

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1676/99

New Delhi this the 13th day of September, 1999.

Hon'ble Shri S.P. Biswas, Member(A)

Shri Mahabir Prasad,
S/o late Sh. Lala Ram,
R/o 93, Nimri Colony,
Delhi Admn. Flats,
Ashok Vihar,
Delhi-52.

..... Applicant

(through Sh. Sunil Malhotra, Advocate)

versus

1. Govt. of NCT, Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-54.

2. Director of Prosecution,
1st Floor, Tis Hazari Court
Building, Delhi.

3. Sh. S.V. Singh, Addl.PP,
Delhi Admn. Flats-C-755,
Timar Pur, Delhi.

..... Respondents

(through Sh. Rajinder Pandita for official respondents
Sh. Jog Singh for Respondent No. 3)

ORDER

Applicant, Additional Public Prosecutor under the respondent Government of NCT/Delhi, is challenging the A-1 order dated 29.07.1999 issued by Addl. Secretary (Home) Govt. of NCT/Delhi. By the said order, the earlier order of the respondents issued on 09.07.99 transferring the applicant from Karkarduma Court to Patiala House Court has been kept in abeyance. Consequently, the applicant seeks relief in terms of (i) quashing the impugned order at A-1 and (ii) also issuance of directions to respondents No.1 & 2 for not transferring the applicant from Patiala House Court back to Karkarduma or any other place.

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2. Applicant has chosen to assail the aforesaid order of transfer on several grounds. We, however, bring out for sharp focus only the major ones.

Shri Sunil Malhotra, learned counsel for the applicant argued vehemently to say that the impugned order has been passed without any application of mind and against the principles of natural justice. The order has been issued by adopting a pick and choose policy. This is because some of the Public Prosecutors, similarly placed, have not even been transferred at all during last 15-25 years from one place to another ever since they had joined respective posts. Learned counsel has mentioned the names of a few such officers in para 9 of the paperbook.

3. The applicant's order of transfer is also in violation of the transfer policy on Prosecutors. The details of the said policy have been annexed at Annexure A-2. As per the said policy, an official is required to complete three years of working at any particular place of posting. Whereas the respondents have shifted the applicant within a month from Patiala House Court where he had joined very recently on 13.07.99. Although the applicant has served more than five years at Karkarduma, the respondents, with ulterior motives, have issued the order of transfer only to favour Respondent No.3 who had been serving at Patiala House for the last three years. The order of

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transfer issued only after 16 days of joining the new post by the applicant is, therefore, discriminatory and vitiated by malafides on the part of respondents No.1 & 2.

4. The applicant would also submit that his initial appointment was at Tis Hazari Court. Thereafter, he has been transferred from time to time even against the transfer policy introduced by Respondents No.1 & 2. The details of transfers the applicant had to face so far are as hereunder:-

1. Tis Hazari Court to PTS Jharoda Kala 25.06.1986
2. From Jharoda Kala to North District(TH) 20.10.1987
3. From North District(TH) to Patiala House 09.08.1991
4. From Patiala House to North District(TH) 20.07.1992
5. From North District(TH) to Karkarduma Court 16.09.1994
6. From Karkarduma Court to Patiala House 09.07.1999

The order is also illegal in the sense that it has been issued without consent of Respondent No.2. Respondent No.2 is required to exercise his discretion reasonably and in accordance with the transfer policy. Seniority of the official and tenure of posting at one place or other etc. are required to be considered while issuing such orders. Whereas in the present case consent has been given to Respondent No.1 for issuing the order dated 29.07.99, without any application of mind and without any reasons. In support of his contentions as aforesaid, the learned counsel for the

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applicant cited the decision of this Tribunal in the case of S.K. Singh Vs. U.O.I. & Ors. (1991(17) ATC 893). That was the case where the transfer order was modified immediately after the applicant therein had joined the new place. The Tribunal held that after the applicant had joined the post, the order should not have been modified. The counsel drew further support from yet another decision of this Tribunal in the case of Major A.A. Aphraim Vs. DG NCC N.D.&Ors. (OA No. K306/1988) decided on 25.01.1989. In that case the Tribunal held that the applicant had already got advance TA&DA etc. following the transfer order and withdrawal of the same unilaterally on the day he was to join the new place of posting is bad in law on the basis of principle of promissory estoppel.

5. When the case came up for hearing on 12.08.99, Shri Jog Singh, learned counsel for Respondent No.3 opposed the applicant's plea. He would submit that the applicant had obtained the interim relief on 03.08.99 by staying the order dated 29.07.99 by means of suppressing the fact that Respondent No.3 had already joined as Senior Public Prosecutor at Patiala House on 30.07.99 (Annexure R-5). Shri Jog Singh also submitted that pursuant to the aforesaid interim order, there are two Senior Public Prosecutors who are functioning at Patiala House against the sanctioned post of only one.

