

IN THE CENTRAL ADMINISTRATIVE TRIBAL

NEW DELHI

O.A. No. 72/2002

T.A. No.

DATE OF DECISION 1-11-2002

Dr. Raghu Raj Singh Chauhan Petitioner(s)

Sh. Rakash Kumar Singh Advocate for the Petitioner(s)

Versus

U.O.I. & Ors. Respondents

Sh. Rajinder Nischal & Sh. L.R. Khatana Advocate for the Respondent(s)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(Dr. A. Vedavalli)
Member(J)

Cases referred:

1. UOI Vs. Ashutosh Kumar Srivastava and Another (2002(1)SCC 188)
2. Rajendra Roy Vs. UOI & Anr. (AIR 1993 SC 1236)
3. Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others (1991 Suppl.2 SCC 659)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-72/2002

New Delhi this the 1st day of November,

Hon'ble Dr. A. Vedavalli, Member(J)

Dr. Raghu Raj Singh Chauhan,
Assistant Director (Exhibition Cell)
National Museum, Janpath,
New Delhi-110001. Applicant

(through Sh. Rakesh Kumar Singh, Advocate)

Versus

1. Union of India through
Secretary,
Dept. of Culture,
Ministry of Tourism and Culture,
Government of India,
Shastri Bhawan,
New Delhi-110001.
2. National Museum,
through Director General,
Janpath,
New Delhi-11.
3. Sh. K.N. Srivastava,
Joint Secretary,
Ministry of Tourism & Culture,
Dept. of Culture,
Government of India,
Shastri Bhawan,
New Delhi-1.
4. Sh. Sanjiv Mittal,
Director,
Ministry of Tourism and Culture,
Dept. of Culture,
Government of India,
Shastri Bhawan,
New Delhi-1. Respondents

(through Sh. Gauri Shanker, Sr. Counsel with
Sh. Rajinder Nischal, Advocate for Respondents No.1,3&4 and
Sh. L.R. Khatana, Advocate for R-2)

O R D E R
Hon'ble Dr. A. Vedavalli, Member(J)

The applicant Dr. Raghu Raj Singh Chauhan,
Assistant Director (Exhibition Cell), National Museum, New



Delhi is aggrieved by his transfer alongwith his post from National Museum to Dr. Zakir Hussain Memorial Museum as its Officer In-charge. He has impugned the transfer order dated 07.12.2001 issued by Respondent No.1 and the relieving order dated 08.12.2001 issued by Respondent No.2 (Annexure P-10 Colly.).

2. Facts of this case briefly are as under:-

The applicant joined the National Museum (Respondent No.2) as Keeper (Publication) on 12.12.1989 on selection through UPSC. He was appointed to the post of Assistant Director (Exhibition Cell) in the said Museum on 01.01.1996 on ad hoc basis. Subsequently, he was appointed to the post of Assistant Director (Exhibition Cell) by transfer on deputation by letter dated 02.12.1998 (Annexure P-4 Colly.). He was appointed to the said post on regular basis on absorption with effect from 29.05.2001 by a Notification dated 14.06.2001 (Annexure P-5).

The applicant was transferred from National Museum to Dr. Zakir Hussain Memorial Museum New Delhi as its Officer In-charge with immediate effect by an office Memorandum dated 07.12.2001 (Annexure P-10 Colly.). The post he was holding was also transferred to the said Museum to accommodate the applicant in the post of Officer In-charge by the said order. Pramod Ganapathy, Officer In-charge (Dy. Keeper), Dr. Zakir Hussain Memorial Museum, was transferred to National Museum by the very same order. Pursuant to the said O.M. dated 07.12.2001, the

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applicant was relieved alongwith his post by an Office Order dated 08.12.2001 (Annexure P-10 Colly.) and was directed to report for his duty as Officer In-charge at the Dr. Zakir Hussain Memorial Museum relieving Sh. Pramod Ganapathy for joining National Museum as Dy. Keeper.

