

Central Administrative Tribunal

Principal Bench

New Delhi

O.A.No.1887/2015

Order Reserved on:02.06.2016
Order pronounced on 03.06.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

(By Shri Sanjiv Chaturvedi, Applicant in person)

Versus

1. Union of India through the Secretary
Ministry of Health and Family Welfare
Government of India
Nirman Bhawan, New Delhi
 2. Director
All India Institute of Medical Sciences (AIIMS)
Ansari Nagar, New Delhi-110029
 3. Central Vigilance Commission
Through Secretary,
Central Vigilance Commission
Satarkata Bhawan,
New Delhi-110023
 4. Mr. Manoj Jhalani
Chief Vigilance Officer (AIIMS) and
Joint Secretary and Chief Vigilance Officer,
Ministry of Health and Family Welfare,
Government of India, New Delhi ... Respondents

(Presence: Ms. Sanjay Jain (ASG), and Sh. Hanu Bhaskar, Sh. Sumit Misra, Ms. Aastha Jain, Mr. R.V.Sinha, Mr. R.K.Gupta, Sh. R.N.Singh, on behalf of respondents)

ORDER

By V. Ajay Kumar, Member (J):

While disposing of the OA No.1887/2015 on 17.05.2016, though both the Hon'ble Members agreed on most of the issues, but since disagreed on one aspect of the matter, the same is referred to this 3rd Member Bench for its opinion on the said single issue which is extracted as under:

"Whether the claim of the applicant for allocation of work to him in accordance with initial allocation of work order dated 07.07.2012 read with OM dated 23.06.2011 is legally sustainable in view of Regulation 11 of the AIIMS Regulations 1999, made in exercise of the powers conferred by Section 29 (1) of the AIIMS Act, 1956 on deviation in work allocation to the applicant as Deputy Secretary through subsequent withdrawal of work vide orders dated 5.11.2012, 15.05.2015 and 2.12.2015 rendering effective work left with the applicant only relating to Pension and Hindi Section can be interfered with by the Tribunal under judicial review in the factual background of the case in view of the reply filed by the respondent-AIIMS claiming that they are strictly following the OM dated 23.06.2011 in letter and spirit?"

2. Heard Shri Sanjiv Chaturvedi, the applicant, who appeared as party in person, and Shri Sanjay Jain, the learned Additional Solicitor General with Shri Hanu Bhaskar, Shri Sumit Misra, Ms. Aastha Jain, the learned counsel for the 1st respondent-Union of India and Shri M.K.Singh for Shri R.K.Gupta, the learned counsel for the 2nd Respondent-AIIMS, Shri Amit Sinha for Shri R.V.Sinha, Shri R.N.Singh, the learned counsels for 3rd Respondent-Central Vigilance Commission, and perused the pleadings on record.

3. Since the facts of the case were dealt with in the Order dated 17.05.2016, elaborately, the same are not being reproduced here exhaustively. However, the brief facts, necessary for the present

purpose and as stated in the order dated 17.05.2016, are that the applicant, an IFS Officer of Haryana Cadre, was posted as Deputy Secretary on Central Deputation in All India Institute of Medical Sciences (in short, AIIMS), Delhi and joined the said post on 29.06.2012. In accordance with the decision taken by the respondents that the Deputy Secretary, AIIMS will also function as Chief Vigilance Officer (in short, CVO) of AIIMS, the applicant was also designated as the CVO of AIIMS simultaneously on his taking charge as Deputy Secretary.

4. Before the applicant joined as Deputy Secretary in AIIMS, the work assigned to the said post of Deputy Secretary vide Order dated 23.06.2011 (Annexure A2) was as follows:

- "a. to exercise management and control of the institute
- b. to coordinate with multi-disciplinary experts
- c. to coordinate and manage infrastructure projects and ensure their timely completion"

5. However, after the applicant's joining as Deputy Secretary, the work assigned to him was changed and the work allocation order dated 07.07.2012 reads as under:

"The Director has been pleased to order that Shri Sanjiv Chaturvedi, Deputy Secretary who has recently joined shall act as the Chief Vigilance Officer of the Institute. Further, in accordance with Regulation 11 of the AIIMS Regulations, 1999 (as amended), the Director has allocated the work of the following branches to him in addition to his duties and responsibilities as CVO with immediate effect, till further orders:-

1. General Section
2. Estate Section
3. He will also be the Nodal Officer for Grievance of Officers/ Staff
4. He is also authorized to sign the pension papers of the Officers/Staff."

