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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.444/2002

New Delhi this the 30th day of June, 2003

Hon'ble Shri R.K.Upadhyaya, Member (A)

Sunil Kumar Sinha,
S/O Late Shri M.P.Sinha,
R/O WZ-745-E, Dada Dev
Road, Palam Village, New
Delhi and employed as ACIO-I(G),
IB, New Delhi.

..Applicant

(Applicant in person)

VERSUS

1. Union of India through the
Secretary, Ministry of
Home Affairs, Govt.of India,
North Block, New Delhi.
2. Director, Intelligence Bureau,
Ministry of Home Affairs,
Govt.of India, North Block,
New Delhi.
3. Shri P.L.Kher,
Assistant Director,
Intelligence Bureau, Ministry
of Home Affairs, Govt.of India,
North Block, New Delhi.
4. Shri A. Muthusamy,
Additional Deputy Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt.of India, North Block,
New Delhi.

..Respondents

(By Advocate : Shri R.V. Sinha)

O R D E R (ORAL)

This application has been filed claiming the following
reliefs:-

- "a) quash the order of transfer, rejection of his
representation for the cancellation of his
transfer (Annexure "A") and the office order
relieving him on transfer (Annexure "B");
- b) to fix up the accountability, particularly
the role of Sri P.L. Kher AD-E and Sri A
Muthusamy ADD-E, to be followed by
appropriate action;"

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2. It is stated by the applicant that he joined Intelligent Bureau (IB for short) as Assistant Central Intelligent Officer, Grade II, General (ACIO - II (G) for short) on 11.8.1969. He served different parts of the country including NEFA and Kashmir and was transferred on 17.11.1988 to IB Headquarters, New Delhi. By an order dated 13.2.2002, the applicant has been transferred to Jaipur. He states that on account of his personal problem, i.e., education of his blind son, his earlier transfer order dated 11.3.1997 was cancelled. However, he made a representation for cancellation of his transfer order as per his representation dated May, 2001 (Annexure A-1), but the same has been rejected vide impugned order dated 13.2.2002 (Annexure A). The applicant vide order dated 13.2.2002 was to be relieved w.e.f. 20.2.2002. However, on account of orders issued by this Tribunal on 19.2.2002, he is still working as ACIO - I (G) New Delhi. The applicant states that the impugned order of transfer and relieving order deserve to be struck down for several reasons. According to him, these orders are malafide, grossly malicious, arbitrary, whimsical, cryptical and biased. The applicant explained that he has to ensure proper education of his blind son. The result of 2nd year of graduation of his son is expected at any time and if he is declared successful he would go in the final year of graduation. During the course of arguments, the applicant stated that perhaps after his son passed graduation, he may be transferred. However, he has stated that if he is transferred at the present juncture, he has no option but to take pre-mature retirement. He has referred to application dated 18.6.2001 (Annexure A-2) for his pre-mature retirement as well as application dated 18.10.2001 (Annexure A-5) wherein he has stated that he has to seek

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pre-mature retirement. It was further pointed out that IB has no transfer policy. There have been several instances of long stay at places of choice of others whereas the applicant was picked up because of malafide reasons.

3. Respondents have filed their reply in which they have stated that the applicant unnecessarily made allegations regarding personal bias, grudge, malafide or otherwise any ill will against them. The respondents have denied any such thing. According to the respondents, the case of the applicant has been considered according to the rules in the normal course in the best interest of the administration. The respondents in their reply have further stated that the applicant has no vested right to be transferred at a particular place of his choice. Transfer is an incidence of service and any employee can be posted at any place at the discretion of the administration in the public interest. The applicant has got All India Transfer liability. Considering the facts of his case, he was transferred to Jaipur in the public interest. It is explained by the learned counsel for the respondents that the transfer of the officers at the level of the applicant is made by a Board comprising of three senior officers, two of them being at the level of IGP and one of them being at the level of DIGP considering the need of the department as well as the employees. The respondents have stated that the representations of the applicant were considered even at the level of Director, IB. However, the same was not agreed to. The transfer orders of the applicant once in 1994 and again in 1997 were cancelled considering his request on humanitarian ground. According to the respondents,

