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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3125/2003

New Delhi, this the 26th day of April, 2004

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

P.R.N. Nair

D-4/73, Vashist Park Nangalraya

P.O.Pankha Road, New Delhi

.. Applicant

(By Advocate Shri S.M.Garg )

VERSUS

1. Director General

CSIR, Anusandhan Bhavan

Rafi Marg, New Delhi

2. V.K. Gupta, Director

National Institute of Science

Communication & Information Resources

Dr.K.S.Krishnan Marg

New Delhi

3. Director, CRR

Delhi-Mathura Road, New Delhi

4. Administrative Officer

National Institute of Science

Communication & Information Resources

Dr.K.S.Krishnan Marg

New Delhi

.. Respondents

(By Advocate Shri Hari Shanker )

O R D E R

Shri P.R.N.Nair the applicant in this OA while working as Technical Officer, Grade 'C' in the National Institute of Science Communication and Information Resources ( NISCIS) was transferred along with the post to the Central Road Research Institute CRR), New Delhi vide order dated 16.12.2003 (Annexure A). The applicant is aggrieved on this account and assails the same and seeks quashing and setting aside the said order.

2. Counsel for the applicant has contended that the order of transfer from one organisation to a totally new Institution is not in public interest. Further, if as contended by the respondents, the transfer has been

Issue

necessitated as a result of restructuring warranting down sizing of, the organisation, the respondents ought to have followed the policy of declaring the excess staff as surplus and should have followed the policy with regard to rehabilitation of surplus employee. Failure in this regard and forcing the applicant to join in another Institution, therefore, he contends is contrary to public interest. Advancing his further arguments he contends that even in ordering the transfer, the respondents have neither followed the policy of reverse order of seniority i.e. to transfer the juniormost first before the senior could be touched nor they have adduced any ground for such a transfer. If reorganisation entailed shifting of some staff from one organisation to another he contends that the same should have been resorted to after obtaining the option from the employees who would have volunteered to join the new Organisation/Institution. This course also has not been followed and the applicant has not only been directed but has been forced to join CRRI against his will. Further, the counsel contends that since the seniority of the applicant will be lost as a result of the transfer to the new organisation along with the post, his service interest will be seriously jeopardized.

3. Finally, the counsel has termed the action of the respondents as malafide as he contends that the applicant was one of the signatories in Writ Petition filed before the High Court for implementing the report

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submitted by the One Man Fact Finding Committee on corruption and other irregularities of the officials of NISCOM and restoration of the copyright of Wealth of India, an encyclopaedia illegally transferred to a private society in collusion with the senior officials of CSIR/NISCOM. The counsel contends that the applicant has been singled out for being 'set right' in view of this background which he contends has prompted the respondents to pass the impugned transfer order by way of punishing him. The fact that he was relieved on the same date the order of transfer was issued, goes to support his claim that it was not only mala fide but also arbitrary. Contending that when the applicant in compliance to the order of transfer reported for joining the new organisation on 17.12.2003, he was not allowed to do so, but on the next date when he reported there again, he was forced to submit his joining report with a back date supports his allegation of victimisation because of his being signatory to the Writ Petition against some senior officials of the organisation and therefore, the same is illegal and therefore, the same should be quashed and set aside.

4. Respondents have contested the application, They have stated in their reply that the CSIR which is the supreme body with regard to various research organisation appointed a Committee headed by by Prof. R.Narasimha, FRS to review and assess the competencies, programmes, activities and functions of INSDOC and NISCOM to gainfully serve the service the scientific and

Dr. R. Narasimha

technical information and communication needs of the potential users and to benefit from the emerging opportunities in the IT domain. The said Committee submitted its report in January, 2002 which was discussed in the Governing Body of CSIR in March, 2002. The salient features of the approval given by the Governing Body included merging of two institutes, i.e. Indian National Scientific Documentation Centre (INSDOC) and National Institute of Science Communication (NISC) into a single entity w.e.f. 30.9.2002 called National Institute of Science Communication and Information Resources (NISCAIR) and authorising DG, CSIR to implement the business plan of the new entity as confirmed to by the Research Councils of the two institutes including a scheme for effecting the 'right sizing' of the entity. As a result of the exercise undertaken in right sizing the Institution, the strength of Group 'C' staff to which the applicant belongs entailed reduction from 156 to 58 posts. In the process of this exercise, large number of categories were identified for being relocated in other CSIR Institutions /Laboratories not only in the category to which the applicant belongs but also certain other categories and a large number of employees had been relocated. This has necessitated the issue of the impugned transfer order. The applicant has been posted in the High Way and Planning Division of CRRRI which is in the same city of Delhi and, therefore, cannot be termed as a malafide or arbitrary.

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5. With regard to the contention of the learned counsel for the applicant that he will lose his seniority on account of transfer the counsel contends that the same is totally incorrect as according to the Scheme he will retain his seniority.