6. Thereafter, vide various orders the work allotment of the applicant was changed number of times and finally he was only left with Item No.4 in Memorandum dated 07.07.2012, i.e., he was authorised to sign the pension papers of the Officers/Staff in addition to the work relating to Hindi Section. Aggrieved with the said action, the applicant filed the OA mainly seeking a direction to the 2nd Respondent-AIIMS to implement the Order dated 23.06.2011 (Annexure A2) issued by the Ministry of Health & Family Welfare and to allot the work of Deputy Secretary to him, accordingly.

7. The Hon'ble Administrative Member, while noticing the contention of the 2nd Respondent-AIIMS in its reply affidavit, dated 22.03.2016 that they have been following strictly the OM dated 23.06.2011 (Annexure A2) in letter and spirit, and observing that in actual practice they are not allotting the work to the applicant as per the said OM, expressed his view at para No.14, as under:

"14. Normally, the Tribunal would not like to interfere in the matter of allocation of work of officials within the organization. This is so because this would unnecessarily encourage hundreds of cases being filed by employees of government on the ground that they have not been allocated the right kind of work. Obviously, Tribunals cannot decide what work will be assigned to which officer of the government and that is the prerogative of the executive. However, in the peculiar circumstances of the case where the applicant has been humiliated and harassed in such manner, in order to restore the faith amongst the civil servants against arbitrary action of the State, we have chosen to interfere."

and accordingly, ordered at Para 15, as under:

"15. We, therefore, direct the Secretary, MoH&FW (R-1) and Director, AIIMS (R-2) to assign work to the applicant attached to the post of Deputy Secretary, AIIMS strictly in accordance with the OM dated 23.06.2011 expeditiously and in any case not later than 15 days from the passing of this order."

8. The Hon'ble Judicial Member in his separate order, though agreed with the views expressed by the Hon'ble Administrative Member upto Paragraph 11, however, considering Regulation 11 of the AIIMS Regulations, 1999, while holding that allocating or changing the duties of the officers and employees of the Institute is well within the powers of the Director, dismissed the OA and the relevant para reads as under:

"2. Regulation 11 of the AIIMS Regulations 1999, made in exercise of the powers conferred by Section 29(1) of the AIIMS Act, 1956, reads as under:

"Powers and duties of the Director:- The Director shall be the Head of Department in terms of supplementary Rule 2(10) and shall exercise the powers of Head of Department and discharge the duties mentioned below, namely:-

- (a) He shall be incharge of the administration of the Institute. He shall allocate duties to the officers and employees of the Institute and shall exercise such supervision and executive control as may be necessary subject to the rules and these regulations.
- (b) He shall also exercise the powers specified in Schedule I to these regulations.
- (c) He shall also have powers to delegate any of his powers to the officers on the administrative side subject to such limitations as may be imposed by the Governing Body."

3. It would be clear from the above-quoted provision that it is within the powers of the Director to allocate or change duties of the officers and employees of the Institute and they all work under his supervision and executive control. In this light of the matter, even if there has been any change in the allocation of work of the applicant initially given to him as Deputy Secretary, it would not be illegal and the applicant cannot have any legally sustainable grievance in that regard.

4. In my view, the OA deserves to fail and is hereby dismissed. No order as to costs."

9. In view of the fact that the point of reference for this 3rd Member Bench, is limited to the extent whether this Tribunal in exercise of its power of judicial review, can issue directions to the executive with regard to allocation or change of work/duties to its

Officers/Employees, the various contentions raised by both sides with regard to issues, other than the issue under reference, need not be gone into.

10. Shri Sanjiv Chaturvedi, the applicant, who is appearing as party in person, while drawing attention to various documents on record, and to the provisions of the All India Institute of Medical Sciences Act, 1956 and its Rules and Regulations, broadly submits that the power of judicial review of this Tribunal is exhaustive and inclusive, and can issue directions to the respondents on all matters, once it is found that their action is not in accordance with law. He also placed reliance on the following decisions:

- i) Union of India and Anr. v. Sudhir Kumar Jaiswal, (1994) 4 SCC 122.
- ii) State of Karnataka and Anr. v. All India Manufacturers Organisation and Others, (2006) 4 SCC 683.
- iii) Union of India v. E.I.D.Parry (India) Ltd., (2000) 2 SCC 223.