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the impugned transfer order is just, bonafide and in the administrative interest. Besides no statutory rule has been violated. The respondents have relied on several case laws in support of their contention that this Tribunal can interfere by way of judicial review only if the order is against any statutory rule or malafide. Learned counsel of the respondents further pointed out that in the present case, the applicant has claimed personal hardship only and that cannot be a basis for cancellation of the order of transfer. He also stated that some other officers have longer stay at the same station but that cannot be a ground for cancellation of the transfer order of the applicant. In this connection, learned counsel of respondents also placed reliance on this Tribunal's order dated 12.2.2002 in O.A. No.1856/2001 wherein one Udai Singh had filed the O.A. challenging the same transfer list by which the applicant was also transferred. In that case, applicant Udai Singh contended that his transfer deserved to be cancelled as he had to look after his blind mother and had to look after his two daughters who were of marriageable age. According to the learned counsel after considering the facts of that case, this Tribunal observed as follows:

"5. It is not disputed that the applicant has transfer liability throughout the country and a transfer from one place to another is an incidence of service. In the present case, by the impugned transfer order dated 24.2.2001, a total of 92 officers, including the applicant, have been transferred to various places. It is further relevant to note that a number of other officers have also been transferred to Raipur and the list of persons transferred also includes lady officers, for example, at Sl No.85, who has been transferred from Hqrs. to Bhopal. The fact that the applicant has remained in Delhi for more than half the period of his service does not entitle him to continue in Hqrs. We have also considered the fact that the applicant will be 55 years only on 1.4.2002. Therefore, at the time when the impugned transfer order was issued, he was less than 54 years and on

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this ground we see no reason to set aside the transfer order. Respondents have also stated that the transfer order has been made in public interest, including the transfer of the applicant to Raipur in the newly created State of Chattisgarh. In the circumstances of the case, nothing has been shown by the applicant to establish that the impugned transfer order has been passed in violation of any statutory provisions or with malafide intention (see Union of India Vs. S.L.Abbas, 1993(2) SLR 585 (SC)).

6. The representation made by the applicant has also been duly considered by the respondents and in the facts and circumstances of the case, we find neither the rejection order is illegal or arbitrary nor against the principles of natural justice, as contended by the applicant's counsel."

4. According to the learned counsel of respondents, the transfer may involve personal problem but the applicant having All India transfer liability cannot successfully contest before this Tribunal for quashing of the transfer order on account of personal hardship. Therefore, no interference is called for in this case.

5. The facts, as stated by the applicant as well as the record available have been gone through in detail. The arguments of both parties have also been considered.

6. From the respondents' reply, it is seen that the applicant had earlier also sought stay of his transfer for education of his blind son at the level of 10+2. The education of children, no doubt, is a primary responsibility of the parents but the exigency and requirement of the service also cannot be ignored. It is true that the applicant has all India Transfer liability. The Hon'ble Supreme Court in National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan & Anr. (2002 (1) SLJ 86 SC) has observed as follows:-

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"Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting such transfer, the courts or the tribunals can not interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of management as against such orders passed in the interest of administrative exigencies of service concerned."

7. In case, the applicant desires he can always make representation to his administrative department for his personal reasons and on his own account. But its rejection itself cannot be a ground for quashing of the transfer order. It is for the administrative authorities to consider whether the request of the applicant is to be accepted or not. In view of the facts of this case, it is held that no interference at this level is called for, as the transfer order of the applicant is not against any statutory rules. The applicant is liable to be transferred to any place in India because he has All India Transfer Liability.

8. The claim of the applicant that he will be compelled to seek pre-mature retirement if his transfer order is not cancelled, is not a relevant factor so far as this OA is concerned. If the applicant so chooses, he can seek pre-mature retirement. It is not for that reason that he would put a precondition or seek interference of this Tribunal for quashing of his transfer order on this ground and this is not for this Tribunal to make any suggestion in this regard. The contention of the applicant is that the transfer order has been passed on malafide reasons. After considering the facts and other material on records which have been produced the order was passed in routine manner. There is no element of malafides in this case. The respondents in their reply have

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stated that a Committee of three senior officers have made proposal for transfer of the applicant along with others. It is not that the applicant alone was picked up for transfer. Transfer was on all India basis. Therefore, the contentions of the applicant that the impugned transfer order is out of malafide, is rejected.

9. It is also noticed that the applicant had made representations against the transfer order which was duly considered and rejected long ago although more than 2 and a half years have passed after the issuance of the transfer order, the applicant had been shown enough indulgence. Therefore, it is desirable to comply with the said order forthwith, unless, the administrative authority reconsiders his claim for being retained in the present place of posting. So far as this claim is concerned, the same is rejected.

10. In the result, the OA is dismissed. Interim order dated 19.2.2002 stands vacated.


(R.K. UPADHYAYA)
MEMBER (A)

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