

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/021/135/2019

Dated: 10.04.2019

Between:

Dr. (Mrs) Gyanmudra,
Aged about 58 years,
Working as Professor & Head (CHRD),
National Institute of Rural Development &
Panchayat Raj, Rajendra Nagar,
Hyderabad ó 500 082.

R/o. Villa No.17, Sunrise Valley Homes,
Near PVR Pillar No.179, Attapur,
Hyderabad ó 500 048.

í Applicant

A N D

Union of India rep. by
The Director General,
National Institute of Rural
Development & Panchayat Raj,
(Ministry of Rural Development,
Govt. of India), Rajendra Nagar,
Hyderabad ó 500 030.

... Respondents

Counsel for the applicant : Mr. K. Sudhaker Reddy
Counsel for the respondents : Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (J)
Hon'ble Mr. B.V. Sudhakar, Member (A)

ORAL ORDER

[Per Hon'ble Mr. Justice R. Kantha Rao, Member (J)]

Heard Sri K. Sudhaker Reddy, learned counsel appearing for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents.

2. The applicant is a Professor and Head of the Department in National Institute of Rural Development, for short ó NIRD. Prior to joining NIRD, the applicant worked as Scientist -Bø (Psychology) in Defence Research Organization (DRDO), Allahabad. She was promoted as Scientist -Dø in the said organization and she was drawing the pay scale of Associate Professor. Subsequently, she applied for direct recruitment for appointment of Academic Staff (on contract basis) against the permanent post on 3.5.2002 in NIRD. She was selected by NIRD. She was appointed as Academic Staff vide Office Order dated 5.10.2002 and she joined the said post. She was promoted as Professor w.e.f. 25.10.2010. In recognition of the performance of the applicant, she was awarded by DG, NIRDPR as the -Best Woman Employeeø on 8.3.2017. Her performance and credentials have been mentioned by her in the O.A. In any event, there are no adverse remarks against her throughout her entire service.

3. After she was promoted as Professor in 2010, she submitted a representation dated 27.11.2017 along with some annexures requesting the respondents to count her past service which she rendered in the DRDO and further requested to treat her compulsorily retired from DRDO on technical resignation, for the purpose of continuity of service.

4. The respondents, however, issued Office Memo dated 28.11.2018 stating that she suppressed the fact of imposition of compulsory retirement against her by the previous employer ó DRDO, at the time of appointing her in service in NIRD and also at the time of her regularisation on 4.5.2012. It is further mentioned in the said Memo that the respondent Institute came to know about the punishment of compulsory retirement only after 15 years, when she attached a copy of major penalty along with her representation dated 27.11.2017. They also proposed to initiate disciplinary action against the applicant. On that she filed O.A. No.74/2019 assailing the Memo dated 28.11.2018 as arbitrary and illegal and the Tribunal suspended the said Memo passing an interim order. The O.A. is pending before the Tribunal.

5. Thereafter, the impugned transfer order dated 4.2.2019 was passed, shifting her from CHRD and posting her to Centre for Good Governance & Policy Analysis (CGG & PA) with immediate effect and one Dr. P. Sivaram, Professor & Head of Centre for Rural Infrastructure (CRI) was given additional charge of CHRD and he was asked to continue as such on full time basis. After the said transfer order, the applicant filed the present O.A. She applied for leave and did not join the transferred post. It is contended by her in the present O.A. that the transfer impugned in the O.A. was neither basing on administrative exigencies nor does it involve any public interest and was made purely to demoralise the applicant who is a honest professor. It is further contended that the order is punitive in nature, without any purpose to be achieved and accordingly sought to set aside the same.

6. The respondents filed their reply statement contending inter alia that the transfer is based on administrative grounds. Similar such transfers are ordered by the respondents in respect of some other professors and employees

of the organization. As per the conditions of service of the applicant, she has all India transfer liability and, therefore, she cannot challenge the present transfer order.

7. Now, the point for determination in the present O.A. is whether the transfer order which is passed against the applicant can be interfered with by the Tribunal.

8. Learned Senior Standing Counsel for the respondents placed before us certain orders whereunder in charge arrangements were made and transfers were ordered which were unopposed by the professors or employees of the Institute. She contended that the transfer made on administrative grounds cannot be challenged by the applicant in the present O.A. She would further submit that the applicant did not make any representation against the impugned transfer order and, therefore, she cannot file the present O.A. She would further contend that Dr. P. Sivaram, who was temporarily given additional charge of CHRD, is continuing as Professor & Head of the Department of CHRD on full time basis as per the transfer order passed by the respondents. The O.A. without making him as a party, is not maintainable for non-joinder of parties.

9. On the other hand, it is contended by the learned counsel for the applicant that the transfer is an act performed keeping victimisation of applicant in mind, which can be challenged even without submitting any representation to the department as there is no such bar to challenge the transfer order. Learned counsel submits that the applicant did not hand over the charge of the post and is continuing on leave and Dr. P. Sivaram is temporarily discharging the functions of CHRD as Head of the Department

and without bringing him on record as party to the OA also, the transfer order can be challenged.

