

56

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. 1110/2002**

**New Delhi this the 4<sup>th</sup> day of July, 2005**

**Hon'ble Mrs. Meera Chhibber, Member (J)**

Ajit Singh Phalswal  
S/o Shri Bharat Singh Phalswal,  
Resident of Vill & PO: Gumman Hera,  
New Delhi-110073.

.... Applicant.

(By Advocate Shri B.B. Raval)

Versus


1. Union of India  
through The Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block;  
New Delhi.
2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
Government of India,  
35, Sardar Patel Marg,  
New Delhi-21.
3. Shri P. Mahendru,  
Joint Director,  
Intelligence Bureau,  
C/o Respondent No.2.

.... Respondents.

(By Advocate Shri N.S. Mehta)

**O R D E R (ORAL)**

By this O.A., applicant has challenged the order dated 8.10.2001 whereby period of 33 days starting from 20.8.2001 to 21.9.2001 has been treated as EOL without pay – without MC (page 37), order dated 13.3.2002 whereby he has been transferred from IB Headquarters to Itanagar (page 38 at 41) and the order dated 19.4.2002 whereby he has been relieved from his duties w.e.f. 19.4.2002 with direction to report to AD/E, SIB, Itanagar, after availing admissible joining time.



2. It is submitted by the applicant that he was supposed to perform his duties with Joint Director (W) on 18 and 19.8.2001 i.e. Saturday and Sunday but on 18.8.2001 at 0630 hours in the morning, he was attacked by a bull who hit him in the chest and the ribs as a result of which he could not attend his duties. He was taken to the Doctor and since he was uncomfortable, he immediately informed the PS to Joint Director (W) at his residence and also in the office at 0900 hours about his being hit by a bull and inability to attend the office. He was taken to CGHS Dispensary on 19.8.2001 where he was referred to Dr. R.M.L. Hospital. Intimation was given to Mr. P. Mahendru, Joint Director, IB Headquarters under Certificate of Posting. Thereafter, he continued to get treatment from CGHS as well as private Doctor at Najafgarh where he stays but in spite of that he was sent a Memorandum dated 4.9.2001 asking him to report for duty and another Memorandum dated 18.9.2001 informing him that he was absenting from duties since 4.9.2001 without any intimation/permission, therefore, to report for duty immediately, failing which action would be taken against him (page 45):

3. Applicant was given a fitness certificate by Dr. S. Gupta and he reported for duty on 24.9.2001 along with his application and medical certificate. He has thus submitted that since he was suffering due to an accident and had submitted his medical certificates and given due intimation, period could not have been treated as EOL. Being aggrieved, he gave representation on 30.10.2001 to the Joint Director against treating his period as EOL but his request was rejected by a non-speaking order dated 10.12.2001 (page 64). He gave another detailed representation to the Additional Director on 8.1.2002 stating all the facts therein but even this was rejected by Memorandum dated 26.2.2002 once again without giving any reason by simply referring to the earlier order passed by the Controlling Officer (page 67). He has thus prayed that his whole period of absence should be treated as commuted leave on medical ground.

4. Applicant has also challenged his transfer to Itanagar, on the ground that he has been transferred because he had complained about his senior officers Shri A.S.

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Achaya and Shri A.M. Prasad for misusing the Government vehicles for their personal use. It was, therefore, to teach him a lesson that at the instance of those officers applicant was transferred out. He has also stated that he is neither the senior most nor the junior most. Therefore, he could not have been transferred out by adopting a method of 'pick and choose'. Being aggrieved, he gave a representation to cancel his transfer to the Joint Director-E through proper channel (page 68) but no reply was given to him. Even though in transfer order itself, it was mentioned that transfer orders were to be implemented by 30.4.2002 but before 30.4.2002 applicant was relieved on 19.4.2002 itself which clearly shows that he has been transferred due to mala fide reasons.

5. Respondents have opposed this O.A. by submitting that as per conditions mentioned in Para 2 (III) of the offer of appointment, applicant carries with him liability to serve in any part of India. Therefore, he can always be transferred to any part of India in exigencies of service and administrative functional needs of the Department. It is a duty of the second respondent to make transfers in public interest for better functioning and to distribute officers/staff working under him in different SIBx all over India taking into account the requirement of staff in each SIBx. The order dated 9.3.2002 is a general transfer order whereby 75 drivers, including the applicant, were transferred from one SIBx to another or from IB Headquarters to SIBx and vice versa in the exigencies of service. This has been done on the basis of their comparative younger age (i.e. date of birth above 1950 and having longer stay at I.B. Headquarters without doing any posting outside). These transfers have been made to meet the functional requirement of SIBx in public interest. They have categorically denied that applicant's transfer has been made by pick and choose method and it has nothing to do with his 33 days absence as EOL (without pay). Respondents have also stated in the counter that no intimation was given by the applicant about his accident but at the time of arguments, counsel for the respondents fairly stated that he does not wish to address on that issue and Court may pass any orders with regard to the relief of EOL.

