

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2386/2002

New Delhi, this the 29th day of April, 2003

Hon'ble Shri Shanker Raju, Member(J)

Anil Kumar Gupta
G-78, Lajpat Nagar I, New Delhi-24 .. Applicant
(Shri Shyam Babu, Advocate)

versus

Union of India, through
Secretary(R)
Cabinet Secretariat
Room No.7, Bikaner House Annexe
Shahjahan Road, New Delhi .. Respondent
(Shri Madhav Panicker, Advocate)

ORDER

Applicant, through this OA impugns respondents' order dated 2.5.2002 transferring him from headquarter office at New Delhi to Kolkata. He has sought quashment of the aforesaid order with direction to the respondents to strictly follow the transfer policy dated 17.6.2002 with grant of consequential benefits.

2. Applicant who is working as Private Secretary (PS), respondents publish transfer policy on 29.9.95 which was modified vide memorandum dated 6.3.98 which is applicable to all cadres in the office of respondents. As per the policy transfer to the special bureau is restricted to within the country whereas transfer to special assignment construes posting abroad.

3. By letter dated 23.2.2000 transfer policy has been laid down through circular for PAs/Stenos and rendering a full tenure in SB before consideration for special assignment has been made mandatory.

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4. Applicant by an order dated 2.5.2002 was directed to join at SB, Kolkata. Being aggrieved he preferred a detailed representation. Accordingly his transfer was deferred till 31.8.2002 on account of mid academic session of his children and it was further stated that applicant would be relieved from headquarter w.e.f. 1.9.2002.

5. By an order dated 17.6.2002 in continuation of memo dated 21.3.2000, it has been noticed that PAs who have done special assignment posting but not done SB posting, it is decided that those who have not done any SB posting, would have to render a full tenure as SB before, they are considered for posting on a special circuit. By an order dated 19-7-2002, representation of the applicant against his transfer, was rejected. He preferred another representation on 6-8-2002 which has not been responded to, giving rise to the present OA.

6. Learned counsel for the applicant Sh. Shyam Babu assailed the transfer policy, as arbitrary, violative of Articles 14 & 16 of the Constitution of India and contended that any transfer resorted on legal malafides against the transfer guidelines is liable to be set aside and for this, he places reliance on the decision of the Apex Court in State Bank of India Vs. Ranjan Sanyal (2001 (5) SCC 508). In this backdrop, it is stated that the respondents have adopted pick and choose policy without any basis and justification. By quoting example of one Shri Adhikari, it is contended that officers who have done special assignments, have been attached to the Additional Secretary and are not considered for transfer despite long length of service as well as senior

most. In so far as others are concerned, officers are allowed to reach the age of 55 years and their transfers have been kept in abeyance on fictitious medical grounds and once they reached this age, they are exempted from SB posting. For transfer, the age of 55 years, in SB posting is held good but for special assignment abroad despite crossing of this age, there is no impediment for such an officer to go abroad. Further more, applicant in his representation has referred to the cases of K.L.Malhotra and U.V.Menon who have long period of service and are yet to do a SB posting. They have been exempted on administrative convenience, as such the aforesaid policy is misused by the respondents, which shows favouritism.

7. Quoting examples of Sh. H.R. Kapoor, S.P. Bhola and Kishan Dutt, it is stated that they have been sent for Special Assignment without undergoing SB tenure and are exempted from transfer to SB on attaining age of 55 years.

8. In the cases of Malhotra and Menon, their cases have been kept in abeyance whereas transfer place has medical facility at par, whereas the similar ground of applicant of heart ailment of his father, responsibility towards daughter and wife, have not been considered which amounts to discrimination and treating equals unequally by the respondents in violation of Articles 14 & 16 of the Constitution of India.

9. Sh. Shyam Babu, learned counsel, by referring to the reply by the respondents to the representation, stated that they have admitted that officers like H.R.Kapoor and S.P.Bhola have been posted on special assignment but never

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done SB posting on crossing age of 55 years. He refers to the reply of the respondents dated 19-7-2000 to substantiate his plea. He alleges discrimination and states that the respondents are bound to strictly comply with the transfer policy dated 17-6-2002 and not to relax the same to show favouritism.