10. We have gone through the pleadings of both the parties and thoroughly considered the submissions made by both the counsel.

11. There is no dispute about the fact that the applicant has all India transfer liability. However, the issue which requires to be noticed while dealing with the present O.A. is that the applicant has been continuously working in the same Institute for the last 15 years and she is going to retire within 1 ½ years. She was considered to be a good officer and she was awarded by DG, NIRDPR as the "Best Woman Employee" on 8.3.2017. This fact has not been disputed. The fact that she is involved in the work relating to international projects in CHRD is also not in dispute. Though the applicant was transferred by the impugned order from CHRD to CGG & PA, the Office Order dated 12.2.2019 was passed by the respondents in modification of the impugned transfer order, conveying to the applicant that the UNICEF project on CRU and Project of Sri Lanka on Training Need Analysis (TNA) and organizing training programme for officials of Sri Lanka Administrative Service and Sri Lanka Planning Service, will continue to be with her. All other subjects of CHRD including Research, SAGY, etc. shall be under Dr. P. Sivaram, Head In charge, CHRD. The order dated 12.2.2019 obviously indicates that the presence of the applicant is very much required in the work undertaken by CHRD with regard to certain international projects. The main contention of the applicant in the O.A. is that she is the Professor of Psychology and it is very difficult to deal with the post of Professor & Head of the Department of CGG & PA, which requires eminence in Political Science and Public Administration.

12. Though according to the respondents, the impugned transfer is made on administrative grounds, the order dated 04.02.2019 does not state that the transfer is made on administrative grounds. Further, what is the exact ground for the transfer of the applicant is also not mentioned in the reply statement of the respondents. Therefore, the question comes before us for consideration is as to whether any administrative exigency is involved in the impugned transfer. Whenever an employee alleges malafides and victimisation in respect of the transfer, it is not always possible to adduce evidence in that regard. It is for the Tribunal or the Court to take into consideration the totality of the circumstances to find out whether the transfer is in fact made in any administrative exigency or whether it is a malafide action. The contention of the applicant is that the respondents have proposed to initiate disciplinary action against her on the ground that she failed to inform the punishment of compulsory retirement imposed on her and the same was challenged by her by filing the O.A. before the Tribunal and as she obtained interim order suspending the said Memo dated 28.11.2018, the respondents resorted to transfer her though she is going to retire within a period of 1 ½ years.

13. Before arriving at a decision on the issue involved in the present case, it is necessary to refer to the following judgements relied on by the learned counsel appearing for the applicant:

1. (1995) 31 Administrative Tribunals Cases 246 wherein Central Administrative Tribunal, Ahmedabad Bench held as follows:

“21. The grounds and motivation for such a transfer order in this case, clearly betrays an unseemly anxiety on the part of the respondents somehow to take the applicant off his environs and send him to a far off place, even if it involves seeking higher authority's approval for inter-divisional transfer.

This leads to irresistible conclusion that transferring the applicant, although stated to have been made in the order, on administrative and public interest, has been employed as a convenient device to subserve a consideration which demonstrably is not administrative in nature or in the interest of public service. We would consider that appropriate course in such circumstances for the respondents should have been to proceed with the disciplinary action expeditiously and after necessary enquiry as per prescribed procedure, to impose an appropriate punishment if the charges are held to be proved.

22. The respondents have not demonstrated in the pleadings how the public interest was overriding or how there is administrative exigency or urgency, in such a transfer when the applicant was actually under suspension which was to be followed by disciplinary proceedings for alleged official misconduct.ö

2. Judgement of the Hon'ble Supreme Court in Civil Appeal No.7308 of 2008 in

Somesh Tiwari vs UOI & Others wherein the Supreme Court held as follows:

ö19. Indisputably an order of transfer if an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia malafide on the part of the authority is proved. Mala fide is of two kinds ó one malice in fact and the second malice in law.

20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.ö

14. Turning to the facts of the instant case, absolutely there are no allegations against the applicant. She has been working in CHRD for the last 15 years and she was never transferred. Though it is contended by the respondents that the transfer order is passed on administrative grounds, the

order does not contain the said condition. The reply affidavit does not contain any facts in relation to administrative exigency or as to the public interest involved. The very fact that the applicant was entrusted with some responsibilities in CHRD by order dated 12.2.2019 clearly indicates that the order is not passed on administrative grounds nor does it involve any public interest. Therefore, we have to necessarily understand that the transfer order is passed keeping in mind the action of the applicant challenging the Memo issued proposing disciplinary action and filing O.A. before the Tribunal. We are of the considered view that the transfer is motivated and suffers from malice in law. Therefore, the impugned order is liable to be set aside. The order dated 04.02.2019 is set aside. The respondents are directed to issue posting order to the applicant in her original place. The O.A. succeeds and is accordingly allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (A)

(JUSTICE R. KANTHA RAO)
MEMBER (J)

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