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59

Counsel for the respondents relied upon the judgment given by Hon'ble Supreme Court in the case of Union of India & Ors. Vs. S.L. Abbas (1993 (25) ATC 844).

6. I have heard both the counsel and perused the pleadings as well. Law is well settled on the question of transfer inasmuch as Hon'ble Supreme Court has repeatedly held that transfer is an incident of service and who is to be posted where and how best the services of an officer can be utilized are the matters which should be left to the administration to decide and courts should not interfere in transfer matters in a routine manner unless it is proved to have been passed due to mala fides or are contrary to any statutory rules. In the instant case, it is stated by the applicant that his transfer has been actuated due to the influence of IPS officers, namely, Shri A.S. Achaya and Shri A.M. Prasad but neither Shri A.S. Achaya nor Shri A.M. Prasad have been impleaded as party in the Memo of Parties. He has only impleaded Shri P. Mahendru, Joint Director as party and has stated that he had threatened the applicant with dire consequences but Shri P. Mahendru has filed a separate affidavit to deny the allegations as he has stated that there was <sup>such</sup> no communication between him and the applicant.

7. On the question of mala fides, Hon'ble Supreme Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Anr has held that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of <sup>credibility</sup> ~~eligibility~~ (AIR 1974 SC 555). However, in the present case, I find that applicant has not been able to prove any mala fides against the officer. He has merely made the allegations against the officers without trying to substantiate the same. Moreover, as we have stated above that those officers have not even been impleaded as respondents in the O.A. and the basic principle of mala fides is that if mala fides are alleged against an officer, he has to be impleaded as a party in the O.A. so that he may respond to it. Therefore, the contention of mala fides in this case is rejected. It has been repeatedly held by the Hon'ble Supreme Court

8

60

that in the absence of mala fides, courts should not interfere in transfer matters especially when it is a general order whereby as many as 75 persons have been transferred on a laid down principle, as explained by the respondents in their counter affidavit, namely, on the basis of their comparative younger age i.e. date of birth above 1950 and having longer stay at IB HQs without doing any posting outside. It goes without saying that so long as a uniform policy/criteria has been adopted by the respondents for transferring the persons to different places, no fault can be found in that. Therefore, as far as applicant's challenge to his transfer is concerned, there is no merit in the O.A. However, the second grievance of the applicant with regard to treating his period from 20.8.2001 to 21.9.2001 as EOL is concerned, I find some substance in the arguments made by the counsel for the applicant. Even though respondents have tried to show that applicant had not given any intimation regarding his accident but they have admitted that on joining the office on 24.9.2001, he did enclose the medical certificate. Applicant has also annexed his prescription slips from Dr. R.M.L. Hospital, CGHS dispensary and Dr. S. Gupta which clearly show that he had met with an accident as in the prescription slip of CGHS Dispensary itself it is mentioned "hit by a bull" on 19.8.2001 whereby he was directed to get his X-ray done at Chest and was referred to Dr. R.M.L. Hospital where medicines were prescribed to him and Dr. S. Gupta had also given him a medical certificate stating therein that he had been under his treatment for fracture in ribs from 20.8.2001 to 23.9.2001. He was declared fit from 24.9.2001. It is seen that when applicant had given all those certificates, no order, recording the finding whether the certificates or prescriptions were wrong or not, has been passed by the competent authority. It goes without saying that once applicant had <sup>given</sup> prescriptions and certificates to show that he had indeed met with an accident, there was no justification to treat the said period as EOL without pay, especially when as per their own order dated 8.10.2001 there were as many as 274 EL and 229 HPL in the credit of applicant. It is also seen that when applicant gave his representation for treating the period on medical, his representation



was rejected by a non-speaking order simply by saying that his request cannot be acceded to and even when he gave representation to the higher authorities, they simply referred to the order passed by the Controlling Officer which shows total non-application of mind. In view of the above, the orders dated 8.10.2001, 10.12.2001 and 26.2.2002 are quashed and set aside. In normal course, I would have remitted the matter to the authorities to reconsider the same and pass appropriate orders but since applicant has now annexed all the documents from CGHS, Dr. R.M.L. Hospital and also the certificate from Dr. S. Gupta, I am satisfied that applicant was indeed taking treatment for having been hit by a bull. Therefore, respondents are directed to treat the period from 20.8.2001 to 21.9.2001 as commuted leave on medical ground.

8. With the above direction, this O.A. stands disposed of. No order as to costs.

  
(MRS. MEERA CHHIBBER)  
MEMBER (J)

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