Consequent upon the transfer/relieving of the applicant, officers of the Exhibition Cell in the National Museum were transferred/posted to other sections in the said Museum. The applicant did not report for duty in the Dr. Zakir Hussain Memorial Museum pursuant to the said impugned orders. He filed the present O.A. on 07.01.2002 challenging the two impugned orders.

3. He seeks the following reliefs in this OA:-

- "(a) That, this ld. Tribunal may be pleased to grant ad interim ex parte stay of the operation of OM dated 7.12.2001 and Relieving ORder dated 8.12.2001 and make the ad-interim ex-parte order absolute after notice to the respondents.
- (b) That this ld. Tribunal may be pleased to direct the respondents not to take any step for disturbing the post of Assistant Director (Exhibition Cell) till the disposal of instant OA.
- (c) That the ld. Tribunal may kindly be pleased to direct the file containing reasons manner and approval of the transfer of the applicant and the post of Assistant Director (Exhibition Cell)."

4. Heard the learned counsel for both the parties. Pleadings and material papers and documents

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placed on record have been perused. Matter has been considered carefully.

5. The first impugned order dated 7.12.2001 is as under:-

"Subject : Transfer of Shri R.R.S. Chauhan,
Asstt. Director, National Museum-
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The competent authority had decided as under:

a. To transfer Shri R.R.S. Chauhan, Asstt. Director to Dr. Zakir Hussain Memorial Museum, New Delhi as its Officer In-charge with immediate effect.

b. To transfer Shri Pramod Ganapathy, Officer In-charge (Dy. Keeper), Dr. Zakir Hussain Memorial Museum to National Museum against an existing vacancy.

c. To transfer the post of Asstt. Director from National Museum to Dr. Zakir Hussain Memorial Museum in order to accommodate Shri Chauhan in the post of Officer in-charge to the grade of Asstt. Director of National Museum.

2. Shri Chauhan may be relieved with immediate effect in order to assume the charge as office in charge in Dr. Zakir Hussain Memorial Museum. After Shri Chauhan joins, Shri Ganapathy shall be relieved and report for duty at National Museum."

6. The second impugned order dated 8.12.2001 is as under:-

"In pursuance of Office Memorandum No.F.13-43-2001-M.1 dated 7.12.2001 of the Government of India, Ministry of Tourism and Culture, Department of Culture, Dr. R.R.S. Chauhan, Asstt. Director (Exhibition Cell) is hereby relieved alongwith the post to assume the charge as Office In-charge in Dr. Zakir Hussain Memorial Museum with immediate effect.

He should report to his duty as Officer In-charge in the Dr. Zakir Hussain Museum and relieve Shri Pramod Ganpatye for joining the National Museum as Deputy Keeper.

Dr. R.R. S. Chauhan, after assuming his duty as Officer In-charge in the Dr. Zakir Hussain Memorial Museum will send his joining report to the DG, National Museum immediately." 25

7. The main contention of the applicant in the OA is that the aforesaid impugned orders are vitiated by several illegalities and mala fides and hence are unsustainable under the law.

8. The first ground urged by the learned counsel for applicant Sh. Rakesh Kumar Singh is that the applicant was appointed to the post of Assistant Director (Exhibition Cell) in the National Museum only and hence cannot be transferred to another Museum, namely, Dr. Zakir Hussain Memorial Museum, New Delhi without his consent and that the said post he was holding is also not transferable. He submits that the National Museum and Dr Zakir Hussain Memorial Museum are altogether different and separate organisations and that the applicant had applied for the post of Assistant Director (Exhibition Cell) in the National Museum only and was selected to that post which was advertised in the Employment News Edition 21-27 September 1996 by the Department of Culture (Ministry of Human Resources) (page 43 of the paperbook) for filling up the post by transfer on deputation. The applicant on his selection to the said post on the recommendation of the UPSC was absorbed in that post on regular basis by a Notification dated 14.06.2001 with effect from 29.05.2001 (Annexure P-5). Learned counsel for the applicant submitted that there is nothing in the relevant advertisement for the post to which he was appointed or in



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the orders relating to his absorption on regular basis/appointment to the said post or in the relevant Recruitment Rules which indicates that either the said post is transferable or that the applicant has any transfer liability. He contended that transfer is a condition of service and that in the above circumstances the transfer of the post as well as the transfer of the applicant alongwith the post from National Museum to Dr. Zakir Hussain Memorial Museum are illegal as they are violative of FR 14-B, FR 15 and the terms and conditions of his service.

