

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A. No. 1230 of 1998 decided on 28.10.1998.

Name of Applicant : D.S.Rana

By Advocate : Shri B.B.Raval

Versus

Name of respondent/s Union of India & another

By Advocate : Shri R.V.Sinha

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1230 of 1998

New Delhi, this the 28th day of October, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

D.S. Rana, S/o Shri S.S. Rana, aged about 54 years, Resident of Qr. No. 667, Sector 8, Rama Krishna Puram, New Delhi-110022 and employed as Assistant Central Intelligence Officer Grade II (General) in the Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi.

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-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, Government of India, North Block, New Delhi-110001

-RESPONDENTS

(By Advocate Shri R.V. Sinha)

ORDER

By Mr. N. Sahu, Member (Admnv)

The applicant impugns the order of transfer dated 2.12.1997 posting him from Intelligence Bureau (in short "IB") Headquarters Delhi to Jaipur. He represented to the authorities stating that he lost his son of 19 years, 3 years back as a result of which his wife has been suffering from mental depression and he has also an old mother of 80 years. He mentioned in his representation that during 29 years of his service in IB, he remained posted out of Delhi for about 17 years and part of this was spent in difficult areas like Leh in Ladakh and other border areas of Gharwal District. He further stated that he has to vacate the Government accommodation in

the event of his transfer to Jaipur. His representation was favourably recommended by his superior officers, yet the representation was rejected. It is necessary to mention that soon after his transfer order the respondents considered his first representation and allowed him to continue at Delhi up to 31.3.1998. After the rejection of his second representation the applicant is before me on the ground that he has been singled out by way of a punitive transfer to Jaipur because he had filed another O.A. before this Court for not giving him promotion in due time. It is stated that in the impugned order of 136 transfers most of the officers were retained and adjusted in their places of posting before transfer and with regard to the few others who have been sent out, it was at their request. Only in the applicant's case he had been transferred to Jaipur. It would be necessary to mention at this stage the contention of Shri Raval, learned counsel for the applicant that 40 officers of the rank of the applicant are still retained in Delhi.

2. The next ground taken by the applicant is that this order has not been issued in public interest or public exigencies. For this purpose Shri Raval has drawn my attention to the impugned order Annexure-A-2. This order recited in the preamble that Junior Intelligence Officers Grade-I of IB "are promoted to the grade of Assistant Central Intelligence Officer Grade II (General) (in short "ACIO Gr.II") in an officiating capacity". He stated

that the words "public interest" do not find any mention in the said order. He has cited a Constitution Bench decision of the Hon'ble Supreme Court in the case of Mohinder Singh Gill and another Vs. The Chief Election Commissioner, AIR 1978 SC 851 to the effect that nothing can be added or substituted or read into in a public order and that the words used in that order shall be read in their natural meaning. He states that since public interest was not mentioned in the order of transfer it cannot be implied. He, therefore, says that the impugned order was not issued in public interest and, therefore, is bad in law. His second point is that when the hierarchy of superiors were satisfied with his performance and recommended cancellation in public interest; the competent authority should not have rejected the representation. He is considered to be an efficient worker. He next stated that the applicant is neither the senior most nor the junior most in terms of length of service at Delhi. His transfer was clearly motivated and violated Articles 14 and 16 of the Constitution of India. A decision of Calcutta Bench of the Tribunal in the case of N.C. Barman Vs. Union of India and others, (1989)11 ATC 250 has also been cited wherein it was held that mere assertion that the impugned action was taken for administrative reasons was not sufficient and cogent reasons should be given.

