

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.964/2001

New Delhi this the 30th day of October, 2001.

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

Shri R.K. Bhardwaj,
H.No.1079, Sector-3,
R.K. Puram, New Delhi.

-Applicant

(By Advocate Shri V.S.R. Krishna)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
New Delhi.

2. The Director General,
SSB, East Block-V,
R.K. Puram,
New Delhi.

-Respondents

(By Advocate Shri B.S. Jain)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant has assailed an order dated 23.10.2000, whereby in public interest he has been transferred from New Delhi to R&G Division, Barmer and his request made for cancellation of transfer order has been rejected on 11.4.2001.

2. Briefly stated, the applicant has joined the office of the respondents in 1964. The applicant is due to attain the age of superannuation in May, 2003. He was lastly transferred to Jammu in 1997 from where he made a request for transfer to New Delhi on compassionate basis on ground of illness of his son, who is suffering from schizophrenia and getting the treatment at AIIMS and Batra hospital. The daughters of the applicant are also unmarried. The applicant has foregone his TA/DA and

thereafter he was posted to New Delhi on 9.8.99. The respondents got a post transferred from Pithoragarh to Delhi in August, 1999 and the applicant was adjusted against the same. As the work was suffering the post was restored back in UP after one year and the applicant has been posted to Barmer. To accommodate the applicant one post of DFO was transferred to Directorate from Barmer for a definite period from 1.12.2000 to 30.3.2001. Later on the applicant has been relieved on 31.12.2001. Only one post of DFO (M) is sanctioned for SSB Directorate which Shr. J.S. Thakur the present incumbent joined on 11.10.2000. He is a heart patient and is getting treatment in Delhi. By way of an interim order passed by this Court on 9.5.2001 prima facie finding mala fide and the transfer order contrary to statutory orders stayed the operation of the order. The applicant who was relieved on 30.3.2001 and was not allowed to join Delhi and also not paid salary filed CP No.355/2001 and by an order dated 12.10.2001 the CP was dismissed on the ground that the stay of the operation of the transfer order was made on 9.5.2000 by that time the transfer order issued in October, 2000 has been given effect to on 30.3.2001 and the applicant has been relieved as such there was no wilful or contumacious disobedience of the court's order. The learned counsel for the applicant Sh. V.S.R. Krishna stated that the applicant's request for compassionate transfer once acceded to by the respondents on the ground of treatment of his son for Schizophrenia at New Delhi and still the situation and circumstances persist and there is no change, resorting to transfer order from New Delhi to Barmer is mala fide. The applicant further contended that he is retaining the Government accommodation at Delhi and has not been paid

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wages. The respondents are charging penal rent from him. It is contended by placing reliance on an order passed on 9.5.2001 that prima facie exparte this court has taken the view that the order is malafide and contrary to the rules which has persuasive value and the same clearly demonstrates that the orders passed are illegal. It is further stated that the legal malafides are apparent on the record as in the order passed on his representation on 11.4.2001 the applicant has been pressurised to join his new place of posting and failing which he will be deemed to be placed under suspension w.e.f. 23.4.2001. The applicant contended that the status of the applicant is of a suspended employee and this threat clearly shows arbitrariness and mala fides on the part of the respondents. By referring to the Transfer Policy and more particularly to clause 3 (h) regarding rotational transfer it is contended that the same should not be resorted to in case the Government servant is to superannuate within three years and in that event he is to be considered for a station of his choice so as to facilitate location near the place of post retirement stay, in so far as this is possible. It is contended that the applicant belongs to Himachal Pradesh and headquarter at New Delhi is the station of his choice and the applicant on his transfer has not been given choice and the choice given by the respondents is arbitrary as it the applicant who has to opt and to give choice regarding transfer. The applicant has further contended by resorting to the transfer policy and to clause 4 that the normal tenure in the station would be three to four years in the SSB and as the applicant was transferred to Delhi in 1999 is transferred to Barmer is after one year but before three years and as such the same

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shows malafide. By placing reliance to clause 14 it is contended that the request transfer on compassionate ground is resorted to only when the cases are genuine and exceptional supported by medical record and as the son of the applicant is suffering from Schizophrenia and having suicidal tendency the same treatment which he is getting at Delhi from AIIMS and Batra Hospital would not be available at Barmer. The learned counsel for the applicant further contended that the applicant is a Group 'C' employee who should not be subjected to frequent transfer as he has already been transferred 14 times in the past. As the transfer is mala fide with the threat of suspension as well not in conformity with the transfer policy the same can be interfered with by this court and shows colourable exercise of power as well as abuse of power.

3. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents stated that on the request of the applicant on medical grounds despite the fact that he has been posted during his tenure in service either at native place in Himachal Pradesh or in Delhi was posted to Jammu on 14.7.97 and before that keeping in view the genuine medical problems of the applicant twice the post of DFO has been transferred temporarily to Delhi but as on administrative exigencies and in the public interest another person whose request has been made on medical grounds has joined the applicant was relieved. It is also contended that the applicant has also used outside influence by pressurising the respondents by making representation through political persons. It is also stated that the transfer order does not contain any threat of suspension etc. and the order on

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representation where it is mentioned that he would be deemed to be under suspension does not amount to any legal mala fide. Further placing reliance on the decision of the Hon'ble Supreme Court in N.K. Singh v., Union of India, 1994 (28) ATC 246 and Union of India v. H.N. Kirtania, 1989 (3) SCC 447 as well as B. Vardha Rao v. State of Karnataka, 1986 (4) SCC 131 it is contended that the scope of judicial review in the matter of transfer is very limited and the transfer order can only be interfered with only if there is any mala fide or violation of the statutory rules. In this backdrop it is stated that there is no change in the transfer policy and the applicant having been relieved on 30.3.2001 his headquarter is Barmer and the payment of salary is to be dealt with by the headquarter there. It is also stated that the transfer order has been made in administrative exigencies and in public interest. It is stated that having regard to the medical problem of the applicant his request transfer was made but as Schizophrenia is an incurable disease and having the same treatment all over India the same is very much available at Barmer too. It is also stated that the interim order passed by this court on 9.5.99 was an exparte order without according an opportunity to the respondents as such the observations made therein would not be treated as a precedent or have any persuasive value. As regards the bonafides of the respondents it is contended that the applicant has been adjusted till 30.3.2001 by transferring the post temporarily. It is also stated that there is no post at headquarter to adjust the applicant. As regards the guidelines, it is contended that these have no statutory force but are the principles laid down to deal with the transfer. Referring to clauses 2 (a), (d) and (g)

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of the policy it is stated that the employees having all India transfer liability and in operational and administrative interest to ensure that rotation of the staff is maintained in the field units from Headquarter as well as a person is not belonging to a transferable establishment shall not be allowed to continue in one station. It is also stated that the ~~transfer~~^{Transfer} is neither punitive nor any disciplinary proceedings have been initiated against the applicant. It is also stated that before relieving the applicant he has been given three choices but he has not agreed to exercise the same. The applicant is an ~~idle~~^{idle} ~~man~~^{man} and is getting salary without any work being done. It is also stated that the daughter of the applicant has already been married and is abroad. The applicant has no vested right to be posted at a particular place keeping in view the fact that during the tenure of the applicant he has mostly remained for 12 years in Delhi. Further placing reliance on the decision of the Apex Court in Shilpi Bose v. State of Bihar, 1991 (Supp.) (2) SCC 659 it is contended that if the court continues to interfere with the day-to-day transfer order issued by the Government there would be a complete chaos in the administration which would not be conducive to public interest. As the temporary transfer of the post of SSB HQ to accommodate the applicant cannot be allowed to continue indefinitely the transfer of the applicant was unavoidable and necessitated in the circumstances. It is also stated that the applicant has not controverted the contentions of the respondents by filing a rejoinder.

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4. I have carefully considered the rival contentions of the parties and perused the material on record. It is a settled position of law that ^{the} ~~the~~ ^{transfer} ~~transfer~~ in transfer matter as a judicial review the scope of the Tribunal is very limited when the order is mala fide or is based and is contrary to the statutory rules and instructions. From the facts and circumstances and the arguments advanced before me I do not think that the applicant is entitled for any relief in the present OA. Admittedly the applicant has been in service with the respondents since 17.11.64 and during the tenure of more than 20 years the applicant has either been posted in Delhi or in his native place. The only exception is when in administrative exigencies the applicant has been posted to Jammu on 14.7.97. Although as per the guidelines the tenure of an officer is three to four years on rotation basis but having served only for two years the request of the applicant for compassionate transfer back to headquarter at New Delhi was acceded to by the respondents having regard to the ailment of his son. The resort of the applicant to contend that as the same conditions still persist the respondents should be directed to retain him till his retirement is not justifiable or valid. Schizophrenia is an incurable disease and for which the treatment is available all over India. Barmer where the applicant is posted is having all facilities for such treatment. In this view of the matter the decision of the respondents to transfer the applicant to Barmer cannot be found fault with.



5. As regards the contention of the applicant that this court by an order dated 9.5.2001 observed that the transfer is malafide and is against the rules is concerned, the same has been passed exparte and as per the provisions of Section 24 of the Administrative Tribunals Act, 1985 the matter has been finally argued and the respondents have submitted their version by way of filing the counter-reply. The aforesaid observation of the court has no persuasive value. What matters is the decision of the controversy finally on the basis of the pleadings of both sides. From the perusal of the pleadings I find that in the transfer order there is no reference to any punitive action to be taken against the applicant. Merely because in the order passed by the respondents not acceding to the request for stay at Delhi and the fact that the applicant has not been joining despite an order passed and was retained by the respondents by transferring temporarily the post from UP and having reported back the same in absence of any post the action of the respondents by mentioning that if the applicant disobeys the order he would be deemed to be under suspension no legal malafide can be inferred. The fact remains that the applicant has not been placed under suspension by any order passed subsequently. This has been done to persuade the applicant to join his place where he has been posted, i.e, Barmer. No disciplinary proceedings later on have been taken against the applicant. In these circumstances mere reference to the deemed suspension which has not been resorted to admittedly, In my considered view the order does not suffer from any legal infirmity.



6. As regards the resort of the applicant to the guidelines is concerned, no doubt in exceptional and genuine circumstances on the basis of the request of the applicant on medical grounds the applicant has been transferred back from Jammu to New Delhi and has been retained for more than one year and the fact that the treatment is also available in Barmer where the applicant has been posted and moreover the illness is of a permanent nature the action of the respondents was rather bona fide and the fact that only one post of DFO is sanctioned for SSB and for out of heart ailment one J.S. Thakur has been posted and joined on 11.4.2000 the applicant has not^h indefeasible right to continue at a particular place of posting. The Apex Court in several pronouncements, including Shilpi Bose has clearly observed that one has no vested right to be posted at one place of posting and by interference with day-to-day transfer orders the same is not conducive to public interest. Having regard to the fact that the request of the applicant has been acceded to on request transfer his further transfer and the fact that the applicant has been retained for few months on temporary transfer of the post by the respondents the action of the respondents cannot be termed as mala fide and is absolutely in accordance with law.

7. Another contention of the learned counsel for the applicant is that as per the normal tenure in a station he should not have been shifted before 3-4 years in the SSB. In my considered view the applicant has been pre-maturely brought to Delhi on his medical request and has failed to complete the tenure at Jammu. The provisions of normal tenure would have any application in the cases of



transfer on compassionate grounds. Apart from it, the applicant has been given choice by the respondents and having failed to exercise the same he is estopped from contending that the respondents have acted malafidely. The applicant has not come out with clean hands and the fact the the choice is to be given by the applicant will certainly go against the public administration and exigencies of service. The applicant admittedly as All India transfer liability and in operational and administrative interest to rotate staff from Headquarter to Field Unit the transfer is inevitable and in the interest of public exigencies and in the absence of any malafide the same cannot be interfered with.

8. As regards the issue raised by the applicant for rotational transfer and the respondents action to resort the same during the last 3 years of service as the applicant has to superannuate and to consider the station of his choice does not vest on him a right to be retained at a particular place. The guidelines are only principles to be observed are not statutory in nature. In the larger interest of public exigencies the applicant's transfer to Barmer where the treatment is available for his son and the fact that his daughter has already been married he has no justifiable grounds to challenge the transfer order. During the last 3 years of service the posting should be done near the place of post retirement stage in so far as possible. This would not vest a right in the applicant to contend that in all cases he is to be posted near the place of post retirement stage. The applicant who has already been in the tenure of 12 years at Delhi and the remaining period at his native place this ground is not available to

him to challenge the transfer order. I do not find any mala fide or violation of any statutory rules in the issuance of the transfer order, as the transfer order is in public exigencies and in the interest of administration the same is legally valid.

9. As regards the pay of the applicant is concerned, having regard to the Apex Court's decision in Kirtania's case (supra), the applicant has already been relieved on 30.3.2001 and in the absence of any post the respondents could not adjust him at SSB Headquarter and rather one more incumbent has joined by that time the applicant who is already relieved to Barmer can pursue the issue regarding his salary at Headquarter at Barmer. In this view of the matter, having found no justifiable ground to interfere in the matter the OA fails and is accordingly dismissed, but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)