

Central Administrative Tribunal  
Principal Bench

O.A. No. 1171 of 1999

New Delhi, dated this the 8 October, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Diwan Singh Bisht,  
S/o Shri M.S. Bisht,  
R/o 85-B, Sector IV,  
Pushpa Vihar,  
New Delhi-110017. .... Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through  
the Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block, New Delhi-110001.
2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110001. .... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 20.4.99  
(Annexure A) transferring him on promotion as JIO Grade I,  
Amritsar.

2. Applicant's case is that he joined service as a  
sepoy in BSF in 1967 and during his tenure in BSF he  
served in Hazaribagh (Bihar), Indore (M.P.), Bhuj  
(Gujarat), Akhnoor (J&K) and Delhi. He came to I.B. as a  
security Assistant on deputation in November, 1975 and was

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absorbed in I.B. as Security Assistant on 1.1.82. He was thereafter promoted as JIO-II in April, 1990, on completing 8 years service. Thereafter Respondent No.2 issued order dated 31.8.98 (Annexure A-1) promoting 71 JIO Gr. II as JIO Gr. I (General) in which applicant who is at Sl. No.61 in that list was shown as promoted from I.B. Headquarter to Amritsar. He avers that as many as 18 persons in that list were promoted and posted at the same place. He states that he represented on 4.9.98 (Annexure A-2) for ~~reconsideration~~ <sup>reconsideration</sup> of his posting to Amritsar on extreme compassionate family grounds, including the spinal fracture suffered by his wife, supported by medical certificates and the need to settle his marriageable daughter, which was strongly recommended by his superior officer (Deputy Statistical Adviser) but the same was rejected by Memo dated 13.10.98 (Annexure A-3). However, applicant was allowed to continue in I.B. Headquarter for 6 months till 31.3.99 with a clear stipulation that his promotion as JIO Gr. I will take place only after he reported at Amritsar.

3. Applicant states further that even after the deadline w.e.f. 31.3.99 he was retained at I.B. Headquarters, but meanwhile upon a notice from the Tribunal in O.A. No. 610/99 which he had separately filed regarding grant to him of appropriate seniority, respondents got annoyed and issued impugned order dated 20.4.95.

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4. We have heard applicant's counsel Shri Raval and respondents' counsel Shri Panikar.

5. During the course of arguments, Shri Raval has agreed that in the course of judicial review of transfer orders, the scope of intervention by the Tribunal is limited to ensuring that the transfer has not been made in violation of statutory rules, and is not impelled by malafides. This is in accordance with the Hon'ble Supreme Court's ruling in UOI Vs. H.N. Kirtania JT 1989 (3) SC 131. Shri Raval has, however, contended that applicant's transfer on promotion to Amritsar has been impelled by malafides, in view of the fact that many others like him who were also promoted, were promoted and posted in the same station. Shri Raval has dwelt at considerable length on the domestic problems which applicant is facing which have already been referred to. In this connection Shri Raval also invited our attention to the reply given to a Rajya Sabha Question 4.12.80 (Annexure A-4) in which the Minister of State for Home Affairs had himself admitted that <sup>when</sup> postings and transfers in I.B. ~~were~~ made depending upon the exigencies of public service as in any other Government Dept., and though there were no rules, compassionate grounds adduced by the concerned personnel were given due consideration. Shri Raval contended that in the light of respondents' own admission that there were

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no rules/guidelines governing postings and transfers of I.B. personnel, decisions were liable to be arbitrary, and in the present case, applicant's case had also not been considered compassionately.

6. We have considered these contentions carefully.

As held by the Hon'ble Supreme Court in Kirtania's case (Supra) transfers should not be interfered with except on grounds of violation of statutory rules or on grounds of malafides. No statutory rule has been shown to us which has been violated consequent to applicant having been transferred to Amritsar on promotion.

7. As regards malafides, the Hon'ble Supreme Court has held in several judgments that where malafides are pleaded there must be a firm foundation of facts, pleaded and established and it cannot be based merely on insinuation and vague suggestions. Furthermore, those against whom malafides are alleged, have to be made parties in the proceedings by name so that they are given an opportunity to rebut the allegation. In the present case the allegation of malafide is not based on any firm foundation of facts pleaded and established. As applicant was initially transferred to Amritsar by order dated 31.8.98, clearly the notice issued to respondents on O.A. No. 610/99 had nothing to do with applicant's transfer.

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Furthermore no one who is alleged to have acted malafidely against applicant in transferring him to Amritsar by the impugned order, has been impleaded by name, to enable him to file a reply in defence.

8. In so far as the absence of Rules regulating postings and transfers in I.B. are concerned, we have noted that the Rajya Sabha Question was answered in December, 1986. We are not aware whether respondents have framed appropriate rules/guidelines in this regard since. No one can deny their need.

9. In so far as the applicant's domestic problems are concerned, respondents' counsel Shri Panikar has invited our attention to the Hon'ble Supreme Court's ruling in State of M.P. Vs. S.S. Kaurav and Others (1995) 29 ATC 553. In that case Shri Kaurav had challenged his transfer from Bhopal to Jagdalpur. One of the grounds for the challenge was that his wife had committed suicide leaving behind three children and he would suffer extreme hardship if he had to work in a

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tribal area such as Jagdalpur. The Hon'ble Supreme Court held that this ground was not a matter for the Court, but for the administration to consider.

10. In the light of the foregoing, we find ourselves unable to intervene in the matter. The O.A. is dismissed. No costs.

*Kuldeep Singh*  
(Kuldeep Singh)  
Member (J)

*S.R. Adige*  
(S.R. Adige)  
Vice Chairman (A)

/GK/