

Central Administrative Tribunal
Principal Bench.

O.A. 1290/96

New Delhi this the 10th day of February, 1997.

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

A.K. Ghosh,
S/o Shri Anil Ghosh,
R/o 512, Asiad Village,
New Delhi-49.

.. Applicant.

By Advocate Shri K.C. Mittal.

Versus

1. Sports Authority of India,
Jawahar Lal Nehru Stadium,
Lodi Road Complex,
Lodi Road,
New Delhi-110003.

2. Shri A.S.V. Prasad,
E.D. Teams,
Sports Authority of India,
Lodi Road,
New Delhi-110003.

.. Respondents.

By Advocate Shri K.C. Sharma with Shri M.K. Gupta *Advocate*

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the Office Order No. 94/96 dated the 2nd May, 1996 transferring him from the Corporate Office, J.N.S, New Delhi to NIS Patiala, and also the Office Order No. 107/96 dated the 3rd June, 1996 modifying the earlier order dated 2.5.1996 to the extent that the transfer order of the applicant to Patiala stands, but he will look after his present responsibility as SSO (Psychology) at SAI Corporate Office. At the time of hearing, however, the learned counsel for the respondents has submitted that the latter order dated 3.6.1996 has been cancelled.

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2. The applicant claims that he is holding the post and discharging the responsibility as Director (Sports Science) at New Delhi and he cannot, therefore, be transferred to Patiala as SSO (Psychology).

3. The brief facts of the case are that the applicant joined Netaji Subhash National Institute of Sports, Patiala as Junior Scientific Officer (JSO). He was later appointed as Scientific Officer (SO). In July, 1984, he was transferred to Gandhi Nagar (Gujarat) and was promoted as Senior Scientific Officer in February, 1992. According to him, ~~in August, 1992~~¹⁸, he was appointed as Director (Sports Science) at New Delhi in August, 1992 and thereafter he has been discharging the duties and responsibilities of that post, as contained in the Office Order No. 246/92 dated 15.9.1992. These duties include, overall supervision and functioning of ^{the} Dope Control Laboratory, the Human Performance Laboratory and the medical centres in various SAI Stadiums of Delhi, to maintain overall supervision and control of the personnel working in the HPL & DCL and medical centres at New Delhi as also to guide the scientific staff in various SAI Regional Centres for performing physiological assessment tests, etc. He also relies on the identity card issued to him in which his designation is mentioned as Director (SS).

4. Shri K.C. Mittal, learned counsel for the applicant, has submitted that the post of Director (SS) is a single post which is only at New Delhi and, therefore, he cannot be transferred to Patiala. He also submits that the posts of SSO and Director are not interchangeable as the duties of both the posts are different. He further submits that the applicant is not SSO (Physiology) but discharging the duties of Director (SS). The applicant has also alleged that the impugned order of transfer is vitiated by mala fides and arbitrariness and has been issued at the behest of Respondent 2 who was annoyed with

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him. Again, referring to the Office Order No. 246/92 dated 15.9.1992 the applicant submits that he is working under ^{the} overall control of the Secretary, Sports Authority of India and Respondent 2, i.e. E.D. Teams, is not his immediate superior. Respondent 2 is only the administrative Head of the Dope Control Laboratory. In this connection, the applicant has submitted that when a new Director General took over, Respondent 2 had put up a note for his transfer although he is not his boss, as he was annoyed with him. He has also referred to the letter dated 22.3.1995 issued by him and the subsequent representation he made to the Director General dated 6.5.1996 against the transfer order. The applicant has further submitted that the respondents have not disclosed any administrative exigencies for his transfer to Patiala. He has also submitted that even after the impugned transfer order had been passed, the respondents have referred to him in the letter dated 28.10.1996 by designation as Director (SS), which shows that he continues in the post. This, according to him, also shows that he has been promoted as Director and, therefore, he can only be transferred as Director but not as SSO, particularly after working as Director (SS) for four years. According to him the two posts are not interchangeable. Shri Mittal, learned counsel, has, therefore, submitted that the respondents have tried to achieve two things, namely, reverting the applicant from the post of Director (SS) to the post of SSO and simultaneously transferring him to Patiala which they cannot do, so the impugned order should be quashed and set aside. He relies on the following judgements:

- (i) E.P. Royappa Vs. State of Tamil Nadu (AIR 1974 SC 555).
- (ii) N.K. Singh Vs. Union of India & Ors. (JT 1994(5) SC 298).
- (iii) S.S. Sodhi Vs. State of Punjab & Ors. (1990 SCC (L&S)551).
- (iv) P.L. Dhingra Vs. Union of India (AIR 1958 SC 36).