10. In their reply, respondents counsel Sh. Madhav Panikkar denied the contention and stated that U.V.Menon and K.L.Malhotra have already been transferred on SB posting which does not show any discrimination. By adverting to the facts of the case, it is stated that applicant has been posted at Headquarters office, since 2-2-1971 and had undergone three special assignments. Applicant has ten years service to his credit. In so far discrimination and medical grounds for transfer are concerned, it is stated that U.V.Menon was transferred to SB in August 2000 but on account of paralytic attack and bye pass surgery, transfer order was cancelled. Transfer was re-issued in 2001 but cancelled on compassionate account on account of loss of his younger daughter due to hepatitis but now U.V.Menon has been transferred to SB Chennai.

11. In so far as, K.L.Malhotra is concerned, on the basis of his length of stay at Headquarters, he was transferred to SB but due to neurological problem of his daughter and son and his own health on compassionate, the transfer order has been cancelled. In so far as Lakshmi Gambhir is concerned, her transfer was cancelled due to her husband's illness and now she has been transferred to SB

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Lucknow and this was deferred upto 15-03-03 and it is contended that now she has been transferred.

12. As far as officers who have crossed the age of 55 years or those posted with the officers of the rank of Addl. Secretary are concerned, having taken a policy, which is applicable to PS including applicant and is not found to be either malafide or in violation of the rules, cannot be interfered.

13. In so far as challenge to transfer on medical ground is concerned, it is stated that the same was duly considered and was not found feasible. Accordingly, applicant who has no indefeasible right to continue on a particular place or posting has been transferred in public interest and in administrative exigencies which is neither mala fide nor violative of policy guidelines.

14. It is also stated that in C.P. No.428/2002 in the present O.A. applicant has been directed to join at the new place of posting at Kolkata and his absence period was not treated as unauthorised.

15. Applicant has submitted a rejoinder reiterating his pleas taken in the O.A.

16. I have carefully considered the rival contentions of the parties and perused the material on record. As held by the Apex Court in several pronouncements and latest in National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574, "Transfer of employee, held, is not

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only an incident but a condition of service....unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine....Courts or tribunals cannot substitute their own decision in the matter of transfer for that of management"

u 17. If one has regard to the aforesaid ruling and in the light of the policy laid down by the respondents wherein those who have attained 55 years of age are precluded from posting at SB, I do not find any legal infirmity in their policy which has been formulated after much deliberations by the respondents. In order to challenge such a policy, it has to be established that the same is mala fide or contrary to rules. As this policy is uniformly applied to all the officers, I do not find the same to be ultra vires in any manner whatsoever.

u 18. In so far as claim of applicant is concerned, having rendered 31 years of service at headquarters and posted at special assignments on three occasions, he has no indefeasible right to be posted or deputed to a place of his choice indefinitely. The wheels of administration should be allowed to run smoothly and this Tribunal in a judicial review cannot act as an appellate authority over posting and transfer of government servants. As the order is passed by a competent authority which is not violative of any rules or guidelines and is also not mala fide, I cannot, in judicial review, sit over the transfer orders as an appellate authority. This has been precluded by the Apex Court in State of M.P. vs.

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S.S.Kaurav JT 1995 (2) SC 498, as well as N.K.Singh vs. Union of India 1994 (28) ATC 246 (SC).

19. In so far as the discrimination alleged by applicant is concerned, the officers have been treated in their peculiar facts and circumstances and their transfer orders have been kept in abeyance or cancelled in the exigencies which are well covered by statutory rules. However, in the case of U.V.Menon he stood transferred as well as Smt. Lakshmi Gambhir. Moreover, applicant cannot use this forum as a public interest litigation. Having regard to the explanation tendered by the respondents as I do not find any hostile and discriminatory treatment meted out to applicant, Article 14 and 16 of the Constitution have not been violated.

20. In the result, for the foregoing reasons, I do not find any legal infirmity either in the transfer policy or in the order issued by the respondents transferring applicant to Kolkata where he has already joined in pursuance of the directions in C.P.428/2002. The OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

"San."