

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP 428/2002
MA 2174/2002
in
OA 2386/2002

DR

New Delhi, this the 24th day of October, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)
Hon'ble Sh. Shanker Raju, Member (J)

Anil Kr. Gupta
S/o Sh. O.P.Gupta
R/o G-78, Lajpat Nagar -1
New Delhi - 110 024.

...Applicant
(By Advocate Sh. Shyam Babu)

Vs.

Sh. Vikram Sood
Secretary (R)
Cabinet Secretariat
Room No.7, Bikaner House Annexe
Shahajahan Road
New Delhi - 110 011.

...Respondent
(By Advocate Sh. Madhav Panikar)

O R D E R (ORAL)

By Hon'ble Sh. Govindan S.Tampi, M (A)

MA 2174/2002 and CP 428/2002 in OA 2386/2002
were taken together.

2. Heard Sh. Shyam Babu, 1d. counsel for the applicant/petitioner in CP 428/2002 (respondent in MA 2174/02) and Sh. Madhav Panikar, 1d. counsel for the respondents in CP (applicant in MA 2174/02).

3. During the submissions Sh. Shyam Babu, 1d. counsel prayed for disposal of the CP first, while Sh. Madhav Panikar, 1d. counsel pressed the MA to be disposed of first. We also noticed that on 4-12-2002, Tribunal had passed directions that it would be appropriate that CP be listed only after the disposal of the MA. Therefore, we are deciding both the matters together.

4. While OA 2386/2002 had come up for fresh admission on 12-9-2002, the Tribunal had passed the

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following order :-

"Shri Shyam Babu, learned counsel appeared for the applicant. By Office Order No. 47/Pers/6/2002 dated 2.5.2002, the applicant who is a Private Secretary has been transferred with immediate effect from the Hqrs. to S.B. Kolkatta. Shri Shyam Babu states that what has happened in this case is the direct violation of the Article 14 and 16 of the constitution and the transfer policy of the respondents. Inspite of the specific policy there have been number of cases where exceptions and exemptions were granted at the behest of those in power/and who have support but those who do not have such support are being transferred out. In the circumstances the intervention of the Tribunal is called for states, Sh. Shyam Babu.

2. Issue notice returnable in four weeks followed by two weeks for rejoinder. Place before JR for completion of pleadings on 30.11.2002.

3. As far Interim Relief is concerned, Shri Shyam Babu states that the IR which indicated in the OA para 9 may be deleted and case for retention of the applicant be granted. Notice of 2 weeks is given to the respondents to reply the same and IR shall come up for hearing on 27.9.2002 and till such time the transfer order of the applicant should not be given effect to.

4. Issue Dasti."

5. In MA 2174/2002, it is pointed out that the applicant who was transferred on the basis of order dt. 2-5-2002 was relieved on 12-9-2002 had indicated that he would assume charge at Calcutta on 16-9-2002. He had also requested for arrangements being made at Calcutta for making available transport and provisional accommodation. This apparently had not been brought to the notice of the Tribunal on 12-9-2002 which led to the Tribunal passing the order of staying the transfer till 27-9-2002. Infact when

the applicant had appeared before the Tribunal, the impugned order had already been given effect to. It is, therefore, prayed in the MA that the interim order granted may be vacated.

6. On the other hand, it is indicated in the contempt petition that the respondents had declined to permit the applicant to rejoin duties in terms of the interim order and had thus committed contempt. Sh. Shyam Babu, appearing for the applicant stated that the applicant was not guilty of any mis-declaration or non-declaration and that it was only the Tribunal who had given him the interim relief, directing that the transfer order need not be given effect to till 27-9-2002 and it is only in pursuance of the said directions, the individual had stayed back at Delhi. The respondents are proceeding to penalise him for acting in pursuance of the order of the Tribunal and this should not be permitted, pleads Sh. Shyam Babu, 1d. counsel.

7. We have carefully considered the matter and the arguments from both the sides. 1d. counsel for the contempt petitioner would have us to believe that he was doing a favour to the Tribunal by adhering to the stay order which was given unasked for. This infact is not correct. Perusal of the said order would make it very clear that the fact that the applicant had been already relieved was specifically not mentioned by the 1d. counsel, which alone had persuaded the Tribunal to give the interim stay. The arguments raised by Sh. Shyam Babu that the transfer order should be treated as having been completed only when the person takes charge at the new station does not stand to reason and once the

individual has been relieved, the transfer has been given effect to. Still as the Tribunal, even if on mistaken grounds had given the relief, the same cannot be disturbed, unless modified. Sh. Shyam Babu, 1d. counsel has given an undertaking in the Court that within ten days from today (24-10-2002), the applicant would be leaving for Calcutta in terms of the transfer order and that the respondents may not be permitted to take any penal action against him for his continued stay. This has been agreed to by the 1d. counsel for the respondents.

8. Noting the above, we dispose of both the MA and CP with the directions that the applicant shall within ten days from today (24-10-2002) leave for Calcutta to take charge of his new posting and the respondents shall not treat this particular period (from 12-9-2002 to the date of joining at Calcutta before 4-11-2002) as unauthorised absence. Issue DASTI.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

Ans