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5. The respondents have filed their replies and Shri K.C. Sharma, learned counsel, has also been heard. The respondents submit that the post of Director (SS) is equivalent to the post of SSO and the pay scales are the same. They have stated that the SSO can be posted as Director (SS) as part of 'deployment'. They have submitted that there was no DPC for selection of the applicant to the post of Director in the Headquarters but that he was only designated as Director (SS) and is, therefore, interchangeable with the post of SSO in any case. Shri K.C. Sharma, learned counsel for the respondents, has referred to the Sports Authority of India (Sports Sciences and Medicines) Staff Recruitment Rules, 1992 (for short 'SAI Rules'). He submits that the SSO will be eligible for promotion as Dean (SS) and not Director (SS). In the provisional seniority list as on 1.8.1994 published by the respondents on 21.2.1995, the applicant has been shown as SSO and not as Director (SS) for which he had not protested. The respondents have further submitted that the post of Director (SS) is a post filled by transfer/deployment of a SSO in any of the disciplines from the field, and the incumbent can be again transferred to the field as and when need arises. Shri Sharma, learned counsel, has submitted that under the SAI (Services) Bye Laws and Conditions of Service Regulations, 1992, Regulation 8 provides the method of recruitment as follows:

- (a) Promotion
- (b) Direct recruitment
- (c) Deputation
- (d) By re-employment of a retired employee of the Society or Central/State Government or any other organisation.
- (e) On contract for a specified period of technical personnel on specific terms as approved by Vice Chairperson, SAI.

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He has further referred to Reg. 19 which provides, inter alia, that every officer of the Society holding the post in the scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' (Gazetted) officer shall be liable to serve anywhere in India, in any office of the organisation. Sub-para(e) of this regulation empowers the competent authority to transfer an employee from one Region to another Region or to the Central Office or vice-versa on administrative grounds or in the public interest with the approval of the Director General. He has submitted that the impugned transfer order which has been issued with the approval of the Director General, SAI, is in accordance with these Regulations. The learned counsel also submits that the Office Order No. 185/92 dated 18.7.1992 states that the applicant (SSO (Physiology)) has been transferred and not appointed to the Corporate Office, New Delhi against the post of Director (SS) with immediate effect and this is not a method of recruitment as provided in Reg. 8 of the SAI Regulations, 1992. The learned counsel for the respondents has also submitted that although the post of Director (SS) was created in 1988, there are no separate rules for recruitment to that post because under Reg. 8, the competent authority can transfer an employee from one Region to another Region or to ^{the} Central Office or vice-versa. He has ~~also~~ further submitted that since the applicant is holding an equivalent post, he does not lose any career prospects. The learned counsel has also relied on the judgement of the Delhi High Court in Govind Lal Srivastava Vs. Commissioner, Village Development & Ors. (C.M.W.P. No. 8135/92), decided on 21.2.92 (copy placed on record) and submits that there is no irregularity or justification for interfering with the transfer order.

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6. On the ground of mala fides alleged by the applicant against Respondent 2, the learned counsel for the respondents submitted that this officer is himself subordinate to the Director General and the impugned order has been passed with the Director General's approval. He has submitted that in the first representation made by the applicant to the Director General against the impugned transfer orders dated 2.5.1996 and 3.6.1996, there is no hint at all of mala fides and these allegations are, therefore, an after thought. Counter reply on behalf of Respondent 2 has also been filed in which he has more or less reiterated the official stand and has also denied the allegations of mala fides levelled against him.

7. I have also seen the rejoinder filed by the applicant to the replies and the other materials on record and considered the lengthy submissions made by the learned counsel.

