

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.3130/2003

This the 23rd day of September, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

Ramesh Chand Sai,
Upper Division Clerk,
National Institute of Science Communication
And Information Resources,
Dr K.S.Krishnan Marg,
Near Pusa, New Delhi-110012.

... Applicant

(By Shri S. M. Garg, Advocate)

-versus-

1. Council of Scientific and Industrial Research
through its Director General,
Anusandhan Bhawan, Rafi Marg,
New Delhi-110001.

2. Shri V. K. Gupta,
Director,
National Institute of Science Communication
And Information Resources,
Dr. K.S.Krishnan Marg,
Near Pusa, New Delhi-110012.

3. Administrative Officer,
National Institute of Science Communication
And Information Resources,
Dr. K.S.Krishnan Marg,
Near Pusa, New Delhi-110012.

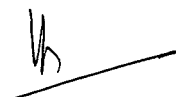
... Respondents

(By Shri C. Harishankar, Advocate)

ORDER (ORAL)

Applicant has challenged Annexure-A dated 24.12.2003

whereby applicant has been transferred along with the post to



another Institute of Council for Scientific and Industrial Research (CSIR).

2. It is alleged that applicant has been arbitrarily picked up for transfer from amongst 19 UDCs illegally with *mala fide* and for extraneous reasons. Applicant has been working as UDC with National Institute of Science Communication (NISCOM). Earlier on he was transferred on 9.8.2002 from NISCOM to Indian National Scientific Documentation Centre (INSDOC). This transfer was challenged by him through OA No.2176/2002, which was partly allowed quashing and setting aside the impugned orders with consequential benefits. However, it was further directed that respondents could issue fresh orders, if so advised, in respect of the posting of applicant in accordance with law.

3. The learned counsel of applicant has contended as follows:

- (1) Applicant has been transferred from National Institute of Science Communication and Information Resources (NISCAIR) to National Physical Laboratory (NPL) as UDC consequent upon merger of erstwhile INSDOC and NISCOM into NISCAIR stating that this transfer has been made on the ground of rightsizing of the ground staff of NISCAIR as approved by CSIR. The learned counsel stated that action of respondents in re-deploying the applicant was without following the procedure laid down in DOP&T OM No.1/18/88-CS.III dated 1.4.1989 which envisages that before embarking on the task of re-deployment, the Government

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should declare the employee surplus in accordance with the procedure laid down therein. Annexure-I of the scheme dated 1.4.1989 lays down steps for identifying surplus staff for their transfer. Step 3.4.1 states, "Determine the number of persons yet to be declared surplus. Prepare a list of juniormost persons equal to such number by following the reverse order of seniority." The learned counsel claimed that applicant is the seniormost UDC as per Annexure P-13 which is the Annual Report (2002-2003) for NISCAIR. Smt. Shakuntala and Smt. Rajni Puri, UDCs, have been shown much junior to the applicant as UDC. The learned counsel stated that these two persons had been declared surplus but later on retained in preference to the applicant, who has been shunted out.

- (2) The learned counsel next contended that the impugned order entails adverse civil consequences as the applicant would be placed as the juniormost in the grade of UDCs at NPL and would lose his seniority of 15 years earned in NISCAIR. In this connection, the learned counsel has relied upon the following :

- (i) (1991) 2 SCC 209 : **Shankar Pandurang Jadhav & Ors. v. Vice-Admiral, Flag Officer, Commanding-in-Chief & Ors.**;
- (ii) 1992 (1) SLR 485 (Calcutta High court) : **Sovan Lal Chatterjee & Ors. v. State & Ors.**

- (3) While the respondents have stated that the cadre strength of Group 'C' staff to which the applicant belongs, has been
- Wh reduced from 75 to 45, the learned counsel maintained that

24

the present strength of Group 'C' staff is only ⁴⁵38. Thus, it is ⁴⁵7 short of the reduced strength, i.e., 45. He further stated that there are 18 staff in temporary capacity in Group 'C' working in NISCAIR and as such the applicant could not be treated surplus/excess relating to reduced strength of Group 'C' staff and transferred out of NISCAIR.

- (4) The impugned transfer is an outcome of *mala fide* (personal grudge of respondent No.2 against the applicant). It is not a routine transfer but applicant has been arbitrarily picked up and chosen out of ⁴⁵18 UDCs despite the applicant being the seniormost without following the procedure laid down in OM dated 1.4.1989. Respondent No.2 has been implemented in this application by name. However, he has not chosen to deny this averment of *mala fide*. In the earlier OA No.2176/2002, Tribunal vide order dated 13.5.2003 had held that applicant's transfer vide order 9.8.2002 was an outcome of *mala fide* on the part of respondent No.2. Retention of four junior employees to the applicant who were already declared surplus in INSDOC also establishes *mala fide* intention of respondent No.2.

- (5) The impugned transfer is also against the accepted policy of transfer in CSIR.

4. The learned counsel of respondents on the other hand, stoutly opposed the contentions raised on behalf of the applicant. He stated that merger of NISCOM and INSDOC had been considered at

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the highest level. CSIR had appointed a Committee headed by Prof. R. Narsimha, FRS to review and assess the competencies, programmes, activities and functions of INSDOC and NISCOM. This Committee had recommended merger of the two Institutes and rightsizing of the new entity. As per this report, strength of Group 'C' staff to which the applicant belongs was reduced from 75 to 45. The learned counsel stated that the Committee had prepared a list of staff and officers who could be made available to CSIR for re-deployment. As per this list, among others, re-deployment of only one UDC, i.e., the applicant, was recommended for re-deployment to NPL. The learned counsel maintained that the procedure for re-deployment of surplus staff rules, therefore, would not apply to the present case as a high level Committee had recommended applicant's re-deployment.

