

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(6)

O.A. NO.1908/2001

New Delhi, this the 11th day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (J)

Shri R. Chandrasekaran,
Foreman Gazetted,
SQAEC (V), Red Fort,
Delhi - 110 006

..... Applicant
(By Advocate : Ms. M. Sarada)

Versus

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block, New Delhi
2. The Director,
DTE of Quality Assurance (Vehicles)
Dept of Defence Production
DHQ PO
New Delhi-110011

..... Respondents
(By Advocate : Ms. Avinash Kaur)

O R D E R (ORAL)

Heard the learned counsel on either side at length.

2. The applicant has been transferred by respondents' order dated 31.5.2001 from Delhi to Avadi from a sensitive assignment to a non-sensitive assignment. Aggrieved by the same, he approached this Tribunal by filing the present OA seeking an ad-interim order of stay, which was granted in his favour after proper consideration on 16.8.2001. At the time of passing of the order of ad-interim stay, the learned counsel appearing on behalf of the applicant had stated that the transfer is malafide and contrary to the rules and the policy framed by the respondents.

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3. The applicant is continuing on his post in Delhi ever since.

4. The learned counsel appearing on behalf of the applicant has submitted that in terms of the rotational transfer policy issued by the respondent-authority on 7.3.1988, those employees who have only 5 years or less to retire may not be disturbed. The applicant will reach the age of superannuation on 31.5.2006. He, therefore, had just five years to retire when the impugned transfer order was issued. Literally speaking, therefore, the impugned transfer order runs counter to the aforesaid provision. The learned counsel appearing on behalf of the respondents has submitted that notwithstanding the ~~above~~^{a above} ~~position~~^{2 position}, the DGQA is competent to consider the matter and pass transfer order in his discretion by virtue of the provision made in Clause (viii) of the aforesaid transfer policy. The same provides as under:

"(viii) Any transfer or non-transfer, which is not covered within the above guidelines, shall have the personal approval of DGQA, who will accord his approval only after he is fully satisfied about the circumstances of the case. DGQA shall submit an annual return to the ministry by the end of June, listing all such cases."

5. What remains to be seen, therefore, is whether the DGQA has exercised the discretionary power vested in him by the aforesaid provision in a fair and just manner. In support of her claim that the respondents had not exercised the power vested in them in a fair and just manner, the learned counsel appearing

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on behalf of the applicant has drawn my attention to a list filed by her containing 11 names. I have perused the same and find that all these officers have completed more than 13 years of stay at the places where they find themselves at present. All of them have less than five years available to them before retirement. None of them has been touched by the respondents and each one of them has been allowed to stay on by following the very same policy, which has wrongly led to the applicant's transfer. She has also placed on record another list of 9 officers (Annexure-B to the rejoinder) which shows that each one of these officers were allowed to stay on at their locations even after they had completed 10 years of stay at their respective stations. At that point of time, each one of them was left with a service period of five years and more, but they were not disturbed. In the said list barring one Shri M. Rajagopal all others have to their credit less than five years of service left before retirement. Accordingly, precisely in accordance with the transfer policy, none of them has been transferred in May 2001. It is thus seen that in a large number of cases the respondents have proceeded to act fairly and justly adhering to the transfer policy parameters laid down in the aforesaid policy.

6. Why have they failed to adhere to the same ~~policy~~ policy in the case of the applicant has not been made clear at all by the respondents. The only ground taken is that the DGQA has done so in ~~the~~ ³ exercise of the discretionary power vested in him. The learned

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counsel appearing on behalf of the applicant has vehemently argued that the DGQA has not exercised his discretion in the matter in a fair and just manner. In support of her claim, she places reliance on what the Himachal Pradesh High Court has had to say in Dr. V.K. Bhargava Vs. State of Himachal Pradesh and others decided on 16/17.5.1985 reproduced in 1986 (3) SLR 511. The relevant paragraph taken therefrom can be usefully produced as under:

"In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion means sound discretion guided by law. It must be governed by rule, not by humour. It must not be arbitrary, vague and fanciful. It would appear from the above observations that predictability even of the administrative decision is one of the essentials of rule of law which is the high policy of the Constitution embodied in Articles 14 and 16. It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on plain of invalidation of an act in violation of them."

If one has regard to the principles laid down by the High Court as above, it is clear to me that the DGQA cannot be said to have exercised the discretion vested in him in a fair and just manner. No reason whatsoever

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has been advanced in support of the impugned transfer order. I am, therefore, compelled to hold that the impugned orders have been passed in arbitrary exercise of the power vested in the DGQA. This cannot be allowed. Transfer orders can be challenged on the basis of malafide, violation of statutory orders and also on the ground of arbitrary exercise of powers. In the present case, the aspect of arbitrary exercise of authority stands out along with the act of discrimination, for the respondents have treated similarly placed persons differently.

7. For the reasons mentioned in the preceding paragraphs, the OA is found to have merit and is allowed. The impugned transfer order dated 31.5.2001 is quashed and set aside. There shall be no order as to costs.


(S.A.T. RIZVI)
MEMBER (A)

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