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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.476/95

New Delhi this the 31st Day of August, 1995

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

Shri Pankaj Mehta,
Senior Accountant,
R/o B-8/221,
Sector-3, Rohini,
Delhi-110 085.

Applicant

(through Sh. A.K. Behere, advocate)

versus

1. Union of India,
through the Director,
General Border Security Force,
Pushpa Bhawan,
New Delhi.
2. The Asstt. Director(Accounts),
B.S.F.,
Pushpa Bhawan,
New Delhi.

Respondents

(through Sh. B. Lall, advocate)

O R D E R
delivered by Hon'ble Sh. B.K. Singh, Member(A)

Aggrieved by Order No.1 PAD/1-72/85F/1934
dated 29.11.1994, the applicant has filed this
O.A.No.476/95. This is annexure A-1 of the paper-
book. He has been transferred from B.S.F. Headquarters
New Delhi to IAP BSF North Bengal, Kadamtula.

The applicant joined the Pay and Accounts
Division of the BSF Organisation in July 1987 with
one of the conditions that he is liable to be
transferred to any place in India. This appointment

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letter No. PAD/1-240/BSF/86-87 dated 2.6.1987 is enclosed as annexure R-1 to the counter-affidavit.

The admitted facts are that the transfer order was issued on 29.11.1994 and the applicant has been relieved and his name has been struck off from the rolls of the Hqrs. PAO, New Delhi with a direction to him to join his duties immediately to the place of his posting.

In this O.A. the applicant has prayed for the reliefs that the transfer order (Annexure A-1) issued by the respondents should be quashed and set aside and to call for the records of the case to read between the lines real reasons for the transfer and also to direct the respondents to give all consequential benefits. The interim prayer for maintaining the status quo till the matter is adjudicated, has not been considered by the Tribunal. The matter was finally heard on 23.08.95 when the learned counsel for the rival parties were present.

The main arguments advanced by the learned counsel for the applicant was that the applicant has been transferred primarily because he is a union leader and was engaged in the activities pertaining to the recognition of the Association of the civilian employees of the B.S.F. and it is on account of these activities that he has been subjected to this transfer. He argued that the transfer order is pertaining to the trade union activities and as such is illegal since it is directed against the interest of the civilian employees of the Organisation. He was

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taking the legal steps for recognition of the Civilian Welfare Association when he was transferred from the headquarters. It was further argued that he is neither the senior most nor junior most officer in the present station and that there are other employees who have stayed in headquarters for a longer periods than the applicant and they have not been touched. The sum and substance of the entire argument was that the respondents were not happy with his trade union activities and, therefore, they have shifted him from BSF Hqrs, New Delhi to IAP BSF North Bengal, Kadamtala. This was, however, rebutted by the learned counsel for the respondents who argued that when the applicant was recruited and joined Pay & Accounts Office in July, 1987, his very appointment letter dated 2.6.87 (Annexure R-1) will indicate that he had an all India transfer liability. He argues that transfer is a condition of service and public interest is paramount as has been held by the Hon'ble Supreme Court in the case of Hardeep Kumar Vs. State of H.P. (1989(1) ATR(HP)143). He further argued that the courts have held that transfer of a government servant is within the jurisdiction of the administration and the courts are not to interfere unless the transfer orders are vitiated by mala fides or they are in breach of statutory rules.

After hearing the rival contentions of the parties, it is clear that in a catena of judgements the Hon'ble Supreme Court have held the view that courts should refrain from interfering with transfers either in exigencies of public service,

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in public interest or on administrative grounds. This view was held in the case of Gujrat Electricity Board vs. A.R. Sungamal Peshani (AIR 1989 SC 1433) in which the Hon'ble Supreme Court have categorically stated that transfer being one of the conditions of service, an employee has no choice but to comply with the transfer order. In the case of hardship, he can approach the authorities and if the authorities do not accept his representation then he must comply with the transfer order failing which he exposes himself to disciplinary action under the relevant rules. The same view was reiterated in case of Bank of India Vs. Jagjit Singh Mehta (1992(1) ACC 306). In one of the latest judgements, the Hon'ble Supreme Court in case of Union of India Vs. S.I. Abas (1993(3) 17 JT 678) have held as follows:-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with it."

B.S.F. is a disciplined para-military force and the applicant is Senior Accountant with an all India transfer liability and in view of a catena of judgements given by the Hon'ble Supreme Court in case of transfers being beyond the purview of judicial review unless malafides ^{are} proved or unless there is breach of statutory rules, cannot be interfered with. We do not find that malafides or breach of statutory rules are involved in the instant case. Mere casual allegations of malafide without concrete pleadings on record and adequate proof cannot be accepted. A perusal

of the record does not indicate that this transfer order

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has been made on account of any bias or prejudice on the part of the respondents. In view of the law laid down by the Hon'ble Supreme Court, I do not find any scope for interference and accordingly the application fails and is dismissed, leaving the parties to bear their own costs.

(B.K. SINGH)
MEMBER(A)

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