11. On the other hand, Shri Sanjay Jain, the learned Additional Solicitor General, appearing for the respondents, while drawing our attention to Para No.14 of the Order of the Hon'ble Administrative Member would contend that without there being any basis for the finding that the applicant was humiliated and harassed by the respondents or any arbitrary action, the Hon'ble Administrative Member taken exception to the normal Rule that the Tribunal would not like to interfere in the matter of allocation of work of officials, and directed AIIMS to assign the work to the applicant in a particular

manner. The learned ASG would further contend that this Tribunal in exercise of its power of judicial review, cannot interfere with the executive power of allotment of work to the employees.

12. The learned ASG would further contend that no prejudice such as reduction of rank or pay or demotion or working under his juniors or subordinates, is caused to the applicant. It was further contended that though, no violation of any Rule or Regulation of AIIMS is pleaded, shown or found, but the Hon'ble Administrative Member issued directions contrary to the settled law. The learned ASG also contended that the Hon'ble Judicial Member rightly dismissed the OA by considering Regulation 11 of the AIIMS Regulation, 1999, issued in exercise of the powers conferred under Section 29(1) of the AIIMS Act, 1956, that the Director shall be the Head of Department and shall be Incharge of the Administration of the Institute and shall allocate duties to the officers and employees of the Institute. He also placed reliance on the following decisions:

- i) **P.U.Joshi and Others v. Accountant General, Ahmedabad and Others**, (2003) 2 SCCC 632.
- ii) **Sujata Kohli v. High Court of Delhi**, 148(2008) DLT 17.

13. The Hon'ble Administrative Member having opined at Para 14 of his Order that allotment of work by the authorities to its employees is not within the domain of this Tribunal, could not have directed the respondents to allot the work to the applicant, in a particular manner. As rightly opined by the Hon'ble Administrative Member himself, and

as per the settled principles of law, interfering in the matter of allocation of work of officials in the organization, is not within the jurisdiction of the Courts and Tribunals.

14. In **Sudhir Kumar Jaiswal** (supra), when the 'cut off date' fixed for determining the eligibility in the matter of age of the candidates for the examination for recruitment to the Indian Administrative Service, etc. was questioned, in the facts of the said case, having found that the same was not fixed arbitrarily, the Hon'ble Apex Court allowed the appeal of Union of India by setting aside the decision of the Allahabad Bench of this Tribunal. On facts, the said decision is of no help to the applicant's case.

15. The applicant relied on **E.I.D.Parry (India) Ltd.** (supra), in support of his contention that Regulation 11 of the AIIMS Regulations, 1999, basing on which the Hon'ble Judicial Member dismissed the OA, was neither pleaded nor argued by the respondents and hence, cannot be considered by the Hon'ble Judicial Member. But it is to be seen that the entire case of the applicant revolves around the AIIMS Act, Rules and Regulations, and hence, the said decision has no application.

16. The applicant relied on **All India Manufacturers Organization** (supra), to show that the change in the Government and the ruling party was the reason for change of his duties, is not relevant to the issue under reference, as the same was not considered by either of the Hon'ble Members.

17. In P.U.Joshi (supra), the Hon'ble Apex Court held as under:

"10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

18. In Rajendra Singh, etc. v. State of U.P. & Others, (2009) 15 SCC 178, the Hon'ble Apex Court while examining the matter of transfers of a Government servant, held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal;** (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** 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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

19. In view of the aforesaid decisions of the Hon'ble Apex Court that the scope of judicial review in matters of transfer of a Government servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any statutory provisions. In the present case, the issue is not even the transfer from one place to another, but the same is only allotment of work, in the same post and in the same place which admittedly not having any adverse consequence on the service or career prospects or rank or pay of the applicant. Further, no grounds, as mentioned in the aforesaid decisions or the reasons mentioned by the Hon'ble Administrative Member, were found to be considered or proved, to take exception to the normal rule. On the other hand, the respondents specifically empowered to allot or change the duties of its employees/officers, by way of an unambiguous Regulation.

20. In the circumstances and for the aforesaid reasons, I concur with the view expressed by the Hon'ble Judicial Member and accordingly, the OA is dismissed. No costs.

(V. Ajay Kumar)
Member (J)

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