9. The respondents in their short reply as well as the detailed reply have denied the aforesaid contentions relating to the alleged illegality involved in the transfer of the post as well as the transfer of the applicant alongwith post.

10. The respondents have stated, inter alia, that the National Museum is a subordinate office under the Ministry of Culture, Government of India and Dr. Zakir Hussain Memorial Museum is under the administrative control of the National Museum. Its expenditure is met from the budget provisions of National Museum only and has no separate budget provision. There is no separate Director General for Dr. Zakir Hussain Memorial Museum. It is a part and parcel of National Museum and only housed in different premises within Delhi. It is the primary responsibility of the National Museum to look after the administration of Dr. Zakir Hussain Memorial Museum and

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since there was no senior officer/person posted in Dr. Zakir Hussain Memorial Museum which is outside the National Museum it was decided to post a senior Officer In-charge of Dr. Zakir Hussain Memorial Museum. Accordingly, the applicant was posted as Officer in-charge of Dr. Zakir Hussain Memorial Museum and his post as Assistant Direction (Exhibition Cell) has been shifted to Dr. Dr. Zakir Hussain Memorial Museum for administrative convenience and in public interest. It is not a transfer from one post to another. It is a mere posting from one unit to another unit in the same organisation and in the same station. The respondents have also stated that the applicant has an All India Service liability.

11. Learned Senior Counsel for respondents Dr. Gauri Shanker during the course of his arguments referred to the relevant statements and submissions made by the respondents in their aforesaid replies as well as in their additional affidavits filed on 20.03.2002 pursuant to the Tribunal's order dated 15.03.2002 and the rejoinder to the additional affidavit filed by the applicant etc.

12. Learned counsel submitted that there is no rule to say that the post which the applicant was holding is not transferable. There is also no rule prohibiting the transfer of the applicant in question by the Government. The applicant has failed to establish that the post is non-transferable. Learned counsel also submitted that the

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applicant belongs to the General Central Service and is not a separate encadred person outside the service. He contended that the plea of the applicant that he has no transfer liability is unsustainable as all government servants belonging to Central Services are subject to transfer in public interest and in the exigencies of service. It was also submitted by the learned Senior Counsel that there is no transfer as such as understood, normally, in the present case. The applicant was only shifted/posted from one unit to another unit of the same organisation in the same station alongwith the post and that there is no change of cadre or residence or reduction in pay and allowances or any domestic disturbance involved. He further contended that the aforesaid plea of the applicant as to the violation of FR 14B or FR 15 or any other alleged illegality in the transfer of the post itself or his transfer or his posting alongwith the post is, therefore, devoid of any merit and deserves to be rejected.

13. FR-14B on which the applicant placed reliance is as under:-

"Subject to the provisions of Rule 15, the President may transfer to another post in the same cadre, the lien of a Government servant who is not performing the duties of the post to which the lien relates."

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14. FR-15, another provision on which also the applicant relies is as under:-

"(a) The President may transfer a Government servant from one post to another provided that except-

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a Government servant shall not be transferred to, or except in a case covered by Rule 29, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

15. It is well settled that the Government can create or abolish any post as per the relevant statutory provisions, rules and instructions in accordance with law. While so, the applicant has not been able to spell out clearly and specifically as to how the impugned transfer of the post in question is violative of the aforesaid fundamental rights or any other statutory provision. He has also not been able to bring forth any statutory bar or prohibition against the transfer of the post to another unit of the same organisation.