8. It is an admitted fact that the applicant had been promoted as SSO in 1992. A provisional seniority list as on 1.8.1994 had also been issued by the respondents on 21.2.1995 showing the applicant at Serial No. 3 in that list as SSO. Office Order No. 185/92 dated 18.7.1992 refers to the applicant as SSO (Physiology) who was then working at Gandhi Nagar, who has been transferred to the Corporate Office against the post of Director (SS). The relevant recruitment rules of 1992 show that the SSO can be promoted as Dean (SS) or Chief Scientific Officer. Regulation 8 of the SAI Regulations, 1992 provides the method of recruitment, but recruitment/appointment by transfer is not one of the methods so provided. However, Rule 19(e) of the relevant SAI Rules provides that every officer of the Society holding a Group 'A' or Group 'B' (Gazetted) post can be transferred from one region to another region or to the Central office or vice versa. Therefore, under the Rules, the respondents had the power to transfer the applicant, who was a SSO at Gandhi Nagar, to the Corporate Office, New Delhi against the post of Director (SS).

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9. The learned counsel for the applicant has strenuously argued the point that the applicant, who was holding the post of Director (SS) was performing the duties as enumerated in the Office Order No. 246/92 dated 15.9.1992 which were of a more responsible and onerous nature than that of a SSO. He has, however, not denied the averments made by the respondents that these posts carry the same pay scale viz., Rs.3700-5000. The list of duties attached to the post of Director (SS) as enumerated in the Office Order No. 246/92 does not by itself show that his duties are more onerous than that of SSO (Physiology). The applicant has also not shown by what prescribed method he has been selected for the post of Director (SS). What has been stated in the Order dated 18.7.1992 is that he has been transferred to the Corporate Office. The submissions made by Shri K.C. Mittal, learned counsel for the applicant, that since there is no rule covering the situation, he cannot be treated as being transferred only on a short term basis and he should not be sent back as SSO is also untenable in view of the fact that these posts carry the same scale of pay and nothing has been shown that his career prospects will be adversely affected if he is posted as SSO Patiala. There is no justification for interfering in the impugned transfer order on this ground.

10. Regarding the allegation of mala fide, on careful perusal of the records, there are no satisfactory materials brought on record to prove the same. In N.K. Singh's case (supra), similar allegations of mala fides had been made by the applicant, including against the then Prime Minister. After discussing the rule position regarding the ordinary tenure of deputation of IPS officers, the Supreme Court held that "the relevant records show that there is nothing therein to suggest that the transfer was unusual. No other suspicious

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circumstance is made out to permit the contrary inference. No roving inquiry into the matter is called for or justified within the scope of judicial review of a transfer scrutinised with reference to the private rights of an individual. There is thus no basis to accept the appellant's contention that his transfer was occasioned by mala fides of the then Prime Minister on account of his annoyance with the appellant or that it was in any manner contrary to the requirements of the Tenure Rules". It is relevant to note that in the first representation made by the applicant on 6.5.1996 against the impugned transfer order, he has not made any allegation of bias or mala fide against Respondent 2 and this, therefore, appears to be an after thought which cannot assist him. There is no dispute at all that the impugned transfer order has been passed with the approval of the competent authority, i.e. Director General and as such the plea that since it was proposed by Respondent 2 it is vitiated by mala fide is without any basis and it is accordingly rejected.

11. The reliance of the applicant on the identity card issued to him wherein he has been referred to as Director (SS) will not also assist him in the facts and circumstances of the case, as he has not been appointed to that post but holds the post of SSO (Physiology). As SSO under Rule 19 of the SAI Rules, he has a transfer liability all over the country. The applicant has failed to establish any mala fide or detriment to his career prospects by being transferred to Patiala. In the facts and circumstances of the case, the cases relied upon by the applicant will not assist him as neither mala fides or any infraction of the rules justifying quashing of the impugned transfer orders have been made out. It is settled law that in cases of transfer, unless the order is vitiated by mala fides or is made in violation of any statutory provisions, the Court/Tribunal cannot

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interfere with it. The Administrative Tribunal is not an appellate authority sitting in judgement over the orders of transfer. Who should be transferred where is a matter for the appropriate authority to decide (See the observations of the Hon'ble Supreme Court in Union of India Vs. Abbas, 1993(2) SLR 585. This application, therefore, fails and it is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'