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

O.A. No. 1045 of 1997 decided on 9.2.1998.

Name of Applicant : Sh. J. S. Sharma

By Advocate : Sh. V. K. Rao

Versus

Name of respondent/s Union of India

By Advocate : Shri Raj Kumar Chhabra

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

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(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1045 of 1997

New Delhi, this the 9th day of February, 1998

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

Shri J.S.Sharma, s/o late Shri
P.S. Sharma, (presently on leave)
at r/o 6H, Shahpurjet, New Delhi -
110 049

(15)
-APPLICANT

(By Advocate - Shri V.K.Rao)

Versus

Union of India through -

1. Secretary, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi.
2. Director General, Health Services, Nirman Bhavan, New Delhi.

(16)
-RESPONDENTS

(By Advocate Mrs. Raj Kumari Chopra)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) -

This Original Application is directed against an order dated 4.4.1997 (Annexure-A -1) rejecting the applicant's representation for retransfer to Delhi. This representation was filed pursuant to the liberty given in the order of this Court dated 31.12.1996 passed in O.A. 2639/96 to respondent no.2 to sympathetically consider the representation on the ground of illness of applicant's wife and pass appropriate orders within one month.

2. The grounds taken in this Original Application are that the order of transfer was punitive as it was occasioned because of a memo dated

3.12.1996 alleging misconduct. Secondly, there are a number of vacancies in Palam Air Port in the post of Sanitary Inspector. Instead of transferring the applicant, he could have been accommodated in one of the posts. Thirdly, the wife of the applicant is a patient of chronic epilepsy needing personal care. Fourthly, it is submitted that the applicant being the Assistant General Secretary of the Union, he is entitled to be posted in Delhi because of Govt. of India's instructions dated 8.3.1988. He finally furnishes a list of persons who stayed in Delhi for more than 19 years and, therefore, targeting the applicant for a transfer is arbitrary and violative of Article 14 of the Constitution.

3. The learned counsel for the applicant urges the Court to call for and peruse the record to satisfy itself as to whether the respondents applied their mind in disposing of the representation. He stated that the applicant was prepared to be posted anywhere near Delhi and for this purpose he opted for Amritsar but there is no consideration about this request.

4. The learned counsel for the respondents vehemently argued that the very grounds raised in this Original Application were earlier considered by this Court in O.A.2639/96 and the said O.A. was dismissed. The applicant next filed a contempt petition on 30.3.1997 against the non-implementation of the directions of this Court in that O.A. The Contempt Petition was disposed of discharging the

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notice issued. While disposing of the O.A. mentioned above this Court held that the impugned order of transfer is neither punitive nor vitiated by malafide, nor was prompted by any intention to exercise power with an ulterior motive. The applicant was retained in Delhi for a period of 11 years from 1985. The finding in that O.A. was that the applicant held a transferable post and could not claim to be retained at a particular place. It is stated that even epilepsy is a common condition and medical facilities are available in Calcutta for the said treatment. The transfer is effected in the public interest and in the exigencies of public service. In respect of the ground that the other employees have stayed for sufficient length of time, it is submitted that the retention of others as also the transfer of the applicant are matters to be decided by the administrative authority. No discrimination can be alleged merely on that ground.

5. There is no need to call for the records. In a reply filed on 3.10.1997 to the rejoinder the respondents stated that the applicant's request for retransfer could not be acceded to as all comparable medical facilities available in Delhi for treatment of Epilepsy are available in Calcutta. The applicant's appointment as a General Secretary of Port and Airport Health Employees Union on adhoc basis is contested on the ground that the respondents are not aware of this adhoc appointment and they were dealing with one Shri G.P. Pandey as the General Secretary. It is stated that the primary membership

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of the applicant has been cancelled from Delhi Branch of the Union. It is urged that it is not obligatory on the part of the respondents to agree to the request of the applicant for transfer either to Delhi or Amritsar even if he is appointed as General Secretary.

6. The applicant states that he got himself enrolled as member of the Union in Calcutta on 14.1.1997. He states that he was Assistant General Secretary of the Union at Calcutta and, therefore, he was appointed as General Secretary of the Union on 20.6.1997 by the President of the said Union.

7. The Original Application is without merit. The findings given in the order disposing of O.A. 2639/96 are sufficient to dispose of the present O.A. as well. I have seen from the affidavit filed that the respondents had applied their mind on the representation and for reasons stated therein they felt that the representation has no merit. I do not think that their decision calls for any judicial interference. The applicant after the order of transfer moved this Court in the OA 2639/96 as well as in contempt proceedings and lost both. Substantially all the grounds that are canvassed now are covered in the earlier O.A. The findings recorded therein do not leave any more scope to the applicant to knock at the doors of this Tribunal. Having stayed at Delhi for 11 years the applicant cannot again express his anxiety to come back to Delhi. This obsession on the part of the applicant

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cannot be appreciated. The respondents have categorically affirmed that they are authoritatively advised that the medical facilities in Calcutta are no less than at Delhi for treatment of epilepsy.

8. The Hon'ble Supreme Court has held that the Government is the best judge to decide as to where and how to utilize the services of a Government servant and this discretion is not subject to judicial review. Secondly, transfer is an incident of service and no vested right can be claimed to a particular post. Thirdly, all inconveniences arising out of a transfer have to be borne and cannot be questioned. Finally, a transfer can be challenged only when the order violates a statutory rule or is malafide. Admittedly, the applicant's transfer had not violated any statutory rule and that the earlier order itself confirmed that the transfer order was neither punitive nor actuated by any malafide. For the above propositions, the learned counsel for the respondents has placed reliance on the following decisions of the Hon'ble Supreme Court - **Rajendra Roy Vs. Union of India and another**, (1993) 23 ATC 426; **M. Sankaranayanan Vs. State of Karnataka & others**, (1993) 23 ATC 412; **Union of India Vs. S.L. Abbas**, (1993) 25 ATC 844; **N. K. Singh Vs. Union of India and others**, (1994) 28 ATC 246.

9. That apart it is settled in the case of **G.J.Fernandez Vs. State of Mysore**, AIR 1967 SC 1753 that administrative instructions cannot be enforced in a Court and that no writ lies for disobedience of these administrative instructions.

10. The facts show that the applicant was not a member of the Union and was not a General Secretary when the impugned order of transfer was passed. The subsequent events have no influence on the impugned order of transfer. That the guidelines of the Ministry of Personnel do not confer an enforceable right is also held in the case of **S.L.Abbas(supra)**.

11. After hearing the arguments of both the counsel I have discussed the above points but more than any thing else, this O.A. could have been disposed of and dismissed on the ground of res judicata. The doctrine has been propounded by the Hon'ble Supreme Court in the case of **Shanti Kumari Vs. Regional Deputy Dirotor, Health Service, Patna**, AIR 1981 SC 1577. I record that this O.A. deserves to be dismissed even on the ground of res judicata.

12. In the result, the O.A. is dismissed. No costs.

rkv.

Narashimha Rao
(N.Sahu) 9/2/98
Member (Admnv)