

Central Administrative Tribunal, Principal Bench

OA No. 2417/99

New Delhi this the 15th day of March, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)

Shri S.P. Kulshrestha,
S/o late Shri M.L. Kulshrestha,
R/o H.No.1109, Sector VIII,
R.K. Puram,
New Delhi.

...Applicant

(By Advocate Shri M.K. Gaur, proxy for Sh. G.D. Bhandari)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi.
2. The Plant Protection Adviser
to the Government of India,
Directorate of Plant Protection,
Quarantine & Storage,
N.H. IV Faridabad (Haryana).

3. Mrs. Chandi Ray,
Deputy Director (PP),
National Plant Protection
Training Institute,
Rajendra Nagar,
Hyderabad. Respondents

(By Advocate Shri S.M. Arif, though none appeared)

O R D E R (ORAL)

None appears for the parties either in person or through their counsel except the aforesaid proxy counsel to inform that the Advocates are abstaining from Court. Since this is admitted case and the pleadings are complete, I dispose of the case on the basis of the available pleadings on record even in the absence of the parties under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

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2. The applicant challenges the order of his transfer from Delhi to Hyderabad in this OA.

3. It is the case of the applicant, who is a Deputy Director (Plant Protection) Group 'A', that he has worked from 1992 to 1995 at Faridabad when he was transferred to Delhi in the Plant Quarantine & Fumigation Station, Rangpuri, New Delhi and has been working there since then. Respondent No.3 one Dr. Mrs. Chandi Ray who was working in the headquarter office at Faridabad has been requesting for her posting at Hyderabad while her husband was already posted there. She was accordingly transferred in 1995 to Hyderabad. Since R-3 could not be accommodated any longer at Hyderabad as there was no suitable post available for her at Hyderabad, in order to accommodate her, R-3 was transferred from Hyderabad to New Delhi and the applicant was posted to Faridabad. The allegation of the applicant, therefore, is that the transfer of the applicant was only to accommodate R-3. The R-3 was infact proposed to be transferred back to Faridabad which is evident from order dated 9.8.99 (Annexure A-2). It is, therefore, the plea of the applicant that there are no administrative grounds for changing the posting order of R-3 from Faridabad to New Delhi and shifting the applicant from New Delhi to Faridabad. Thus the applicant was victimised by the respondents and the action of the respondents is a colourable exercise of power. It is also pleaded that the applicant had undergone study tour under UNDP Project to UK and Israil during 1997 for two weeks and he had established the Plant Quarantine Station, Rangpuri, New Delhi. Several reasons were also given by the applicant why R-3 should not have been posted at Delhi. It is also pleaded that the mid-

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academic transfer of the applicant is contrary to the well established practice and the guiding principles of transfer.

4. In the reply it has been stated that the OA has to be dismissed ~~only~~ on the ground that the applicant had not exhausted the alternative remedies, as he has not made representation against the impugned order. It is averred in the reply that the transfer of the applicant was made in administrative interest and keeping in view the exigencies of service. The allegation that it was made only to accommodate Dr. Mrs. Chandi Ray R-3 is denied. It is also stated that a number of complaints have been received against the applicant regarding his style of functioning in the office. It was stated that R-3 was posted temporarily in the National Plant Protection Training Institute, Hyderabad to keep husband and wife at one station as far as possible. The posting of R-3 from Hyderabad to Delhi was in public interest and it was in the discretion of the concerned authorities to utilise the services of its employees in the places they are required. The allegation of favouritism in favour of R-3 is stoutly denied.

5. I have given a careful consideration to the pleadings in the case and the points urged in the OA by the applicant. The main plea of the applicant in this case is as to the favouritism shown by the respondents in favour of R-3 and that to accommodate her at Delhi the applicant was transferred to Faridabad and that the transfer of the applicant was not in administrative interest. The applicant seeks to rely upon the proceedings at Annexure A-1 and A-2 dated 5.11.99 and 9.8.99 respectively. In the

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letter dated 9.8.99 at the request of R-3 for extension of her posting at Hyderabad was considered and rejected. R-3 was, therefore, directed to report back to Faridabad. In the letter dated 5.11.99 addressed by the Government to the Plant Protection Adviser, Faridabad where it is stated that the competent authority has decided to post R-3 to New Delhi vice the applicant transferred to Faridabad. In pursuance of this letter the transfer orders have been given by the department. No doubt, it is clear from the letter dated 9.8.99 that a decision was taken to send back R-3 to Faridabad but subsequently the Government has revised its decision to post her to New Delhi. This order is under challenge in this OA. The reason given by the respondents in posting the R-3 to Delhi and transferring the applicant to Faridabad is said to be purely administrative. It should be noted that it is open to the appropriate authority to always consider the facts and circumstances and alter the orders as to posting of a particular officer and even to modify or cancel the transfer already made. Merely because ^a the change in decision was made, it cannot be said, in my view, that the said decision was made only in the interest of one employee or the other. On that ground it is not possible to hold that the order of transfer is vitiated. It is not in dispute that the applicant is liable to transfer to Faridabad. The order of transfer is not questioned as violative of any rule or competency of the officer who passed the impugned order. Transfer to one place to another is necessary in public interest and efficiency of public administration. It is true that an order of transfer can be interfered with where malafides are established. But in the matrix of the present case it cannot be said that the mere last minute change in the

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decision of the authority, to post R-3 to Delhi instead of Faridabad, was a colourable exercise of power out of malafide motive\$ to accommodate R-3. It is not for me to decide, exercising the judicial review jurisdiction, whether the transfer in question is not in the interest of department. Several grounds raised by the applicant in order to substantiate that the posting of R-3 at Delhi is not in the interest of the department cannot be ~~given any~~ ^{gone into} ~~evidence~~ as it is for the appropriate authority to take a decision as to the best interest of the department. The jurisdiction that is vested in me will not enable me to make a roving enquiry and come to a ^{different} ~~one~~ decision. The inference of malafides should be read in between the lines and taking into account the attendant circumstances. vide N.K. Singh v. Union of India & Ors., 1994 (28) ATC 246 (SC). In State of M.P. & Ors. v. Sh. S.S. Kouray & Ors. JT 1995 (2) SC 498 the Supreme Court clearly laid down that it was not for the courts or the Tribunals to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decisions and such decisions shall stand unless they are vitiated ^{by clear} ~~either~~ ~~by~~ mala fides.

6. In view of the fact that the malafides are not established in this case, I am unable to interfere with the impugned order. The OA, therefore, fails and is accordingly dismissed. No costs.

Rajagopal Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

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