

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2265-1999

New Delhi, this the 31st day of January, 20001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri M.C. Pandey S/o Late Shri R.D. Pandey,
R/o 75/230, Sector-I, D.I.Z. Area,
Gole Market,
New Delhi Applicant
(By Advocate : Sh. S.D.Raturi, proxy for Sh.
G.D. Gupta)

VERSUS

Union of India through

1. The Secretary, GOI,
Ministry of Home Affairs,
North Block, New Delhi
2. Director,
Intelligence Bureau,
Min. of Home Affairs, North Block,
New Delhi,
3. Shri B.K. Kaushik,
Assistant Director,
Intelligence Bureau, MHA,
East Block-VIII,
RK Puram, New Delhi. Respondents
(By Advocate : Shri M.K. Bhardwaj, proxy for
Shri A.K. Bhardwaj)

O R D E R

The applicant in this OA, a Private Secretary, working in the office of the respondent No.3 is aggrieved by the order of his transfer from Delhi to Ahmedabad (Annexure A-1) and the subsequent memorandum dated 29.9.1999 by which his representation for cancellation of his transfer has been rejected (Annexure-A-2).

2. It is seen that the applicant had sought ~~for~~ an ad-interim order from this Tribunal staying the aforesaid transfer order, but did not succeed in getting a favourable order and his plea for stay was rejected on 15.11.1999. The respondents have sought to

2

62

contested this OA and have accordingly filed their Reply which has been followed by a rejoinder from the applicant, followed thereafter by an additional affidavit which, in turn, was followed by a rejoinder filed by the applicant in response to the additional affidavit filed by the respondents. Thus the present OA is a hotly contested case.

3. On the last date of hearing i.e. on 19.1.2001, the learned counsel for the applicant (Shri G.D. Gupta) was not present and his proxy (Shri S.D. Raturi) sought time to enable the learned counsel himself to appear in this case. The record shows that the learned counsel (Shri G.D. Gupta) has not been appearing personally in this case for the last three dates and was not present on 19.1.2001 either. Since the dates are most generally fixed subject to the mutual convenience of the learned counsel, I do not consider it necessary to grant any further date. Moreover, the learned counsel for the respondents pressed for an expeditious disposal of the OA. In the circumstances, while the learned counsel for the respondents was heard, permission has been given to the learned counsel for the applicant (Shri G.D. Gupta) to submit his written submissions by 23.1.2001 (afternoon). With this stipulation, a final order in this OA was reserved with the intention to pass the final orders after considering the written submissions, if any, submitted by the learned counsel for the applicant. *dr*

4. The learned counsel for the applicant has, I find, submitted his written submissions, which have been taken on record. I have perused the aforesaid submissions carefully.

5. The learned counsel for the applicant has attacked the order of transfer on various grounds. He has, for instance, sought to contend that the respondents have not framed any policy or guide-lines governing the transfer of officials in the I.B. and to this extent the order of transfer passed in his case is arbitrary. He has alleged that his interest has been harmed on account of the provisions of the Intelligence Agencies (Restrictions of Rights) Act. Further, he has also contended that he has not been transferred in the public interest. He has gone on to say that undue favours have been shown in the matter of transfer to several others, while he has been picked up for transfer to Ahmedabad without any justification. According to him a number of officials, with longer duration of stay in Delhi, have been allowed to stay on in Delhi, while he has been picked up for transfer purely on account of bias. The applicant also places reliance on a few judgements of the Hon'ble Supreme Court in support of his contention that transfer orders are required to follow certain guide-lines and should not be passed without keeping public interest in mind and for malafide considerations.

6. The learned counsel appearing for the respondents has sought to refute each and every

Dr

2A

contention raised by the applicant. Insofar as the contention of a policy of transfer necessarily being in place is concerned, the respondents have relied on the judgement and order of this Tribunal dated 17.10.1996 in OA No.1608/1995 (Kailash Chander v/s UOI). That case also related to the transfer of an IB official. This is what the Tribunal observed in its decision in that OA.

