



W.P.No.34728 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

WEB COPY

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.P.No.34728 of 2023
and
W.M.P.No.34691 of 2023

P.Eswaran

... Petitioner

Vs.

1. Central Institute of Petrochemicals
Engineering & Technology (CIPET)
Rep. By its President/Secretary
Government Council,
Department of Chemicals & Petrochemicals
Ministry of Chemicals & Fertilisers
Shastri Bhavan, New Delhi – 110 001.

2. The Director General,
Central Institute of Petrochemicals Engineering
& Technology (CIPET)
Head Office, Guindy,
Chennai 600 032.

3. The Director & Head,
CIPET :IPT-Chennai
Central Institute of Petrochemicals,
Engineering & Technology (CIPET)
Guindy, Chennai 600 032.

... Respondents



W.P.No.34728 of 2023

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in the order dated 10.03.2023 in O.A.No.739/2022 and the order dated 21.11.2023 in OA/310/00739/2022 passed by the Central Administrative Tribunal, Chennai Bench and quashing the same.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.Su.Srinivasan

ORDER

(Order of the Court was made by by R.SURESH KUMAR, J.)

This writ petition has been filed challenging the order passed by the Central Administrative Tribunal, Chennai Bench, by order dated 10.03.2023 and 21.11.2023 in O.A.No.739 of 2022.

2. The short facts which are required to be noticed for disposal of this writ petition reads as follows:

(i) That the writ petitioner was working as Chief Manger (Technical) at Central Institute of Petrochemicals Engineering & Technology (in short 'CIPET'), Chennai. From the said post, he has been transferred and re-designated as Director & Head at CIPET, CSTS-



W.P.No.34728 of 2023

Imphal, Manipur by order dated 29.07.2022. In the very order of transfer and re-designation dated 29.07.2022, a relieving order also has been mentioned thereby on that date he has been relieved, however a formal relieving order was issued on 1st August 2022 by the Director & Head, CIPET to the writ petitioner.

(ii) Challenging these orders, the writ petitioner filed original application before the Central Administrative Tribunal, Chennai on 05.08.2022. By the said order, the Tribunal given liberty to the writ petitioner to file a comprehensive representation to the respondents within a period of 10 days and a direction also was given that on receipt of such representation, the competent authority to pass a reasoned and speaking order in accordance with law within a period of three months.

(iii) Accordingly the representation had been given by the writ petitioner on 14.08.2022. The said representation having been considered, the 2nd respondent i.e., the Director General passed a speaking order on 24.08.2022 whereby the plea raised by the writ petitioner in the said representation having been considered was rejected.



W.P.No.34728 of 2023

(iv) Challenging these orders including the speaking order, the writ

petitioner had filed the original application second time in O.A.No.739 of 2022. The said OA was decided by a Division Bench of the CAT, Chennai on 10.03.2023 where the Administrative Member decided the issue in favour of the applicant/writ petitioner and the Judicial Member decided in favour of the respondent/employer. Therefore, this was referred to a third Member of the CAT, Chennai, who, by order dated 21.11.2023, concurred the view taken by the Judicial Member thereby supporting the employer and dismissing the original application. These orders are under challenge in this writ petition.

3. Heard Mr.M.Radhakrishnan, learned counsel appearing for the writ petitioner. He has raised three grounds against the orders which were impugned passed by the Department before the Tribunal and also the order impugned passed by the Tribunal.

4. The first ground raised by the learned counsel was that, there has been a *mala fide* on the part of the respondents in passing the order of transfer transferring the writ petitioner from Chennai to Imphal. The second ground raised by him was that, the writ petitioner/applicant is



W.P.No.34728 of 2023

having a 26 years old female child with special disability and the writ petitioner/applicant is the main care giver to the said child, therefore that necessitated for the applicant/writ petitioner to stay with his child with special disability and therefore as per the protection given under the Right of Persons with Disabilities Act, 2016 and various judgments of the Hon'ble Supreme Court and this Court as well as the DOP&T OM has been issued in that respect, such kind of care giver shall not be subjected to transfer was the second ground raised by him.

