered. Applicant's request that the Tribunal issue a directive to respondent No.1 to post her at Delhi is not only not justified but the Tribunal in matters of transfer will not issue such directive unless the same is contrary to Rules, if any, or on grounds of malafide which in this case does not stand proved.

21. Counsel for the applicant's averment that the applicant being an unmarried girl would not be able to look after herself alone at Jammu as her whole family is in Delhi, I am afraid would not make the case of the applicant any better, as the applicant knew it well that she was recruited for a post outside Delhi.

22. In the facts and circumstances of the case and after careful consideration of the arguments advanced before me by the parties as also after a careful perusal of the records, I find no merit in this application. The order impugned has not been passed malafide and as such there is no irregularity or illegality. The application accordingly is dismissed with no order as to costs.

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(S. K. NAIK)
Member (A)

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