3. It is next contended that the transfer was malafide and for this purpose the applicant relied upon the decision of the Hon'ble Supreme Court in the

case of Union of India and others Vs. H.N.Kirtania,
(1989) 3 SCC 445. It is stated that the transfer order might look innocuous but a deep probe would show that it is resorted to as "sweet revenge to remove from scene an inconvenient employee". It is also stated that no other Junior Intelligence Officer promoted along with the applicant and retained at Delhi has got such a profile of service at hard and difficult areas on the borders and, therefore, there was no justification to single out the applicant. The learned counsel for the applicant cited the decision of the Hon'ble Supreme Court in the case of Arvind Dattatraya Dhande vs. State of Maharashtra

(1997) 6 SCC 169 wherein their Lordships quashed the order of transfer on the ground of malafide. He has also cited a decision of Bangalore Bench of this Tribunal in the case of N.K.Suparna Vs. Union of India and others, (1991) 15 ATC 1 wherein also the transfer order was set aside on the ground of malafide.

4. Finally, it was submitted that in reply to a Parliament question, the concerned Minister stated that normally transfers in IB are made in public interest depending on administrative exigencies and special grounds made out explaining personal difficulties are considered. Though there is no special policy of transfer, compassionate ground adduced by the affected persons are duly considered. The learned counsel for the applicant cited the decision of Hon'ble Supreme Court in the case of Director of School Education Madras and others Vs.

O.Karuppa Thevan and another, (1994) 28 ATC 99 to the effect the applicant has three school going children and transfer disturbs their education.

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5. Opposing the stand taken by the applicant's counsel, Shri R.V.Sinha, learned counsel for the respondents vehemently argued that there is no merit in any of the contentions. His first point was that this was a transfer on promotion to a higher rank and his promotion was to take effect from the date he takes over as ACIO Gr.II at SIB Jaipur. The second most important point made was that it was wholly improper on the part of the applicant to accuse respondent no.2 of bias or malafide. He pointed out that the transfer orders were formulated by a special committee of three senior officers of the rank of Deputy Directors or DIG of Police, who took into account the requirements of each of the persons affected in the impugned order before making his placement. This averment has not been denied by the applicant. Respondent no.2, the Director had simply approved the recommendations and formulation of this Board. There was no question of personal vendetta or malice. It is next pointed out that the applicant did enjoy a stay of 12 years in Delhi from May, 1986 and he was allowed a period of more than 3 months when he first requested for extension. Thereafter on a further request for allowing him to take over as ACIO Gr.II (G) at IB Headquarters, New Delhi his case was again sympathetically considered and he was allowed to avail his promotion at IB Headquarters and his transfer was kept in abeyance till 7.4.1998.

Thereafter the applicant sought an audience with the Director, IB for cancellation which was orally rejected on the same day. Meanwhile the applicant proceeded on leave with effect from 16.6.1998 to 12.7.1998 and filed this OA to prolong his stay at Delhi. The learned counsel stated that there is an all India liability for transfer. He was one of the 136 officers in the impugned order. Such transfer cannot be the subject matter of judicial review unless there is violation of statutory rule or on the ground of malafide.

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6. Shri Sinha cited the decision of Union of India vs. N.P. Thomas, AIR 1993 SC 1605 wherein it was held that the employees holding transferable post have no vested right to remain in original circle if they are transferred on promotion. He has also cited the famous decision of Shilpi Bose (Mrs) & others vs. State of Bihar and others, (1991) 17 ATC 935. The learned counsel referred to the decision of Aloke Nath Mitra vs. Union of India and others, (1991) 17 ATC 786 wherein it was held that mere omission to mention in the transfer order that the transfer was for administrative reasons would not warrant judicial interference.

7. With regard to the applicant's claim of service in difficult areas, it is stated by the learned counsel for the respondents that out of his 17 years of service the applicant was posted at Leh for a period of less than 3 years and for the remaining period of 14 years from June 1972 to April

[Signature]

1986 he was posted in his home State in the region of UP hills to which he belongs. Shri Sinha stated that a few officers might have stayed in Delhi more than the applicant; however, retaining an officer or transferring him out is entirely a matter to be decided not by the applicant nor by a Court but by the concerned competent authority in the administrative interest. The rejection of his request was a conscious and considered decision. Instead of waiting for this rejection the applicant sensed the mood of the competent authority and proceeded on leave.