5. The third ground raised by the learned counsel appearing for the writ petitioner/applicant is that, the impugned transfer order is a punitive order as it has been mentioned in the speaking order by the respondent that, there has been a disciplinary proceedings on sexual harassment complaint already been initiated which is pending. Therefore if that is the reason for which if the writ petitioner/applicant is transferred that too for a far off place, then certainly it would be construed only as a punitive transfer, such kind of punitive transfer would not be made unless there is an administrative exigency that too on the basis of rule. Hence the learned counsel seeks indulgence of this Court to interfere with the impugned orders. In support of his contention, the learned counsel for the petitioner



W.P.No.34728 of 2023

has relied upon the following decisions:

WEB COPY

- (i) 1974 AIR 555 : 1974 SCR (2) 348 [E.P.Royappa Vs. State of Tamil Nadu and another];
- (ii) 1979 AIR 1628 : 1979 SCR (3) 1014 [Ramana Dayaram Shetty Vs. The International Airport Authority of India and others];
- (iii) A Division Bench judgment of the Kerala High Court in OP (CAT) No.90 of 2023 [Balan C Vs. Union of India, represented by Secretary to Government of India, Ministry of Electronics & Information Technology, New Delhi and others]

6. Citing these decisions, Mr.M.Radhakrishnan, learned counsel for the writ petitioner has further submitted that, earlier there has been a disciplinary proceedings initiated against the writ petitioner which ended in a punishment of compulsory retirement, however as against which though unsuccessfully he filed an appeal, subsequently when he filed a review, the President of the CIPET has reviewed the order awarded by the Disciplinary Authority confirmed by the Appellate Authority and the punishment was modified considerably to set aside the punishment of compulsory retirement, instead it was directed to give only warning or censure against the applicant/writ petitioner.



W.P.No.34728 of 2023

WEB COPY

7. Pursuant to the said order passed sometime in March 2022, the Disciplinary Authority had issued order of warning in the month of July 2022 and immediately he has been subjected to this transfer. Therefore, according to the learned counsel for the petitioner, there has been a *mala fide* intention on the part of the Disciplinary Authority as the earlier punishment awarded against the petitioner could not be materialised. Therefore in order to take revenge *mala fidely* he has been included in the list of transferees to be made by the Headquarters, therefore he submits that it is a *mala fide* transfer.

8. Insofar as the 26 years old female child with special disability of the applicant/writ petitioner is concerned, he would submit that, the mother of the child also is a working woman, therefore both the parents since are working, atleast in the evening hours and holidays their care must be with the special child, hence in order to ensure that position the applicant/writ petitioner ought not to have been transferred, however when this was specifically raised in the representation given to the Administration, they have not considered this aspect in passing the speaking order rejecting the plea of the petitioner.



W.P.No.34728 of 2023

WEB COPY

9. As far as the third ground is concerned, he has submitted that, if the transfer is made based on administrative exigency, the transfer now made to him is to the institution situated at Imphal and in that Station, the post of Director and Head was vacant for several months, therefore it is not the immediate administrative exigency for which the transfer sought to be made against the writ petitioner, hence this transfer can only be considered as a punitive transfer taking into account of the disciplinary proceedings initiated against the petitioner on the alleged sexual complaint made against him wherein the enquiry has not been conducted, therefore instead of concluding the enquiry since the Administration has taken the tool of transfer, it can only be construed as 'punitive transfer', therefore on that ground also the transfer orders are liable to be interfered with.

10. Therefore the learned counsel would contend that, all these aspects or the grounds that has been raised on behalf of the writ petitioner/applicant since has not been considered in proper perspective either by the Judicial Member of the first judgment or the another Judicial Member of the second judgment i.e. the third Member to whom it has



W.P.No.34728 of 2023

been referred, except the Administrative Member of the first judgment of the Tribunal, therefore the judgment impugned is liable to be interfered with, he contended.

11. On the other hand, Mr.Su.Srinivasan, learned Standing Counsel appearing for the respondent Department has contended that, the transfer order made on 29.07.2022 by the Headquarters of the respondent Department is not a single transfer order pertaining to the applicant/writ petitioner alone. It is a transfer order including re-designation of various persons numbering 8 who are covered under the said order dated 29.07.2022. Moreover, the administrative exigency requires that a senior hand or able hand is required in a Station like Imphal where the statistics shows that, it has been running loss for some years, therefore it has to be retrieved only by the person like the applicant/writ petitioner, therefore with good intention only purely on the administrative exigency the transfer has been given that too by way of re-designation as the petitioner from Chief Manager (Technical) has been posted as Director & Head of the Institution at Imphal therefore it cannot be stated as a *mala fide* transfer. He would also submit that, insofar as the ground raised by the petitioner counsel with regard to the child with special disability of the



W.P.No.34728 of 2023

petitioner is concerned, that point has been considered by the Department in the speaking order where he relies upon the relevant portion of the order also.

