

Central Adminisrative Tribunal
Principal Bench, New Delhi

O.A.No.943/2001

Hon'ble Shri Shanker Raju, Member(J)

Monday, this the 5th day of August, 2002

Dr. (Mrs.) Madhu Bala Sharma
w/o Shri Ashok Kumar Sharma
r/o RA, Gasta Flats, Paschim Vihar
New Delhi - 110 063. Applicant

(By Advocate: None)

vs.

1. Union of India through
Ministry of Tourism & Culture
Shastri Bhawan
New Delhi.
2. Anthropological Survey of India
through its Director,
Dr. R.K.Bhattacharya
27, Jawahar Lal Nehru Road
Calcutta - 700 016.
3. Head of Office
North West Regional Centre
Anthropological Survey of India
192/1, Kaulagarh Road
Dehradun - 245 195.
4. Mr. Deepak Tyagi
Joint Director
Anthropological Survey of India
27, Jawahar Lal Nehru Road
Calcutta - 700 016.
5. Dr. Swaran Singh
Deputy Director
Anthropological Survey of India
27, Jawahar Lal Nehru Road
Calcutta - 700 016.

.... Respondents

(By Advocate: Shri S.Mohd. Arif)

O R D E R (Oral)

By Mr. Shanker Raju, M(J):

None appears for the applicant even on second call. Since this matter pertains to transfer and has been listed for final hearing, I proceed to dispose of the matter on the basis of the available pleadings on record, even in the absence of the learned counsel for applicant, as per Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

Heard the learned counsel for respondents.

2. Applicant impugns respondents' order dated 9.4.2001 whereby she has been transferred from North West Regional Centre, Dehradun to C.R.Centre, Nagpur.

3. Applicant, who is holding a Master's Degree in Science (M.Sc.) and Ph. D in Anthropology and was directly recruited through Union Public Service Commission (UPSC) as Anthropologist in the year 1980, and was posted at Nagpur.

4. In January, 1985, applicant was transferred to Dehradun and since she had been working and was promoted during this interregnum period as Superintending Anthropologist in November, 1994, she remained at Dehradun.

5. Applicant being aggrieved ^{with} her transfer preferred OA No.2/2001 before the Principal Bench. Respondents by the impugned order dated 9.4.2001 transferred the applicant in public interest to Nagpur, against which a representation was made but the same was not disposed of. By an order dated 17.8.2001, the request of the applicant for staying the operation of the applicant was rejected through a detailed order. In pursuance thereof, applicant joined at Nagpur on 3.9.2001 and was given the charge of Physical Anthropological Section on 6.9.2001.

6. Applicant, in her OA, has challenged the order of transfer as vitiated by malafides on the ground that having filed the case for promotion, respondents have retaliated and had transferred her to prevent her from attending to the case.

7. It is further stated that the family of the applicant was staying at New Delhi and children are also studying there, from Nagpur it is not possible to look after the family and due to the biased approach of the respondents the transfer has been resorted to, which is unfair.

8. It is further stated that applicant was instrumental in highlighting the misappropriation of funds which has led to her transfer which is punitive and by way of victimisation.

9. Applicant has also highlighted her achievements during the stay at Dehradun and contended that neither any administrative exigency existed nor the transfer has been affected in public interest.

10. In rejoinder, it is stated that policy of the Government is normally to post husband and wife at the same place. Applicant's husband is working at Delhi whereas Dehradun, where the applicant is working, is very near than the Nagpur as such the respondents are not followed the guide-lines.

11. It is further stated that applicant had been posted to Dehradun from Nagpur where she had worked more than four and half years and had remained in Delhi from his transfer from Dehradun for more than one and half of years. As such the applicant is at Dehradun for the last 11 years. Others who are in Dehradun have more than 20 years, have not been

transferred. The vindictive attitude of the respondents is in violation of Articles 14 and 16 of the Constitution of India.

12. Through an additional affidavit applicant has stated that the action of the respondents is malafide as in the counter reply respondents have stated that in the interest of Anthropology Survey of India where Dr. V.R.Rao, Deputy Director (Physical), who was looking after the Region and was due to leave the respondents' office on deputation to the CCMB, Hyderabad for a period of three years as per the directions of the Department of Culture, Dr. Rao has already left the Survey and that the applicant being one of the Senior most Physical Anthropologists and having requisite training and experience has been deputed to Nagpur, is not correct. As since 3.9.2001 applicant had not been handed over the charge of Physical Laboratory of Anthropologists and the juniors are looking after the charge, applicant has been made to work under a junior.

