

Central Administrative Tribunal
Patna Bench, Patna.
T.A./050/0006/2019
[OA/050/00884/2019]

Date of CAV : 04.12.2019

Date of Order:- 10.12. 2019

C O R A M

Hon'bleMr. J. V. Bhairavia, Member [J]
Hon'bleMr. Dinesh Sharma, Member [A]



Binod Kumar Dubey, aged about 52 years, son of Shri Surendra Prasad Dubey, resident of Village – Dubauli, Post – Navadih, Police Station – Indrapuri, District – Rohtas, presently working as Deputy Director, National Skill Training Institute, Government Polytechnic Campus, Adityapur, Jamshedpur, Jharkhand – 832109.

....Applicant

By Advocate : In Person

Vs.

1. Union of India, through the Secretary, Ministry of Skill Development and Entrepreneurship, Government of India, Shram Shakti Bhawan, 5th Floor, Rafi Marg, New Delhi – 1.
2. The Director General Training, Directorate General of Training, KaushalBhawan, B-2, Pusha Road, Near Karol Bagh Metro Station, Pillar No.95, New Delhi-1.
3. The Deputy Director General Training, Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Employment Exchange Building, Push ITI, Pusha Complex, New Delhi-12.
4. The Director Administration, Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Employment Exchange Building, Push ITI, Pusha Complex, New Delhi-12.
5. The Director, Regional Directorate of Skill Development and Entrepreneurship, Ministry of Skill Development and Entrepreneurship, National Skill Training Institute, Government Polytechnic Campus, Adityapur, Jamshedpur, Jharkhand – 832109.

..... Respondents.

By Advocate :Mr.H.P.Singh, Sr. SC

O R D E R

Per J.V. Bhairavia, M [J] :- In the instant TA, the applicant has prayed for quashing of his transfer order dated

05.04.2019 [Annexure-A/1], whereby he has been transferred from NSTI, Jamshedpur to NSTI, Chennai in public interest.

2. The applicant appeared in person and submitted as under : -

[i] After separation of two verticals of the Directorate General of Employment and Training [in short DGET] under the Ministry of Labour & Employment [in short MoLE] -[i] Training and [ii] Apprenticeship and pursuant to declaration of Directorate General of Training [DGT] as an attached office of Ministry of Skill Development and Entrepreneurship [MSDE], the work distribution between MSDE and DGT has been notified, vide notification dated 26.12.2017 [Annexure-A/2] by the MSDE wherein functions described, which has to be directly managed by the MSDE. Column I[i] of the notification clearly stipulates about the cadre management of ISDS Officers, viz. recruitment, seniority, promotion, disciplinary matter, training, deputation and transfer/posting of Grade-'A' officers directly managed by MSDE and column I[ii] empowers the DGT for cadre management up to Group-'B' level only.

The applicant contended that the transferring authority, i.e. Directorate General of Training is not the cadre management authority who approved and issued the impugned transfer order dated 05.04.2019. The



applicant has placed reliance on the notification dated 26.12.2017 [Annexure-A/2].

- [ii] The applicant further submitted that he has received information under Right to Information Act, more particularly the note-sheet related to impugned transfer order dated 05.04.2019, which according to the applicant has been issued on the instruction and on the approval of DG[T], who is not the competent authority as per the standard practice and notification issued in regard to cadre controlling authority of Grade - 'A' officers, vide para 2 of letter dated 30.08.2019 [Annexure-A/3].
- [iii] The applicant submitted that on the date of passing of impugned order dated 05.04.2019, the number of Grade-'A' officers placed at NSTI, Jamshedpur is hardly three, and at present only one officer is working at NSTI, Jamshedpur and another one is under the process of voluntary retirement. This indicates that the order has not been issued in public interest rather vindictive and most selective manner and without approval of the competent authority, i.e. the Ministry concerned. The applicant has also placed reliance on the information supplied in this regard under RTI vide Annexure-A/4.
- [iv] The applicant filed a representation before the competent authority but the same was not considered by the respondents. Therefore, he approached this Tribunal by way of OA No.700/2019, which was



dismissed as withdrawn of on 25.07.2019 with observations that it is expected from the competent authority that they will consider and decide the pending representation of the applicant expeditiously. The applicant again submitted his representation and requested the authority concerned to consider his pending representation, but till date no order has been passed by them, vide Annexure-A/5 and A/6 respectively, therefore the present OA.



- [v] The applicant submitted that he is suffering from chronic kidney disease [CKD]. Medical certificate in support thereof has already been placed before the respondents and requested them to recall his transfer order and also to release of salary since a huge amount on medical expenses is being incurred every month by him.
- [vi] The applicant mainly raised his grievance against the impugned order of transfer and submitted that it has been issued without approval of the competent authority .