12. The learned Standing Counsel would further submit that, insofar as the *mala fide* is concerned, mere making an allegation of *mala fide* is not enough to come to a conclusion that, there has been a *mala fide* on the part of the administration to pass any orders like the present one but it must be made with sufficient particulars and cogent materials. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in **(2006) 9 Supreme Court Cases 458** in the matter of ***Purushottam Kumar Jha Vs. State of Jharkhand and others***, where he relies upon the following passages:

“22.As to mala fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in absence of officers, the Court was right in not upholding the contention that the action was mala-fide.

23.It is well settled that whenever allegations as to



WEB COPY



W.P.No.34728 of 2023

mala fides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was mala fide and malicious is not enough. In absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. It is equally well-established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is 'very heavy'. Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out' and hence it is necessary for courts to examine it with extreme care, caution and circumspection. It has been rightly described as “the last refuge of a losing litigant”. [Vide Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800; [Ajit Kumar Nag v. GM \(PJ\), Indian Oil Corporation Ltd., \(2005\) 7 SCC 764](#)).

24. In the instant case, the allegations are vague, general and casual. No particulars, much less sufficient particulars have been placed on record. The High Court considered the contention in the light of settled legal position and rejected the argument put forward by the appellant. We see no infirmity in the reasoning of the High Court. The conclusion arrived at by the High Court deserves no interference.”



W.P.No.34728 of 2023

13. Insofar as the ground of punitive transfer is concerned, the learned Standing Counsel would submit that, even though disciplinary proceedings was initiated in the year 2006, it could not be concluded because of the non-cooperation on the part of the writ petitioner and even though 4 months time was given in the first order passed by the Administrative Member of CAT to complete the disciplinary proceedings, pursuant to which, when notices were issued, either that has not been responded or he has not come forward to appear before the Enquiry Officer.

14. Despite his non-cooperation, the enquiry was completed and the report seems to be ready with the Enquiry Officer who may at any time will file the same to the Disciplinary Authority, who, on receipt of the same, after evaluating the Enquiry Officer's report and after giving the second opportunity to the petitioner, would pass final orders. Therefore the learned Standing Counsel would submit that, it is not a punitive transfer or transfer with *mala fide* intention and therefore those grounds raised by the petitioner cannot be countenanced.



15. We have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

16. No doubt, it is settled law that the order of transfer is part of the service conditions and whoever is subjected to transfer, they have to abide by transfer orders given by the competent authority except in two occasions. The first occasion is that, if the transfer is proved to be a *mala fide* one. The second occasion is that, for want of jurisdiction such a transfer can be challenged.

17. Here in the case in hand, the ground of *mala fide* has been taken by the petitioner. In support of the said ground, the learned counsel has contended that, earlier disciplinary proceedings ended with the punishment of compulsory retirement since has been modified into warning or censure and while giving such warning in July 2022 immediately they wanted to put the petitioner in trouble, therefore they included the petitioner also in the list of transfers to be made to a far off place i.e. North to South or South to North, that itself shows that it is a clear *mala fide* transfer.



W.P.No.34728 of 2023

WEB COPY 18. However, as has been rightly pointed out by the learned Standing Counsel appearing for the respondents, if at all *mala fide* is to be alleged first of all such a *mala fide* must be alleged against the persons specifically and who must be impleaded as a party respondent in the *lis*. Here no such *mala fide* has been specifically alleged against any of the respondent. Also no sufficient particulars or cogent materials have been submitted by the writ petitioner before this Court to substantiate his contention with regard to the allegation of *mala fide*.