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6. Shri Rajinder Pandita, learned counsel for official respondents opposed the claims on the basis that the O.A. is pre-mature in the light of the principles laid down by Full Bench of this Tribunal in the case of B. Paramesjwara Rao Vs. The Divl. Engineer, Telecommunications, Eluru and Another (Full Bench Volume II Page 250) decided on 12.04.1990. The applicant has not exhausted the alternative remedies available to him and hence the O.A. has to be struck down in terms of provisions under Section 19 of the Administrative Tribunals Act, 1985. The learned counsel, however, conceded that since the applicant has joined the new place of posting, it would not be difficult for Respondents No. 1 & 2 to adjust the applicant's posting in any other Courts in Central Delhi area provided he withdraws this O.A.

7. In the background of rival contentions of the contesting parties, we are required to adjudicate the legality of the applicant's challenge against the A-1 order. The law on the issue of "Transfer" is now well settled. An order of transfer, issued for bona-fide reasons in the exigencies of public service, cannot be interfered with unless the same has been passed in violation of statutory provisions or has been actuated by malafides or issued by means of colourable exercise of powers. Who should be transferred where is a matter for the appropriate authority is to decide. While ordering such transfer, there is no doubt that the authority must keep in mind the guidelines issued

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by the Government on the subject but the said guidelines do not confer upon the employee a legally enforceable right. () If any authority is needed for this proposition, it is available in U.O.I. Vs. S.L. Abbas, 1993(2) SLR 585 decided by the Apex Court. A Government employee or any servant of Public Undertaking has no legal right to insist upon being posted at a particular place. This law is applicable even where there are administrative instructions to consider employees for posting in a particular area after they had completed postings in difficult areas. In the case of CGM (Telecom) North Telecom Circle & Anr. Vs. R.C. Bhattacharya (1995(2) SCC 532), the Apex Court held that the respondents therein held a transferrable post and unless specifically provided in service conditions, he has no choice in the matter of posting. Since the respondent therein had no legal or statutory right to claim his posting at Agartala, there was no justification for the Tribunal to set aside the respondents transfer to Dimapur. In the case of State of M.P. Vs. S.S. Kaurav & Ors. (JT 1995(2) SC 498), their Lordships held that transfer orders issued in violation of the transfer policy/guidelines cannot be legally challenged. The aggrieved persons are entitled to make representations against such orders and it is for the respondents to consider whether a departure from the policy is required or not. We find learned counsel for the applicant has cited two case laws (supra) in support of his contentions. We are unable to accept the contentions in those two case laws in

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view of the law laid down by the Apex Court in a long line decisions recently. ^{also} We find that the Allahabad Bench of this Tribunal had examined the legality of cancelling a transfer order when the same had been implemented. While discussing the issues involved in the case of Bhupesh Kumar Vs. U.O.I. (1997(2)ATJ 219) decided on 16.04.1997, the Allahabad Bench held that an authority which passes the order of transfer is competent to cancel or modify the same. Similarly, we find a direct support in this respect from the decision of the Allahabad High Court in the case of Director Rajya Krishi Utpadan Mandi Parishad/Lucknow & Ors. Vs. Nathu Lal 1995(2)UPLBEC 1128 wherein the Full Bench laid down that "there is no bar to lack of authority or jurisdiction to cancel an order of transfer once it has been implemented". Based on the legal position as aforesaid, the applicant has no case in challenging the order. The O.A. deserves to be dismissed and I do so accordingly.

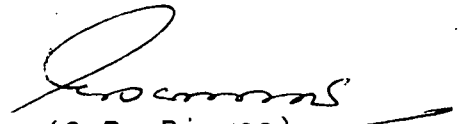
8. The orders of dismissal as aforesaid, shall, however, not stand in the way of the respondents in remodifying the orders dated 29.07.99 or 09.07.99. This is particularly so when the respondents have decided to keep the order dated 09.07.99 in abeyance by the subsequent order on 29.07.99 and also has given a promise to ~~offer~~ ^{provide} a suitable posting to the applicant in any ~~Central~~ ^{Centrally} located Courts. Any responsible respondent like the Chief Secretary of NCT/Delhi is expected to act by the standard by which they profess

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in terms of the law laid down by the Apex Court in the case of Ramana Daya Ram Seth Vs. International Airport Authority (1979(3) SCC 489). Respondents cannot go back on their promises. I, therefore, direct the official respondents to give ~~quit~~ ^{quit} in the matter by issuing a final order within a period of six weeks from the date of receipt of a copy of this order.

9. The O.A. is disposed of as aforesaid. No order as to costs.


(S.P. Biswas)
Member(A)

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