3. On the other hand, on issuance of notice and directions issued to the respondents, they have filed their short reply and denied the contentions of the applicant. They specifically denied the allegation/contention of the applicant that the impugned transfer order has been issued without approval of the competent authority. In this regard, the respondents submitted that vide MSD letter dated 28.12.2017, 20.08.2018 and 20.08.2019, the Secretary, MSDE is empowered for

transfer/posting of ISDE officers. The Director General of Training has to get the work done from the field machinery and as a control mechanism and with the approval of Secretary, MSDE, is being followed in DGT for transfer/posting of Indian Skill Development Service [ISDS] officers up to the rank of Joint Director [including Deputy Director]. Such orders are issued with the approval of Director General. A copy of the approval of the Secretary, MSDE, in this regard is attached, vide Annexure-R/1.



4. The respondents further submitted that the order of transfer dated 05.04.2019 was challenged by the applicant in OA No.700/2019 which was dismissed as withdrawn on 25.07.2019 and the present OA has been filed by the applicant for the same relief. As this OA is not maintainable. The respondents further submitted that the applicant had filed representation for cancellation of his transfer order which was considered by the competent authority and the applicant was advised to obey the order of transfer. Accordingly, he was ordered to be relieved by the competent authority. The applicant again filed a representation dated 25.07.2019 after dismissal of OA No.700/2019, which has also been disposed of by a speaking order dated 7th November, 2019, vide Annexure-R/2.

5. The respondents submitted that transfer is an incidence of service and the employee cannot insist for being posted at a particular place. It is the prerogative of the employer to post a particular employee at a particular place as per the

requirement of the service and as per the suitability of an employee. Therefore, the applicant is under legal obligation to join at transferred place without any further delay.

6. The respondents relied upon a decision rendered by Hon'ble Supreme Court in the case of S.C.Saxena vs. Union of India &Ors., reported in [2006] 9 Supreme Court Cases 583, wherein the Hon'ble Apex Court held that –



"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Assuming there was some sickness, that did not prevent him from joining at T. Medical evidence proves that point. Therefore, there is no reason to interfere with the order made by the Tribunal and the High Court."

7. In response to submission of the respondents, the applicant herein reiterated his contentions and additionally submitted that after the issuance of the impugned order, the competent authority has approved the proposal for transferring the work relating to transfer/posting of ISDS officers up to the rank of Joint Director [including Deputy Director] to the Director General of Training. Therefore, the impugned order is bad in law.

8. Heard the learned counsel for the parties and gone through the materials available on record.

9. The Tribunal has noticed that while the applicant was working as Deputy Director in the cadre of Indian Skill Development Services [in short ISDS] at NSTI Jamshedpur, he

has been transferred from NSTI, Jamshedpur to NSTI, Chennai in public interest, vide impugned transfer order dated 05.04.2019 [Annexure-A/1]. The applicant has challenged the aforesaid impugned order mainly on the ground that the same has not been passed by the competent authority. In support of his contention it is submitted that as per the provision contained in the office order dated 26.12.2017 which is related to cadre management of ICDS officers-viz., recruitment, seniority, training, deputation etc. and as also transfer/posting of Grade-'A' officers. According to the instructions stipulated in the said order the transfer and posting of Gr. 'A' officer shall be dealt with by MSDE only whereas the impugned order of applicant's transfer has been issued from the office Director General Training. As against it, as noticed hereinabove, the respondents have denied the said submission of the applicant. The respondents, vide their speaking order dated 7th November, 2019 [Annexure -R/2] have categorically stated that the points raised by the applicant in his representations have already been looked into in depth in the DGT Headquarters and further stated that all the transfer and postings in Directorate General of Training have been made with reference to the extant transfer and posting policy orders/instructions issued with the approval of the competent authority. It is noticed that undisputedly the Director General Training has been attached office of MSDE. All the transfer and posting in Director General of Training has been made with reference to extant transfer and posting policy orders/instructions issued with the approval of the competent



authority. It is seen that the Secretary, MSDE has accorded his approval to the proposal for exercising power by the DGT for posting/transfer of Gr. 'A' officers which include the case of the applicant. Therefore, the allegation made by the applicant that the impugned transfer has not been issued by the competent authority is not tenable. It is noticed that the transfer order of the applicant has been issued by the respondents in public interest. It is settled principle of law that in the case of administrative order of transfer, the interference is called for unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In **Shilpi Bose v. State of Bihar, AIR 1991 SC 532**, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

10. In the present case, as noticed hereinabove, the impugned order cannot be said to be passed by an incompetent authority. There is no allegation of malafide. The representation of the applicant has been duly considered by the respondents and the same has been rejected by cogent reason. A government servant holding the transferable post



has no vested right to remain posted at one place or the other. Transfer order issued by the respondents/competent authority do not violate any legal right. It is noticed that the applicant has been ordered to be relieved from NSTI Jamshedpur.

11. In view of above discussions, we do not find any infirmity in the impugned transfer order dated 05.04.2019. Accordingly, the OA is dismissed. No costs.

Sd/-

Sd/-

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps

