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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1675/99

New Delhi: this the 11th day of August, 1999.

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

Shri S.K. Gupta,
S/o Shri M.R. Gupta,
R/o 20-Jagrati Apartments,
Captain Satish Marg,
Delhi-34

working as Principal Scientific
Officer in Directorate General of
quality Assurance under
Dept. of Defence Production,
Ministry of Defence,
New Delhi

..... applicant.

(By Advocate: Shri R. Venkaramni, Sr. Counsel with
Shri S.M. Garg)

Versus

1. Union of India
through
its Secretary (DP & S),
Dept. of Defence Production & Supplies,
Room No.136, South Block,
Ministry of Defence,
New Delhi-11.

2. Directorate General of quality
Assurance,
Dept. of Defence,
DQG PO, Room No. 69,
H-Block,
New Delhi.

..... Respondents.

ORDER

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

Applicant impugns respondents' order dated 21.4.99 (Annexure-A) transferring him to Medak, and OM dated 30.7.99 rejecting his representation, which was passed pursuant to the Tribunal's order dated 30.6.99 (Annexure-P-10) in OA No.1475/99.

2. Applicant had earlier filed the afo resaid OA impugning the self same order dated 21.4.99. In its

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order dated 30.6.99 the Tribunal noted applicant's counsel's arguments that the impugned transfer order was arbitrary in as much as respondents had not followed their own transfer policy spelt out in letters dated 17.11.88, 24.5.89, 26.2.97 and 1.12.98, which was binding upon them and applicant was not due for rotational transfer in the year 1999 as he had not completed 5 years posting in Delhi on 30.6.99.

The Bench further observed that it was however impressed by one submission of applicant's counsel, namely that applicant's wife was an RBI official and the place where applicant had been transferred had no attached/subordinate office of RBI. The Bench held that by transferring applicant to Medak, D.P & T's OM dated 12.6.97 was *ex-facie* being violated. It disposed of the OA by calling upon respondents to consider the representation dated 10.5.99 applicant claimed to have filed in the light of Govt. instructions, and applicant's grievances within 4 weeks after giving him an opportunity of being heard. Meanwhile the impugned transfer order was stayed, and applicant was given the liberty to move the Tribunal again, if any, grievance still survived after disposal of his representation.

3. Applicant's representation having been rejected by impugned order dated 30.7.99, he has filed this OA.

4. I have heard applicant's counsel Shri Venkatramani.

5. Shri Venkatramani (who incidentally had argued applicant's case in OA No. 1475/99 also) has once again argued that respondents have not followed their own transfer policy as spelt out in various letters,

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and applicant was not due for a transfer as per the rotational transfer scheme.

6. These very arguments were noticed by the Tribunal in its order dated 30.6.99. By stating that it was impressed by one submission of Shri Venkatramani namely that applicant was being transferred to a station where there was no corresponding subordinate/ attached office to accommodate his wife who was an RBI official, it is clear that the other arguments advanced by him did not carry weight with the Bench and impliedly rejected. No additional materials have been furnished to me to persuade me to take a different view.

7. Furthermore para 4 of D & T's OM dated 12.6.97 itself makes it clear that those instructions reiterating that husband and wife should be posted at the same station would be applicable only to posts within the same department. Those instructions would clearly be inapplicable in the present case where applicant is a Central Govt. official while his wife serves in RBI.

8. Shri Venkatramani has also contended that the statement in para 7 of the impugned order dated 30.7.99 that no PSO would be completing 5 years before July, 2000 is factually incorrect, as there were 6 officers named in para 4 (xxi) (a) who had completed 5 years of service in different stations, any of whom could have been transferred to Medak. Even if this assertion was true, it still does not give applicant an enforceable legal right to compel respondents to post him to a place other than Medak where there is an attached/subordinate office of RBI.

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9. Applicant is a Central Govt. Officer. It is not denied that as per his terms and conditions of appointment he is liable to serve anywhere in India. In AIR 1989 SC 1433 Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, the Hon'ble Supreme Court has held

"Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer."

10. In the present case, applicant was given a personal hearing to represent his case, and the impugned orders dated 30.7.99 rejecting his representation are detailed, speaking and reasoned orders, which discuss each of the grounds raised by him in detail.

11. In UOI Vs. S.L. Abbas 1993(4) SCC 357 the Hon'ble Supreme Court has held that transfer orders can be questioned in a Court/Tribunal only when it is passed malafide or is made in violation of statutory provisions. There can be no doubt that for a plea of malafide to succeed, it has to be based on a firm foundation of facts pleaded and established, and not merely on vague suggestions and insinuations, and for this purpose, the person against whom malafide is alleged has to be specifically impleaded as a party.

12. In the present case applicant has prima facie not succeeded in laying a firm foundation of facts to sustain the allegation of malafide, or establish the

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same, and there has also been no violation of any
statutory provision (emphasis supplied)

13. The OA is dismissed in limine. No costs.

Infogic
(S.R.-ADIGE)
VICE CHAIRMAN (A).

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