

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2816/2001

New Delhi this the 27th day of July, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri M.K. Misra,
 S/o late Sh. M.P. Mishra,
 R/o 47/15, Delhi Govt. Officers Flats,
 Rajpur Road,
 Delhi-110054.

-Applicant

(By Advocate Shri K.C. Mittal with Sh. Harvir Singh,
 Advocate)

-Versus-

1. The Secretary,
 Deptt. of Personnel and Training,
 Ministry of Personnel, Public
 Grievances and Pensions,
 Govt. of India, North Block,
 New Delhi.

2. The Secretary,
 Ministry of Home Affairs,
 Government of India, North Block,
 New Delhi.

3. The Chief Secretary,
 Govt. of NCT of Delhi,
 Delhi Sachivalaya, IP Estate,
 New Delhi.

-Respondents

(By Advocate Shri N.S. Mehta)

O R D E RBy Mr. Shanker Raju, Member (J):

Applicant impugns transfer order dated 26.7.2001, wherein on promotion to supertime scale of IAS his services have been placed at the disposal of Government of Arunachal Pradesh. Quashment of the aforesaid has been sought with consideration of posting of applicant within the Government of NCT/Central Government.

2. By an interim order dated 15.10.2001 operation of the impugned order has been stayed.

3. Applicant joined DANICS in the year 1969 and on being appointed on promotion to IAS on 31.12.1991 was

allotted recruitment year as 1984. Consequently, applicant became member of AGMU-1984. Applicant had worked 10 years in the senior scale after promotion and had undergone posting to Arunachal Pradesh hard station for three and a half years.

4. He was again posted to Delhi as Joint Secretary (Planning) in the Government of NCT of Delhi and had been in NDMC Education and Vigilance Department of Government of NCT. Lastly he was working as Secretary-cum-Director, Social Welfare. By the impugned order applicant was promoted in the supertime scale and was transferred to Arunachal Pradesh. Representation preferred against the order of transfer remained unresponded to, giving rise to the present OA.

5. Sh. K.C. Mittal, learned counsel appearing for applicant alongwith Sh. Harvir Singh assails the impugned order as contrary to the policy guidelines and also on pressing personal grounds. By referring to the policy guidelines for transfer posting of IAS officers of joint AGMU cadre it is contended that the UT services by the cadre has been classified into three categories, "A", "B" and "C" where, "A" is posting in Delhi, "B" Soft areas - Goa and UTs of Chandigarh and Pondicherry and "C" Hard areas, i.e., Arunachal Pradesh, Mizoram and UTs of Andaman and Nicobar Islands etc. are included as hard areas. Further referring to the policy guidelines it is stated that as applicant has already as a promotee officer to IAS has rendered hard posting of three and a half years clause

9 (vii) of the guidelines precludes transfer of promotee officer on completion of 55 years of age to difficult areas.

6. Sh. Mittal contends that normal tenure for an IAS officer in senior time scale is 14 years whereas in supertime scale it is 10 years. During the posting of senior scale direct recruits are to render a tenure of three years in difficult areas and also in category "B" areas. After completion of 6 years tenure officer is considered for transfer to Delhi either on Central deputation or to Delhi Government. By referring to sub clause (v) of clause (ix) of transfer guidelines it is contended that the officers referred to are directly recruited IAS officers who on promotion to supertime scale are to be transferred to out of Delhi and difficult areas for a period of two years and then to category "B" areas for another two years, whereas the aforesaid guidelines would have no application to the promotee officers who cannot be transferred to hard area on attaining the age of 55 years.-:

7. Another leg of argument advanced is that a case of direct recruit and a promotee IAS officer cannot be at par and is to be treated differently. In this backdrop it is stated that applicant who has to retire within a period of three years has a legitimate expectation that he would not be disturbed from his present place of posting.

8. By pressing personal difficulties it is stated that the marriage of the daughter and son of applicant is to take place. It is further contended that

::4::

though supertime scale has been given to him but he has been denied a single posting in Delhi and in view of his retirement in August, 2004 which is less than three years of service posting to hard stations as well as to category 'B' posting would deprive a life time opportunity to service on a supertime scale either with the Government of NCT of Delhi or on any Central deputation.

9. Comparing aforesaid with the direct recruit it is contended that the criteria is discriminatory, whereas a direct recruit enjoys 10 years service in a scale and has more opportunity to serve in Delhi as compared to service in hard stations. Contrary to that promotee officer, who had lesser time and less tenure in the supertime scale by virtue of being DANICS and inducted to IAS by appointment on promotion the same opportunity to serve in Delhi and on Central deputation is over-ruled.

10. By referring to clause 8 of the guidelines it is stated that it is mandated to prepare list of officers in each scale on the basis of period rendered outside Delhi in category "B" and "C" and those who have done the least should be transferred. On this principle it is stated that applicant has rendered more tenure of hard station posting than the other officer K.K. Bhasin, Janak Juneja and Gopal Dikshit as these officers had less than three years of retirement they were not posted to hard stations.

U2

115

11. Referring to para 9 (vii) of the guidelines it is stated that the main criteria is total period spent by officer outside Delhi in respect of scale. Accordingly, applicant who has not served any tenure in Delhi in supertime scale is to be accorded the same.

12. On the other hand, respondents' counsel Sh. N.S. Mehta contested the OA and vehemently opposed the contentions. By placing reliance on the following decisions it is contended that transfer in administrative exigencies and public interest is to be interfered as an exception in a rare case where the act of transfer is vindictive. Moreover, by referring to the guidelines it is contended that the guidelines are not mandatory and cannot be enforceable but are to be considered:

i) Union of India v. S.L. Abbas. (1993) 4 SCC 357.

ii) Amarnath Vaish v. Union of India, 1987 (4) ATC 606.

iii) K. Gopaul v. Union of India, 1967 (3) SCR 627.

iv) Public Service Tribunal Bar Association v. State of U.P., (2003) 4 SCC 104.

13. In furtherance of above, it is contended that clause 9 (v) of the guidelines is applicable in the case of applicant whereas clause 9 (vii) is applicable only at the time of promotion of an officer of appointment to IAS/IPS.

14. Shri Mehta states that as applicant belongs to AGMU cadre of IAS where the members of this cadre are required to meet the administrative needs of all the constituent segments of the cadre viz. the State

::6::

Governments of Arunachal Pradesh, Goa and Mizoram where the officers are to man the senior administrative positions. Officers of the cadre on promotion to supertime scale shall have to transfer to hard area for a period of two years which is inconformity with the guidelines. As there has been a shortage of supertime scale officer in Arunachal Pradesh segments of the cadre. As only four officers are working against five sanctioned posts and one of the officers is to retire next year transfer of applicant was neither malafide nor punitive but in administrative exigencies and public interest. It is further stated that there is nothing in the rules or guidelines to suggest that an officer who is within three years of his retirement on superannuation would not be shifted or posted to hard station outside Delhi the contention put-forth that promotee supertime officers of the cadre are required to serve in Delhi for first six years and remaining four years outside Delhi is baseless and is not envisaged in the guidelines.

15. It is contended that being an officer of the cadre applicant cannot claim for a preference to any particular area and a particular place of posting on his own choice. As applicant had already completed tenure of 27 years in Delhi and as a promotee officer in senior scale had one tenure of three and a half years in Arunachal Pradesh he has to undergo posting in hard areas as per the guidelines.

16. In so far as discrimination in not posting officers to outside segments within three years of retirement discrimination is denied and it is stated that

U.U

::7::

M.P. Tyagi, D.R. Nafri, Sh. G.K. Marwah etc. who are promoted IAS officers have been transferred to other segments of the cadre on their promotion to supertime scale of IAS. As such a uniform criteria has been adopted.

17. By referring to the transfer order it is stated that five other similarly placed promotee officers viz. A. Venkataratnam, Sh. A.K. Paitandy, Sh. S. Hemchandran, Sh. P.R. Bumb and Sh. G.K. Marwah have also been posted to the cadre segments other than Delhi.

18. In rejoinder, pleas taken by applicant in OA are re-iterated. It is contended that correct position is that an officer on promotion to supertime scale may be transferred to hard areas for two years then to soft area for another two years depending upon number of vacancies. Directly recruited IAS and promotees who have lesser tenure of hard posting are to be transferred first. In this backdrop it is stated that service of DANICS cannot be compared with IAS AGMU cadre.

19. I have carefully considered the rival contentions of the parties and perused the material on record. As per the scheme laying down guidelines for transfer and posting of IAS there is no dispute to categories 'A', 'B' and 'C' in so far as posting to Delhi, soft and hard areas is concerned. The revision in the guidelines was carried out to ensure that no unit serviced by the cadre remains starved of cadre officers and that service span of each officer is equitably distributed, as far as practicable, among the three categories. In the

senior scale at Delhi against 23 cadre posts there are 52 posts in category "C" areas and 19 posts in category "B" areas and if Central deputation reserve strength is added the strength of posts in Delhi goes up to 58. Accordingly more than 50% posts in senior time scale are outside Delhi. This shows that an IAS officer in senior scale would be required to spend more than 50% of his senior scale tenure outside Delhi. An IAS officer remains in senior scale roughly for 14 years before he gets supertime scale in the Cadre.