5. The learned counsel of respondents denied that applicant will face any adverse civil consequences inasmuch as his seniority shall be *protected*.

6. As regards allegation of *mala fide* against respondent No.2, the learned counsel of respondents stated that the impugned transfer orders have been made with the approval of CSIR Headquarters and as such respondent No.2, Director, NISCOM, could not be accused of any *mala fide* act. The learned counsel also relied upon order dated 26.4.2004 in OA No.3125/2003 (CAT, Principal Bench) : **P.R.N.Nair v. Director General, CSIR & Ors.**, to contend that in a similar case, the Tribunal had held that it should

113



not interfere in the matter of transfer unless it has been ordered in *mala fide* exercise of powers or in violation of statutory rules/instructions. In that case, these elements could not be established and as such, the transfer orders of the applicant therein were upheld. The learned counsel further stated that it is true that in the earlier OA of the applicant, respondent No.2 had been held guilty of *mala fides*, but it should not give a permanent immunity to the applicant against transfer.

7. I had called upon the learned counsel of respondents to produce the records on the basis of which re-deployment of staff on merger of NISCOM and INSDOC was considered and decided. The learned counsel stated that barring Annexure-III to the Rastogi Committee report dated 14.8.2003 on the subject of deployment of staff after merger of erstwhile NISCOM and INSDOC w.e.f. 30.9.2002, in respect of personnel available for re-deployment by CSIR, no record does exist.

8. I have considered the rival contentions as also material on record and the Rastogi Committee report along with its Annexure-III in respect of personnel available for re-deployment by CSIR.

9. It is observed that respondents have not been able to deny that applicant has been the seniormost among the UDCs in NISCOM. Smt. Shakuntala and Smt. Rajni Puri, UDCs, had earlier on been declared surplus as per Annexure P-14 and they are juniors to the applicant. It is established that on the basis of the Rastogi Committee report, only applicant's name as UDC had been included



27

as available for re-deployment by CSIR. It has not been explained on behalf of the respondents why the aforesaid two persons who are junior to the applicant as UDC and were declared surplus earlier on, were retained and applicant's name was included for re-deployment. Even though re-deployment has been consequential of the merger of the two organisations under CSIR, it does not imply at all that the normal rules for re-deployment of surplus staff should not be made applicable while transferring the concerned staff on merger. Instructions of the revised scheme for re-deployment of surplus staff as issued on 1.4.1989 would certainly apply to re-deployment of staff on merger at hand. These instructions specify that the number of persons to be declared surplus must be determined by preparing a list of juniormost persons equal to such number by following the reverse order of seniority. The records produced by the respondents including the Rastogi Committee report along with its Annexure do not indicate why the junior UDCs to the applicant were left out from transfer and why the applicant who is the seniormost UDC was picked up for such transfer on re-deployment. Such an act on the part of the respondents would certainly be considered as an arbitrary act.

10. Transfer of the applicant in question does involve adverse civil consequences. The two merged organisations did not have a common seniority of UDCs. Obviously, the applicant on transfer shall not be able to avail of his seniormost position as in the earlier organisation. The learned counsel of respondents had stated that applicant would not lose his seniority, but such a hollow assurance

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in the absence of any common seniority of UDCs of the two organisations is meaningless. The ratio in the case of **Shankar Pandurang Jadhav** (supra) and **Sovan Lal Chatterjee** (supra) would certainly be applicable to the present case as a transfer should not entail civil consequences without an opportunity having been granted to exercise option for transfer.

11. Earlier on when the applicant was transferred and respondent No.2 had been impleaded by name, it was held vide order dated 13.5.2003 in OA No.2176/2002 that the transfer was an outcome of *mala fides* on the part of respondent No.2. Again, juniors who had been declared surplus have been retained in preference to the applicant who has been transferred out despite being the seniormost. This time too, respondent No.2 has not responded to the allegation of *mala fide* by way of a separate affidavit. Although by the earlier orders of the Tribunal applicant does not get a permanent immunity from transfers, if the instructions on re-deployment have not been followed and if the juniors have been retained in preference to the applicant, when it has not been explained why applicant alone from amongst ¹⁸ UDCs has been picked up for transfer, it is obviously a case of *mala fides* and is unacceptable.

12. The learned counsel of respondents had relied upon the case of **Union of India & Ors. v. Janardhan Debanath & Anr.**,

11

(2004) 4 SCC 245, and **P.R.N.Nair** (*supra*) to contend that transfer made in public interest should not be interfered with.

13. In the case of **P.R.N.Nair** the Tribunal itself had said that interference of the Tribunal should be made only when transfer has been effected in *mala fide* exercise of power or violation of statutory rules/instructions. In the present case, although re-deployment was required to be conducted in the larger public interest of merger of two organisations, the exercise of power had to be on a rational basis and not in violation of instructions. In the present case, while *mala fide* of respondent No.2 has already been established, instructions for re-deployment were also violated and no satisfactory explanation has been provided through records for picking up the applicant, the seniormost UDC for transfer in preference to certain juniors who had earlier been declared surplus but later on retained in the organisation.

14. The learned counsel of the respondents had also said that applicant has been transferred to an office which is only next door and that the applicant would not suffer any personal difficulty in joining in the next door office. It is immaterial that the new office is next door. Other considerations such as proper procedure, due regard to seniority, civil consequences, *bona fide* exercise of power by the authorities, etc., have been at a discount in the present case. All these combined together, lead to an arbitrary exercise of power in transferring the applicant by the impugned orders.

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15. Having regard to the reasons stated above, Annexure-A dated 24.12.2003 is quashed and set aside with consequential benefits.

16. The OA is allowed in the above terms.

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)
23.9.04

/as/