

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1666/95

New Delhi, this ~~2nd~~ day of November, 1995

Hon'ble Shri B.K. Singh, Member (A)

Shri Naval Kishore
s/o Shri Harbans Lal
National Bureau of Plant
Genetic Resources
Pusa Campus
New Delhi-110 012

.. Applicant

By Shri B.S. Mainee, Advocate

Vs.

Union of India, through

1. The Secretary
M/Agriculture
Krishi Bhawan, New Delhi

2. The Director General
Indian Council of Agriculture Research
Krishi Bhawan, New Delhi

3. The Director
NBPGR
Pusa Campus
New Delhi

.. Respondents

By Shri B.B. Sharma, Advocate

O R D E R

The admitted facts are these. The applicant has been transferred from New Delhi to Hyderabad vide impugned order No.33-103/95-4179 dated 31.8.1995 (Annexure A/1 of the paper book).

The prayer in the DA is to quash this order of transfer. Notice was issued to the respondents who ~~filed~~ filed their reply contesting the application and grant of relief prayed for. Heard the learned counsel for the parties and perused the record.

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3. The learned counsel for the applicant argued that this is a malafide transfer order on account of the trade union activities of the applicant. It was stated that the applicant is a union worker and also a member of the Grievance Cell of NBPGR, which has been created for the welfare of the staff working in the Bureau. It was not denied that departmental enquiry (DE) has been launched against him for allegedly maulding Dr. P.N.Gupta, Principal Scientist and acting Director on 30.6.95. It is also admitted that before the launch of DE, preliminary enquiry was also held about the incident. The learned counsel drew the attention of the court to the orders at Annexure A-1 and A-2 and also the averments made in the counter. He vehemently argued that the word "administrative exigency" has been used for the transfer as a camouflage for colourable exercise of power and that is punitive in nature in the sense that the applicant has been highlighting grievances of the member of the staff in the meetings of the consultative machinery evolved for redressal of grievances. It was further argued that no urgency is involved in filling up the vacancy at Hyderabad, which has been lying vacant for several years. The transfer is just to get rid of the applicant. He vehemently argued that the transfer order was punitive in nature and violative of guidelines and norms laid down by ICAR in their letter No.4-7/85-Esst.V dated 26.6.86, which inter alia lays down that 'there will be no transfer/harassment of any kind to the cjsc/IJC members, who have to watch the interest and welfare of the staff to whom they represent'. These instructions envisage that in case of complaint, the matter has to be brought to the notice of ICAR (A-2 of paper book). He referred to

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another letter dated 25.4.94 wherein while reiterating the instructions contained in 1986 letter, it has been added that not only the CJSC/IJSC members but no staff of any category should be harassed or victimised by their immediate officers/Directors. (A-3 of paper book).

4. The learned counsel relied on the judgement of Hon'ble Member (A) Shri K. Muthukumar of this Tribunal based on the ruling of the Hon'ble Supreme Court wherein while upholding the validity of the transfer order, it was stayed till the end of academic session. In this also, the appeal of the petitioner was dismissed with the observations that the transfer order would be effective after the end of academic session of the children, since no urgency was indicated by the respondents' counsel. The Supreme Court has not favoured interfering with the transfer orders on administrative reasons or in the exigency of public service. The only ground on the basis of which judicial review is permissible is the ground of malafide, which is to be proved and breach of statutory rules.

5. The learned counsel for the applicant referred to the case of B. Varadappa vs. State of Karnataka 1986(4)ATC 131, wherein it has been held that transfer of government servant is an incident of service. The other case referred to was that of Kamlesh Trivedi vs. ICAR 1988ATC(3)445 wherein also it was reiterated that the courts should not interfere in an order of transfer on administrative grounds or in public interest. The same view was held in Silpi Bose vs. State of Bihar 1991-LAB IC 360. Law has been fully explained in AIR 1989-1433 Gujarat State Electricity Board Vs. Atma Ram Sungomal

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Poshani that transfer from one place to other is generally a condition of service and the employee has no choice in the matter. In case of hardship one can file representation and if the same is rejected, he has no option but to comply with that order. If after rejection one fails to proceed on transfer he is liable for disciplinary action. This view was reiterated by the Supreme Court with greater force in JT 1989(3)SC 131 UOI Vs. H.N. Kirtania that transfer in public interest should not be interfered with unless there are very strong reasons which would render the transfer order illegal on the ground of violation of statutory rules or on ground of malafide.

6. The Supreme Court has consistently followed the ratio of previous judgements in ~~S.H.~~ Abbas Vs. UOI 1993(4)SCC 357 wherein it has been held that guidelines and instructions do not confer any vested right which are merely directory in nature and do not have the force of a statute.

7. The ratio of various judgements right from 1988 onwards has consistently been to restrain the courts and tribunals to treat the transfer order lightly and to interfere with it unless there are proved grounds of malafide or violation of statutory rules.

8. The instructions contained in the circulars cited above are to be treated as directory in nature conferring no right on the applicant to support his claim.

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9. As regards malafide it is a great burden to discharge as has been held in case of K. Nagaraj Vs. State of A.P. 1985SCG 526 "burden to establish malafide is a heavy burden to discharge. Vague and casual allegation suggesting that a certain action has been taken with an arbitrary motive can not be accepted without proper pleadings and adequate proof".

10. After hearing the contentions of the rival parties and particularly that of the learned counsel for the applicant and after going through the record, I do not find that the charge of malafide has been proved. The alleged misconduct of manhandling Dr. Gupta may be the motive behind the transfer but if the power of transfer vests in the competent authority, then he can exercise it to keep the applicant away from present place of work in the interest of discipline and enquiry. One can not find fault with it. This can not be treated as colourable exercise of power. The transfer is in exercise of administrative power and has been used when the situation so demanded. Power to transfer an employee flows from the right vested in the administration and there is nothing to show that this is a colourable exercise of power. Neither there is breach of any statutory rule nor the charge of malafide has been proved against the administration. The case of the applicant is ~~equally~~ ^{Squarely} covered by the judgement of the Hon'ble supreme Court in case of UOI Vs. Ganesh Das Singh (1995) 30ATC 629 where the applicant was a union leader and was transferred ~~and~~ ^{he} the levelled serious charges of malafide against respondents and the same was accepted by CAT Jaipur but the Supreme Court not only set aside the judgement but observed that judicial review under Article 226 of a

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transfer of order on administrative grounds is impermissible. The law has been applied in two other judgements viz. Chief GM Telecommunication Vs. Rajendra Chandra Bhattacharya (1995) ATC page 379 and state of MP & Ors. Vs. Kourad & Ors. (1995) 29 ATC page 379. Personal hardship and individual interest do not give a right to question the validity of a transfer order.

11. In the light of the ratio of the recent judgements given by Hon'ble Supreme Court and the observations of this Court in the body of the order, this application fails and is dismissed but without any order as to costs. The interim order passed on 11.9.95 is vacated.

(B. K. Singh)
Member (A)

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