6 Counsel has further contended that the allegation of malafide or the background of the applicant being signatory to the Writ Petition is a figment of his imagination. Had the applicant been on the 'hit list' of the respondents, as is being made out by the applicant he would not have been graded as excellent and further promoted as Technical Officer 'C' which goes to conclusively prove that the background of transfer was not because of any bias. Counsel further contends that since scores of individuals were involved in implementation of restructuring the organisation under the guidelines and the supervision of the DG, CSIR it can neither be termed as discriminatory or arbitrary. The transfer order having been passed in a totally objective and unbiased manner, the counsel contends that the same need not be interfered with by the Tribunal

7. Another limb of argument has been advanced by the learned counsel for the applicant is that the respondents have not followed the procedure prescribed in the policy of the Government for declaring certain staff as surplus. The same has, however, been rebutted by the learned counsel for the respondents by contending that the case in hand was not a case of declaring the

surplus

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staff as surplus but being redeployed as a result of restructuring of Institutions as recommended by the Committee in the changing liberal environment. Besides, if the staff had been, declared surplus they would have been put into surplus pool which is not the case here but the staff is redeployed in accordance with their background and proficiency.

8. The transfer being an incident of public service, no employee has the indefeasible right to be posted in a particular place or organisation for all time to come, the counsel contends as has been held by the Apex Court in a catena of judgements. In particular he has referred to State of Rajasthan Vs. Anand Prakash Solanki (2003(7)SCC 403) and National Hydroelectric Power Corporation Ltd. Vs Shri Bhagwan (2002(1)SLJ 86 (SC)). The rider in such case, however, is that the order should not have been passed as a outcome of malafide exercise of power or in violation of the Statutory provisions that prohibits any transfer. In the instant case since there has been neither malafide exercise of the power nor it is in violation of the statutory provisions, the counsel contends that no interference by the Tribunal in this case is warranted. He has further referred to 1993(4)SCC 357) in UOI & Ors. Vs. S.L.Abbas and has contended that as has been held therein, unless the order of transfer is malafide or is made in violation of statutory rules, the Courts/Tribunal can not interfere. In a similar case of transfer as reported in AIR 1993 SC 2486 titled the

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State of Punjab and Ors. Vs. Joginder Singh Dhatt the Hon'ble Supreme Court has held that the transfer of public servant is entirely for the employer to decide when, where and at what point of time a public servant is to be transferred. The Court should not ordinarily interfere as it is within the domain of the employer. The counsel has, therefore, contended that the application has absolutely no ground to stand and therefore, the application be dismissed.

9. I have carefully considered the contentions raised by both the learned counsel for the parties and also perused the case records. The main grievance of the applicant is that the transfer is neither in public interest nor in the exigencies of administration but as a result of down sizing and with malafide intention. Further it has been contended that as a result of transfer to another organisation, the applicant would lose his seniority which will prejudice his career prospectus. Finally, it has been contended that the transfer order has been issued without inviting any option whatsoever from the employees who have been so transferred from their parent organisation.

10. In so far as the objection raised on the ground of transfer not being in public interest nor in the exigencies of service is concerned, the same would have to be rejected in the background of exercise having been undertaken as a result of the recommendations of the Prof.R.Narasimha Committee. The fact of public interest

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is evident from its recommendations that the Indian National Scientific Documentation Centre (INSDOC) and National Institute of Science Communication (NISC) were recommended for merges into a single entity to be called by a new name i.e. National Institute of Science Communication and Information resources (NISCAIR). This merger had public interest in mind. Director General, CSIR who had nothing to do directly with the employee of NISC was to undertake the implementation of the recommendations and it is under his direction that various employee have been transferred to other organisation as a measure of re adjustments. Thus, no malafide can also be attributed. Besides the contentions that the applicant had been the signatory to the Writ Petition against some officials of the Institute and therefore, there could be an element of bias is also fallacious since the applicant has been awarded recognition and thereafter he has also been promoted to higher rank. The question of declaring surplus and giving option to employee also does not arise as respondents have not embarked upon declaring anybody as surplus but have undertaken redeployment which not only is within their power but also is in the larger interest of the employees themselves. With regard to the apprehension of the applicant that his service interest may be affected and he may lose his seniority in the new organisation, learned counsel has rightly allayed such fears by stating the fears of losing seniority is unfounded. Finally, I

Justice



find that the applicant has been transferred within Delhi itself and not outside and, therefore, it could not be said that the applicant will be subjected to great distress arising out of the transfer order. As has been held in a catena of judgements, the Tribunal should not interfere in the matter of transfer unless it has been ordered in malafide exercise of power or in violation of Statutory Rules/Instructions. In the case in hand, none of these elements stand established. On the contrary the transfer order is in larger public interest. The matter, therefore, calls for no interference by the Tribunal.

10. In view of the discussions above, I find no merit in the application and the same is dismissed without any order as to costs.

S.K. Naik  
( S.K.Naik )  
Member (A)

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