13. In nutshell, the contention of applicant is that the transfer order is malafide, passed on extraneous consideration and is violative of the policy guide-lines on transfer, is liable to be set-aside with directions to the respondents to post her back at Dehradun.

14. Respondents, in their reply, have denied the contentions and Shri S.M.Arif contended that in view of the rejection of her interim prayer and having joined at Nagpur, the OA has become infructuous.

Moreover, on merits, it is contended that applicant having all India transfer liability, respondents have acted in accordance with rules and guide-lines which stipulated that after every five years, the incumbent is to be considered for transfer. As the applicant has already spent more than 16 years in North West Regional Centre, Dehradun, her transfer to Nagpur is in administrative exigency, public interest and as per the transfer guide-lines.

15. In so far as the malafides are concerned, it is contended that the same has not been established by the applicant. It is further stated that the applicant was transferred to Nagpur from Dehradun on 21.1.1985 on her own request and she had working experience at Nagpur which had been utilised by the respondents for the benefit of organisation and it is contended that in the matter of transfer unless malafides are established, it is not open for the Tribunal to sit over as an appellate authority and review the matter as the wheels of the administration should be allowed to run smoothly.

16. In reply to additional affidavit, Shri Arif contended that the applicant had joined at Central Regional Centre, Nagpur on 3.9.2001 and was given the charge of Physical Anthropological Section on 6.9.2001. On 7.2.2002 a meeting was convened where Director, Anthropological Survey of India and various personnel were present and it had been found that files are not routed through the applicant, it was decided in the meeting that all such files should be routed through the officer-in-charge, Physical Anthropological Section and accordingly an Office Order dated 6.3.2002 had been issued.

17. I have carefully considered the pleadings in the OA as well, as the contentions of both the parties. In my considered view, to successfully assailed an order of transfer it has to be established that the same is punitive, malafide and is in violation of the Rules or transfer guide-lines. Earlier, this Tribunal while rejecting the prayer for interim relief, has meticulously dealt with the contentions of the applicant and having found no prima-facie case, the prayer for interim relief was rejected.

18. Moreover, applicant, who was transferred from Nagpur to Dehradun in the year 1985, had remained in for a period of 16 years in the North West Regional Centre. As per the transfer policy and guide-lines for posting and transfer, officers shall ordinarily be liable for transfer after completion of five years except places at Port Blair and Shillong. Applicant has alleged malafides on the ground that the respondents have retaliated as the applicant has filed a case for promotion and in order to prevent her from pursuing her case, she had been transferred, which cannot be countenanced.

19. Moreover, the ground that husband was posted in Delhi and as per the policy, husband and wife were normally be posted at same place as no legs to stand as the applicant, for the last 16 years, is posted in the Region beyond the five years tenure prescribed in the guide-lines. Moreover, posting

husband and wife is to be done ordinarily as far as practicable. This does not construe that the place of posting invariably one of their choice. In this view of the matter, these guide-lines does not confer upon the Government employee a legally enforceable right. In this view of the matter, I am fortified by the Apex Court decision in Union of India v. S.L. Abbas, 1993(2) SLR 585.

20. Contention of the applicant that she had been transferred to Nagpur in the interest of organisation but had not been entrusted the charge of Physical Anthropological Section, is not correct as the respondents have clearly stated that the applicant had joined the Central Regional Centre on 3.9.2001 and charge of Physical Anthropological Section has been entrusted on 6.9.2001.

21. Moreover, the transfer has been affected in administrative exigency and as well as in public interest and having no indefeasible right to be posted at the choicest place, the transfer of the applicant has been resorted to by the respondents in public interest as the applicant who worked at Nagpur has been found most appropriate officer in view of the transfer on deputation of the incumbent Dr.V.R.Rao.

22. As the applicant was posted at Nagpur to utilise her experience which would benefit the organisation, this may be treated as administrative exigency.

23. Moreover in judicial review transfer can be interfered only in cases of malafides or infraction of any professed norm or principle and where career prospects remain unaffected and no detriment is caused, challenge to the transfer must be eschewed.

24. Moreover, as held by the Apex Court in State of Madhya Pradesh & Ors. v. Sri S.S.Kourav & Ors., JT 1995(2) SC 498, the Tribunals or Courts are not appellate forums to decide on transfers of officers on administrative grounds and the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places, which is prerogative of the administration.

25. Having regard to the aforesaid rulings and in absence of any malafide or extraneous consideration established, the transfer is in accordance with policy guide-lines and in public interest as well as administrative exigency, the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

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