19. Thirdly, it must be seen that, the transfer order dated 29.07.2022 is not a mere transfer order pertaining to the writ petitioner alone. The very heading of the Transfer Order says Transfer & Posting / Shifting / Allocation of Responsibilities / Re-designation. The reason stated by the authority to pass such order is that, in order to rationalize and re-deploy the existing technical supervisory manpower, such a transfer & posting, shifting, allocation of responsibilities, re-designation orders were issued in the Organisational Interest / Public Interest. Number of such transfers or re-designations have been made in Part-A



W.P.No.34728 of 2023

itself of the said order, where 6 persons were subjected to re-designations or transfers. A person working as a Principal Director & Head of CIPET at Chennai has been shifted to Guwahati as Principal Director & Head. The other person who is working as Chief Manager (Technical) has been posted at Director & Head, CIPET at Chennai. Yet another man who is working as a Senior Technical Officer, Ranchi has been transferred as Senior Technical Officer, Hyderabad. The other man who was working as Senior Technical Officer, Lucknow has been designated as Senior Technical Officer, Murthal. Yet another man who was working as Assistant Technical Officer at Jaipur has been designated as Assistant Technical Officer at Hajipur. Among these persons, the petitioner also who presently working as Chief Manager (Technical), Chennai CIPET has been re-designated as Director & Head of CIPET at Imphal.

20. Therefore at no stretch of imagination it can be stated that, the transfer order dated 29.07.2022 is made out of *mala fide* by the competent authority. It is not only a transfer order but also a re-designation of various persons to various Stations that itself shows that, due to the administrative exigency such an order of re-designation and transfer, allocation of responsibilities have been passed. Therefore,



W.P.No.34728 of 2023

the first ground raised by the petitioner that, the order impugned i.e. the transfer order made against him is a *mala fide* transfer has no substance, therefore that plea raised by the petitioner has to be rejected.

21. The second reason cited by the petitioner side is that, there is a 26 years of old female child with special disability who is to be taken care of by the parents of the child, the writ petitioner being the father of the child is a main care giver, therefore his presence along with the child is a must, therefore on that ground he seeks protection from transfer.

22. In this context, it is to be noted factually that, the female child is 26 years old, the mother of the child is alive and she is also working, that apart there are two major members of the family available. That apart, since the writ petitioner and his wife are working persons, the entire day time for all these years, according to the learned counsel for the writ petitioner, the child with special disability is taken care of by some other arrangements like care taker or servant maid etc.

23. That apart, if we look at the service particulars of the writ



W.P.No.34728 of 2023

petitioner, he had been initially worked in the year 1995 at Mysore, thereafter at Hyderabad. Thereafter, in 1996-1997 he worked at Mysore, then he was shifted as Senior Technical Officer in the year 1997 where he had been working for 4 ½ years at Chennai, thereafter 6 years and 4 months he had been working at Mysore on promotion and thereafter he has again come back to Chennai from 2008 and since then he has been continuously working at various capacities. In between these period of 14 years and 3 months, he earned the promotion from Manager to Chief Manager, Chief Manager to Director & Head, Director & Head to Chief Manager (Technical) under various capacities continuously for more than 14 years he had been working at Chennai Station.

24. When that being so, if we look at this particulars from the day one till date, the writ petitioner has never worked in any of the Station in North India except 3 Stations viz., Mysore, Hyderabad and Chennai i.e., mainly at South India. If any Organisation like the respondent which is a Pan India Organisation having 40 branches all over the country, these kind of officers are subjected to transfer due to administrative exigency to various places on Pan India basis, therefore an officer working in an Organisation like CIPET cannot said for any reason that, he should be



W.P.No.34728 of 2023

retained only at the present Station i.e. at Chennai continuously even upto the period of superannuation, because, as of now he is 57 years old therefore 3 more years is left.

25. If this kind of plea raised by the petitioner by citing the ground that, there is a 26 years old female child with special disability is to be taken care by parents and other family members, then the administrative exigency cannot be taken care of.

26. In this context, the Central Government already issued OM by the Department of DOP&T in OMF.No.42011/3/2014-Estt.(Res) dated 08.10.2018, wherein certain guidelines have been given regarding exemption from the routine exercise of transfer/rotational transfer for the Government employee who serves as the main care giver of persons with disability. The guidelines also says that, that kind of routine transfers for the main care giver can be avoided, however that is subject to administrative constraints. Moreover, it has been mentioned that, a Government employee who is a care giver of dependent as certified by the certifying authority as a Person with Benchmark Disability as defined