The applicant who admittedly belongs to the General Central Service has not been able to prove that he has no all India service liability. He has also not been able to establish that the impugned transfer alongwith the post he was holding to another unit or the same

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organisation as its Officer In-charge has resulted in any adverse civil consequences including change of cadre, reduction in pay and allowances, change of residence or other facility etc.

16. In view of the above, I find that the first ground urged by the applicant is devoid of any merit.

17. The second ground urged by the applicant is that the impugned orders are vitiated by mala fides and hence are unsustainable under the law.

18. Learned counsel for the applicant submitted that the impugned transfer is not in "public interest" and that the real motive behind the same is to deprive him of his chances of promotion for the post of Dy. Director (Administration) in the National Museum. He has further submitted that for promotion to the said post, experience of working in higher post of a Museum of standing is required and Dr. Zakir Hussain Memorial Museum is not a Museum of Standing. He contended that the impugned transfer orders have been effected at the behest of Respondents No.3 & 4 to settle scores against the applicant to humiliate and harass him.

19. In reply to the aforesaid ground of mala fides, learned Sr. Counsel for respondents reiterated his argument that the factum of "public interest" is evident from the facts and circumstances of the case as brought out in the replies filed by the respondents which have

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necessitated the transfer of the post as well as the transfer of the applicant alongwith post to Dr. Zakir Hussain Memorial Museum and that there is no private interest involved in the case.

20. Learned Senior Counsel has also submitted that the applicant has been transferred from National Museum to Dr. Zakir Hussain Memorial Museum alongwith his post as its Officer In-charge and that there is no change of his cadre. There is no question of depriving him of his chances of consideration for promotion to the post of higher post. It was also further submitted that the applicant will be considered for the post of Dy. Director (Administration) in the National Museum alongwith other eligible candidates within the zone of consideration in accordance with relevant rules as and when steps are taken by the respondents to fill up the said post. Summing up his arguments it was contended by the learned counsel for respondents that the applicant has failed to establish mala fides with sufficient proof and hence the above ground of mala fide cannot be sustained under the law and is liable to be rejected. He relied upon a recent judgement of the Hon'ble Supreme Court in Union of India Vs. Ashutosh Kumar Srivastava and Another (2002(1)SCC 188) in support of his contention.

21. On a perusal of the concerned documents annexed with the OA on which the applicant relied in support of his allegations as to mala fides I find that the said documents do not contain or furnish any strict proof



of mala fides against the respondents. On a consideration of the aforesaid submissions and the contentions of the parties I find that the applicant has failed to support his plea regarding mala fides with supporting strict proof and hence the said ground is unsustainable under the law.

22. It is well settled as per the law laid down by the Apex Court in a catena of cases including the decisions in Rajendra Roy Vs. Union of India and Another (AIR 1993 SC 1236), Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others (1991 Suppl. 2 SCC 659) that transfer is an incident of service and can be set aside by the Courts only on the grounds of illegality or mala fides. The recent decision of the Apex Court in State of Punjab Vs. V.K. Khanna and Others (2001(2)SCC 330) regarding the requirement of strict proof of mala fides is also relevant in this connection.

23. In the facts and circumstances of the present case and in view of the foregoing discussion I am of the opinion that the applicant has failed to establish with supporting material that the impugned orders are vitiated by any illegality or mala fides. The impugned orders, therefore, do not warrant any judicial interference.

24. It is, however, made clear in the interests of justice that as and when the respondents take steps to fill up the post of Dy. Director (Administration) in the National Museum, it must be ensured that the applicant, if

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eligible and is within the consideration zone, should be considered on his merits alongwith other eligible candidates as per the relevant rules in accordance with law. The factum of the applicant's transfer alongwith the post to Dr. Zakir Hussain Memorial Museum should not jeopardise or stand in the way of such consideration in any manner whatsoever,

25. The OA is disposed of as above. No costs.

A. Vedavalli
1/11/2002

(Dr. A. Vedavalli)
Member(J)

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