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8. In his rejoinder the applicant has stated that out of 136 persons transferred on promotion, 42 persons have been retained at the IB Headquarters itself and it is stated that these persons have been in Delhi for about 15 years and have not gone out of Delhi even once; whereas the applicant had difficult tenure posting in places like Almora, Joshimath Check Post, Nainital etc. It is further stated that there are number of officers from the General duty cadre like him who can do the same job and he is not a specialist. There was no need to pick him up in particular for transfer.

9. I have carefully considered the submissions made by both the counsel. According to the pronouncement of the Hon'ble Supreme Court in the case of Shilpi Bose (supra) there is no scope for judicial review in a case of a transfer of a Government employee unless the order is vitiated by



malafide or violation of mandatory statutory rules.

Even though the transfer order may be in violation of executive instructions it cannot be interfered with.

I have the authority for this proposition in Union of India and others Vs. S.L.Abbas, (1993) 25 ATC 844.

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In the case before me, there was an indirect attempt to attribute malafide to the Director, IB, respondent no.2, who allegedly asked the applicant to withdraw the OA. There was no nominee - no mention of the Director's name. I am satisfied the ground of malafide is totally unsubstantiated. In the first place, respondent no.2 went by the recommendations of a committee of three senior officers who had examined the suitability of each officer to be posted to a particular place. No malafide can be attributed to this action. Secondly, two extensions were given to the applicant and he was also allowed to assume charge of his promoted post in Delhi. Thirdly, the Director himself gave an audience who heard him personally but he rejected the request. This attitude of the respondents speak of consideration and concession rather than malafide. There is no material whatsoever to attribute malafide to this transfer. The claim of the applicant that he spent in difficult area is belied by the fact that he spent in his home State Garhwal region. He only spent less than three years in Leh which can justly be called a hard posting but that was way back during the early part of his career. The decision of the Hon'ble Supreme Court in the case of O.Karuppa Thevan (supra) on mid academic transfer would not apply because the applicant was retained till the end of the academic

year. He intended to continue at Delhi and did not arrange to shift his children to Jaipur which is a very developed metropolis with all educational facilities available. The Constitution Bench decision of the Hon'ble Supreme Court in the case of Mohinder Singh Gill (supra) quoted by the learned counsel for the applicant is not applicable to the facts of the present case and is of no assistance to the applicant. There is a presumption of legality and validity of all state action. Mere absence of words "public interest" would not make the impugned order of transfer as one not issued in public interest. Such public interest is to be read into and implied in that order. Transfer is an incident of service and the applicant having stayed for 12 years in Delhi should have no grievance if he is sent out to Jaipur on promotion. With regard to his ground that others having longer stay in Delhi are not disturbed, one has to see that the respondents are a sensitive organisation. They are entrusted with the charge and job of dealing with certain highly sensitive and exclusively difficult matters relating to the integrity of the State, political activities that disturb public order and peace; and act as the eyes and ears of the Government in respect of internal security. There is no need for the competent authority to justify why a person has been transferred out and why a similarly situated official has been retained. The Court cannot usurp the functions of the administrator in this regard. I am satisfied that the entire exercise has been made in an objective manner by a committee specially set up

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for this purpose, which has examined the case of each officer and recommended his posting according to his suitability. The Court cannot sit in judgment in this regard. I am satisfied that there is no malafide involved and that the impugned transfer order has not violated any rule or guideline. There is no arbitrary exercise of power. There is no colourable exercise of power. A transfer issued by a competent authority does not violate any legal rights of an employee. Even if a transfer order is passed in violation of the executive instructions, the Courts should not interfere with the order of transfer as laid down in the case of Shilpi Bose(supra).

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10. In the result, the Original Application is dismissed. The interim order stands vacated. In the facts and circumstances of the case, there is no order as to costs.


(N. Sahni)
Member (Admnv)

rkv.