"While it is true that respondent have stated that the transfer of the applicant is in accordance with the transfer policy and they have subsequently stated that there is no Transfer policy as such, the question to be considered is whether a "Transfer Policy" should always be available in a document form or in any other written statement. The word policy is defined to read as "a concerted end, a plan" - A distionary of modern Legal Usage by Brayan A Garber:- From this, it is evident that a policy need not necessarily be in the form of pre-existing statement or document. It cannot be said that it will not be a ipolicy unless, it is drawn out in written statement or a document" What is important is that a policy can be enforced by means of following a concerted course or action to achieve certain ends. It is stated in the additional affidavit filed by respondent on 10.7.96 that the respondent have been following certain concerted course of action in regard to the staff of the Intelligence Bureau. It is further stated that the staff is rotated frquently between different stations so that each & every officer has an pportunity to serve not only in plain stations but also in border states so that there is no heart burning for any individual officer. It is what this end in view that transfers are ordered after consideration by a Board consisting of three senior officers who are well versed withs the rotational requirements of the department as also operation requirement of the organisation. while making rotational transfers, care is taken to see that every individual officer gets the opportunity to serve not only in plain stations buyt also in border stations". "

2

25

If one has regard to the aforesaid decision, it is not quite possible to find fault with the impugned transfer order insofar as the aforesaid contention is concerned. After all, even though there may be no policy document in existence, the respondents do follow a policy of rotation in practice and orders are passed after the proposals have been considered by a Board consisting of three senior officers, who are versed with the rotational and the operational requirements of the I.B.

7. I also find that it is not open to the applicant to question the provisions of the Intelligence Agencies (Restrictions of Rights) Acts in this OA. For that, he will have to approach a different forum. Furthermore, if he was unhappy with the provisions of the aforesaid Act, he had the option not to get into the IB or having entered the IB he could always quit on whatever grounds he thought fit. He has not done so and, therefore, at this belated stage he is prevented from taking the line that the provisions of the Act have thwarted him.

8. In regard to the allegation of favours shown to others, and the applicant's transfer having been made on less than justifiable ground, I find, that the applicant, who joined the I.B. way back in 1971, has after posting at Shimla and Leh, found his way to Delhi in March, 1978 and it is here in Delhi that he has prospered for nearly 22 years before he has been transferred to Ahmehabad. Delhi being what it is, it is a favoured location for many employees of Central

d

(6)

Organisations. Naturally, therefore, there is pressure for securing a posting in Delhi and attempts are thereafter made to stay on as long as possible. That being so, I find, the applicant is a highly favoured person himself having been allowed to remain in Delhi for as long as 22 years. He cannot, therefore, advance the plea that others have been favoured more than him or at his expense. The respondents have dealt with the factual contentions raised by the applicant in this regard and have, to my mind, succeeded in establishing that no undue favour has been done to anyone in the respondents' set up at the expense of the applicant. On the original file regarding transfer being produced in Court, I have had occasion to peruse the same at the time of hearing on 19.1.2001. I find that the respondents have followed an objective criterion in transferring people to places outside Delhi and if they have made an exception in any case, the same has been so made in the public interest. The classification of employees on the basis of gender and age for the purpose of transfer cannot, in my view, be said to be an unreasonable classification such as to render it violative of Articles 14 and 16 of the Constitution. The contention raised in the written submissions that the aforesaid record/file should have been shown to the applicant is negatived as unnecessary and not even correct and proper. I also find that, all said and done, Ahmedabad cannot be said to be God forsaken place, and, therefore, the posting to that place could not be said to be a punishment posting in any sense of the term. The corresponding pleas raised by the applicant are thus rejected. *2*



9. The applicant has emphasised his relationship with his own immediate boss who happens to be respondent No.3, and has gone on to say that the bitterness of the aforesaid relationship has led to his transfer which has to be regarded as malafide. He has cited several examples of respondent No.3's mis-conduct, which in some cases, I find, cannot have any relationship with the applicant's transfer. For instance, the respondent No.3 is alleged to have purchased a scooter for his son at a concessional rate from Bajaj or secured admission for his daughter in a certain University by influencing the concerned administration. The respondents have, no doubt, denied the aforesaid allegations, but what has to be seen is whether such conduct could, in any event, influence the transfer of the applicant. The applicant has not contended that his services were utilised under pressure and in a meaningful way to procure the scooter or to secure the aforesaid admission. For buying the scooter the aforesaid respondent himself visited the Co. according to the applicant himself instead of making him run which would have been the case if the respondent really wanted to mount pressure on him. From the material placed on record, it does come out clearly, however, that the applicant had been passing on certain papers, presumably of a confidential nature, in an unauthorised way to the others, which is likely to have influenced the respondent No.3 in formulating his judgement against the applicant. It also appears that at the same time the respondent No.3, presumably not being satisfied with the conduct of the