20. In the supertime scale though there are 12 posts in category "C" areas and 5 posts in category "B" areas, adding Central deputation posts against Delhi the strength goes upto 22. Accordingly, the officer in supertime scale would be required to spend less than half of his tenure in super-time outside Delhi and roughly the tenure is 10 years. In this backdrop clause 8 of the guidelines provides preparation of list of officers on the basis of their tenure spend outside Delhi in categories "B" and "C" and those who have done the least are to be transferred. In case of two officers in supertime having at par the officer who has spend more time in hard area is to be given preference. Clause 9 in the guidelines is relevant for adjudication is reproduced as under:

"9 While posting IAS/IPS officers to different areas, as indicated above, following factors would be kept in view:

i) Direct recruits may have their field training as well as their first posting in junior time scale in any of the constituent units of the Joint Cadre, depending upon the facilities for training as well as the nature of experience available there. For those

(U6)

::9::

posted in Cat. "B" or "C" areas, credit for half such period may be given while computing the total period spent outside Delhi by the Officer in their senior scale.

ii) Direct recruits on promotion to senior time scale (roughly after 4 years of service) be posted to the difficult areas for a minimum tenure of 3 years.

iii) After completion of that period, he may be posted to category "B" area for another tenure of 3 or so.

iv) After completion of the above 2 tenures, the officer may be considered for transfer to Delhi either on Central deputation or to Delhi Administration.

v) On promotion to super-time scale, the officers may be transferred to any of the areas outside Delhi in difficult areas for a period of 2 years and then in Category "B" areas for a period of 2 years depending upon the vacancies available.

iv) The period spent on Central deputation in Delhi or abroad will be counted against the total stay of the Officers in Delhi.

v) Promotee officers to IAS/IPS, if they have not completed the age of 55 years at the time of promotion could also be posted to difficult areas and vice-versa to complete their minimum tenure of 3 years outside the area from which they were promoted.

viii) The main criteria for transfer/posting of officers outside Delhi, would be total period spent by the officer outside Delhi in the respective scale, subject to the stipulations at the end of para 8 above.

ix) These very principles would be followed, mutatis mutandis, in case of IPS also."

21. If one has regard to the aforesaid the contention put-forth by applicant getting strength from clause 7 ibid that after 55 years of age promotee officer to IAS cannot be posted to difficult area, cannot be countenanced. If one has a co-joint reading of clause 9 having regard to its literal and contextual construction

::10::

the only inference which can be drawn is that clause 7 applies to a promotee officer in the senior scale and if the officer has not completed the age of 55 years he is to be posted to difficult areas.

22. However, clauses 1 to 4 speak of ^{directly} recruited IAS in senior time scale and their tenure and posting to difficult areas as well as category 'B' areas but clause 5 makes no distinction between the direct recruits and the promotee as the word 'officer' has been mentioned. In my considered view a reference to the officer is an officer of the cadre of AGMU in supertime scale which not only includes direct recruit IAS but also promotee officers of IAS who have been promoted to supertime scale.

23. In the light of the interpretation, an officer irrespective of whether he is directly recruited or promoted on promotion to the supertime scale has to undergo a tenure of transfer to area outside Delhi than in category 'B' for a period of two years respectively depending upon the availability of vacancies. Nowhere in the guidelines or elsewhere this has been provided that there would be methodology in assigning tenure. The contention put-forth by applicant that as being DANICS officer it is impossible to have maximum tenure of 10 years in supertime scale and in that event the first six years are to be on a tenure at Delhi and thereafter the remaining in hard areas and category 'B' is not logical and makes the guidelines redundant. The guidelines are uniformly applicable to the cadre officers which include promotees and direct recruits.

::11::

In any event on promotion to the supertime scale any officer of the cadre is to be posted to difficult areas for a period of two years.

24. A transfer which is in administrative exigencies and in public interest as a routine transfer in a judicial review sitting as an appellate authority cannot be interfered with. The only scope for interference in judicial review is that when the transfer is in violation of the statutory rules contrary to the policy or is malafide and issued by an incompetent authority.

25. In the light of the above no malafides have been alleged, as such the transfer on that count cannot be interfered with.

26. In so far as discrimination is concerned, respondents have uniformly applied these guidelines to the similarly placed officers. There is no iota of discrimination violative of Articles 14 and 16 of the Constitution of India present in the instant case. Those who had less than three years service left before retirement like M.P. Tyagi, D.R. Nafri who are promotee officers have been transferred to other segments outside Delhi. Moreover, in the impugned order not only applicant but promotee officers like A.K. Paitandy and P.R. Bumb similarly circumstanced are also sent outside the cadre segments.

27. I do not find any vindictive action of respondents in effecting transfer of applicant which is a routine transfer as per the guidelines in the interest of

U9

::12::

administration. Learned counsel has failed to establish that the person having lesser tenure in hard posting has been retained, making the action of the respondents as arbitrary.

28. Transfer being an incident of service and made in administrative exigencies is not liable to be interfered by me. In absence of any malafides, punitiveness and incompetence, the present is not a rare case where any vindictiveness is apparent to warrant our interference. The Apex Court in State Bank of India v. Anjan Sanyal, (2001) 5 SCC 508 observed that unless malafides or prohibited by service rules transfer is not to be lightly interfered.

29. As in a judicial review it does not lie within the jurisdiction of this Court to act as an appellate authority and to stall the wheels of administration being run smoothly, the transfer ordered by respondents in the instance case is in accordance with the policy guidelines and does not suffer from any legal infirmity.

30. In the result for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.

31. Interim order issued on 15.10.2001 and continued from time to time is hereby vacated.

S. Raju
(Shanker Raju)
Member (J)