W.P.No.34728 of 2023

under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

27. Here in the case in hand, the Tribunal in fact has recorded that, some documents with regard to the treatment taken to the child with special disability 7 years back has been filed before the Tribunal thereafter no documents to that effect even to the medical treatment filed before the Tribunal and that has been specifically recorded by the Tribunal. That apart, whether the immediate care is needed for the child also is a question arisen and if that kind of care is continuously needed to the child with special disability, whether the writ petitioner is the only main care giver is the another question. In this regard, since the child is the female child, more conveniently such a main care can be given by her mother not by her father. Therefore for that reason also, it cannot be stated that, the presence of the writ petitioner is inevitable or a must to be with the special child for ever i.e. till the superannuation of the writ petitioner as that kind of plea raised by the petitioner cannot be accepted on the basis of factual matrix also. Therefore the second ground raised by the learned counsel for the petitioner also is to be rejected, accordingly is



W.P.No.34728 of 2023

rejected.

WEB COPY

28. With regard to the third ground that it is a punitive transfer is concerned, the learned Standing Counsel appearing for the respondents on instructions has stated that, the enquiry on the sexual harassment complaint was over and the Enquiry Officer has to submit the report. If that being the position, based on the Enquiry Officer report, after giving the second opportunity by way of show cause notice to the petitioner, further course of action to take disciplinary action or otherwise would be taken by the Disciplinary Authority in accordance with the service rule, therefore it cannot be stated that the transfer is a punitive transfer.

29. Moreover, as we have discussed herein above, it is not a solitary transfer that has been made only against the writ petitioner but it is a group of transfers and not a mere transfer but it is also a re-designation due to contingency of the Department, therefore for this reason also it cannot be treated as a punitive transfer for which absolutely no materials are available before this Court.

30. Moreover, in order to streamline the functioning of the Imphal



W.P.No.34728 of 2023

unit of the respondent Department, such an experienced hand is required, therefore such a transfer has been made by giving such re-designation of Head / Director of the Institute at Imphal, to the writ petitioner, therefore it can only be treated as a recognition or promotion of the work done by the writ petitioner to the Department and not as a punitive action as has been alleged by the learned counsel appearing for the petitioner.

31. Therefore for all these reasons, the grounds urged by the petitioner to have a successful challenge against the orders impugned passed by the Department as well as the orders passed by the Tribunal challenged before this Court cannot be sustained. Accordingly the plea raised by the writ petitioner has to fail, hence it is rejected. Resultantly, the following orders are passed in this writ petition.

(i) That the orders passed by the Tribunal are to be sustained, accordingly are sustained. Resultantly, this writ petition fails, hence it is dismissed. As a result of which, there shall be a direction to the respondents to complete the disciplinary proceedings already been initiated on the alleged sexual harassment complaint against the writ petitioner as the Enquiry Officer has completed the enquiry and pass final



W.P.No.34728 of 2023

WEB COPY

orders after giving the second opportunity to the petitioner within a period of three weeks from the date of receipt of a copy of this order.

(ii) As a sequel, the petitioner is hereby given four weeks time, to report at the transferred place i.e. the institute at Imphal, from the date of receipt of a copy of this order. With regard to the period for which the petitioner has been absent from the date of the order of transfer till today it is to be decided by the Department as to whether it can be treated as duty on loss of pay or unauthorised absence, in accordance with law.

32. With all these directions, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K., J.) (K.B., J.)

04.01.2024

Index : Yes



W.P.No.34728 of 2023

Speaking Order : Yes

Neutral Citation : Yes

Note : Issue order copy on 08.01.2024

Sgl



W.P.No.34728 of 2023

WEB COPY

To

- 1.The President/Secretary
Central Institute of Petrochemicals
Engineering & Technology (CIPET)
Government Council,
Department of Chemicals & Petrochemicals
Ministry of Chemicals & Fertilisers
Shastri Bhavan, New Delhi – 110 001.
- 2.The Director General,
Central Institute of Petrochemicals Engineering
& Technology (CIPET)
Head Office, Guindy, Chennai 600 032.
- 3.The Director & Head,
CIPET : IPT-Chennai
Central Institute of Petrochemicals,
Engineering & Technology (CIPET)
Guindy, Chennai 600 032.



WEB COPY



W.P.No.34728 of 2023

R. SURESH KUMAR, J.

And

K.KUMARESH BABU, J.

Sgl

W.P.No.34728 of 2023

04.01.2024