d

28

applicant, had been corresponding with the intra IB offices in trying to bring to their notice certain acts and omissions of the applicant. There can be nothing wrong with any such action on the part of the respondent No.3, given the sensitivity of the Organisation in which they work. In the circumstances, even though the respondents have not admitted it in so many words, I will not be surprised if the dubious conduct of the applicant indicated in the pleadings placed on record has played a role in the decision on his transfer outside Delhi even though otherwise too his transfer outside Delhi could be said to be well deserved. The transfer of a government servant is after all a routine incident of service and in the best of situations that is when a proper policy document exists and is followed, exceptions will always have to be made in respect of individuals in the exigencies of public service and on grounds of an administrative nature. As a matter of fact, the policy documents dealing with transfer of officials do generally contain a clause laying down that in the public interest and in the exigencies of public service or on administrative grounds, exceptions will be made as and when required. The applicant started working under the respondent No.3 in 1995 and remained satisfactorily settled with him for more than four years. He does admit that the respondent No.3 has been unreasonable in his dealings with him, and has been mounting pressure on him of and on in the furtherance of his nefarious deeds. What he has failed to bring out, however, is why he has put up with the aforesaid pressure for all these years and why

2



he did not react as indeed he should have on day one.

I am sure, in my mind, that if he had done so, he would have succeeded in securing due relief from the higher authorities and the respondent No. 3 would have stood exposed if he ever was in error or went wrong. The applicant did not do any such thing. Instead he allegedly succumbed to all sorts of pressures. According to me, by the same conduct the applicant has proved himself to be un-worthy of retention at the place he worked. The related pleas raised by him are, therefore, found to be untenable and are dismissed.

10. In regard to the question of public interest, the applicant has not, at any place, in his pleadings shown as to why his own transfer order was against the public interest or why the retention of the allegedly favoured officers at Delhi was also against the public interest. Having stayed on in Delhi for 20 years plus and keeping in view the pressures normally at work in regard to postings in Delhi, it is not open to the applicant to advance the plea of public interest at the time he has transferred out from Delhi. The said plea is, therefore, rejected.

11. In the written submission filed by the applicant's counsel, reliance has been placed, in particular, on the judgement of this Tribunal in Charanjit Lal Vs UOI & Others (1987) 3 ATC 311 dated 21.11.1986 for advancing the plea that when a transfer becomes unavoidable, the longest stayee should be picked up but the respondents here acted differently to



30

the detriment of the applicant's interest. A perusal of the aforesaid judgement reveals that the principle of longest stayee really form part of the transfer guide-lines evolved by the CWC (respondent in that case) and has not been prescribed by the Tribunal. Different Offices and Departments of the Government are free to evolve different policies in matters of transfer consistently with their individual administration and other requirements and, therefore, not much capital can be made out of the aforesaid contention which is set aside.

12. In relation to the judgements of various Courts to which a reference has been made by the applicant, I find that since the circumstances of transfer tend to be infinitely various, it is not quite possible to compare any two cases of transfer and thus to follow a principle which might have been laid down in the specific context of a particular transfer order. I would, on my own, proceed extremely cautiously in relying upon the observations of higher courts in matters of transfer unless there is a near total identity of circumstances and events leading to transfer and the persons transferred also happen to be totally similarly placed. This, according to me, is not likely to be the case in a vast majority of cases whenever we sit down to examine transfer orders. Judgements laying down statutory principles of general application would stand on a different footing, however. As for me I would place reliance on the judgement of the Supreme Court dated 27.4.1993 in

2

U.O.I. & Ors Vs S.L. Abbas reported as (1993) 4 ^{SCC} 31

357, according to which a transfer order can be successfully challenged only on the ground of malafide or if the same happens to be contrary to a statutory Rule. From what we have discussed above, it is easily seen that there is no malafide on the part of the respondents and they have not, at the same time, violated any statutory Rule in transferring the applicant from Delhi to Ahmedaband nor can the order be said to have been passed arbitrarily and without any reason. This being so I conclude by holding that the present OA has no force and, therefore, deserves to be dismissed.

13. In the circumstances the OA is dismissed without any order as to costs.



(S.A.T. RIZVI)
MEMBER (A)

(pkr)