

(4)

Central Administrative Tribunal  
Principal Bench

O.A.No.1340/97

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 25<sup>th</sup> day of October, 1997

Dr. A.N.Bhowmick  
s/o late Shri R.C.Bhowmick  
Superintending Geophysicist (Scientist 'D')  
in the H.Qs. Office of the  
Central Ground Water Board  
Faridabad - 121 001  
r/o B-394 Sarita Vihar  
New Delhi

Address for service of notices:  
C/o Shri Sant Lal, Advocate  
C-21(B), New Multan Nagar  
Delhi - 110 056.

... Applicant

(By Shri Sant Lal, Advocate)

Vs.

1. The Union of India through  
The Secretary  
Ministry of Water Resources  
Shram Shakti Bhawan  
New Delhi - 110 001.
2. The Chairman  
Central Ground Water Board  
Ministry of Water Resources  
Room No.406, Shram Shakti Bhawan  
New Delhi - 110 001.
3. Dr. Suraj Kumar Sharma  
Regional Director (NHP)  
H.Qs. Office/Member (S.A. & M.)  
Central Ground Water Board  
Faridabad - 121 001.

... Respondents

(By Shri N.S.Mehta, Advocate on behalf of R-1 & R-2)  
(By Shri K.B.S.Rajan, Advocate on behalf of R-3 (private))

O R D E R

The applicant is aggrieved by the transfer order from Faridabad to Raipur and the rejection order of his representation against the said transfer.

2. The facts of the case in brief are that the applicant joined the service of the respondents as Senior Geophysicist (Group 'A') w.e.f. 20.2.1976. He was then promoted as Superintending Geophysicist w.e.f. 17.3.1982 which post was

redesignated as Scientist 'D' in 1987. While the applicant was working at Hyderabad, he was transferred to the Headquarters Office of the Central Ground Water Board (CGWB), Faridabad, vide order dated 28.12.1995 (Annexure A4). He was also directed to look after the work of the Member (S.M. & L), CGWB vide order dated 27.12.1995, issued by the Ministry of Water Resources. Vide order dated 24.4.1997, Annexure A1, the applicant came to be selected and promoted to the Grade of Regional Director in CGWB. However, he was transferred by the said order to the Rajiv Gandhi National Institute of Ground Water Training and Research, Raipur as Member(T)/Principal.

3. The applicant impugns the orders of his transfer from Faridabad to Raipur on various grounds. Firstly, he alleges that he has been transferred from Headquarters to Raipur in order to accommodate Dr.S.P.Sinha Ray who has been transferred from Calcutta to Headquarters. Secondly, he contends that if Dr. S.P.Sinha Ray was brought to Calcutta he should have been accommodated in place of the officer who had a longer stay, i.e. Dr.Suraj Kumar Sharma, impleaded as Respondent No.3 who had been in Delhi/Faridabad for more than 23 years. Thirdly, the applicant alleges malafide and bias inasmuch as he belongs to the Geophysicist discipline and the officers belonging to the Hydrogeology discipline are enmicable to his interest. Finally he has alleged that the transfer has been made in the middle of the academic year of his daughter who is studying in Higher Secondary and who has already suffered in her studies due to the applicant's postings outside Delhi.

4. The respondents in reply controvert the above contentions of the applicant. They state that the applicant while working at Hyderabad had requested transfer to CGWB, Faridabad. After considering his various representations, his request was allowed.

Ob

They point out that there are four posts of Members in CGWB which are lying vacant for want of finalisation of Recruitment Rules. It was therefore decided by the Government to have the work of Members by the senior most officers available in the Board. One of these being the applicant, he was also given the current duties of one of the Members. When the DPC for promotion as Regional Director was held on 7.3.1997, a panel was prepared. Two officers juniors to the applicant, namely, Shri S.K.Sharma, Respondent No.3 and Dr. S.P.Sinha Ray were placed above him in the panel of Regional Directors. In accordance with the policy, the current duties of the Members had to be assigned to the seniormost Members and the inter-se seniority having undergone a change and Shri S.K.Sharma having become senior to the applicant, the former had to be given current duties of the post of Member. On the same analogy the applicant had been given seniority at Sr.No.3 and posted to Raipur to look after the work of Member(T) which was earlier taken care of by one Shri S.C.Sharma, placed at Sr. No.5 of the Regional Directors list. They also submit that Respondent No.3 had to be retained at Faridabad since he is due to superannuate on 31.12.1999; as per the transfer policy the officers due to retire within three years are to be given a place of their choice as far as possible. The respondents refute the allegation of the applicant that Shri S.P.Sharma has been in Delhi for more than 23 years; they state that Shri Sharma has been transferred from Faridabad to Delhi only eight years back. Finally they contend that the transfer has been made in public interest.

5. Shri S.K.Sharma, Respondent No.3 has also filed a reply affidavit adopting the reply of Respondents No.1 & 2. I have heard the learned counsel on both sides. The learned counsel for the applicant argued that all the three officials, namely, the applicant, Dr.S.P.Sinha Ray and Shri Suraj Kumar Sharma and the

(7)

applicant had been assigned the duties of the Members. Since the applicant was holding the post of Member at Faridabad, even if on ad hoc basis, there was no need to replace him and disturb the arrangement. If a change was at all needed, Dr. S.P.Sinhra Ray should have been transferred from Calcutta to Raipur. The learned counsel for the applicant also contended that there is no post of Regional Director in Raipur and the applicant has been asked to draw pay against another post. The learned counsel for the applicant also contended that there is no difference between posting in Delhi and the one in Faridabad since both places are ~~same~~ in the same urban agglomeration and within the National Capital Region. He further argued that the applicant is a victim of ~~enmical~~ attitude of Hydrogeologists in the cadre. He pointed out that applicant was allowed to stay in Delhi only eighteen months while Respondent No.3 has been staying there for the last 23 years.

6. The learned counsel for Respondent No.3, Shri K.B.S.Rajan argued that if the applicant has any grievance it could only be against Dr.S.P.Sinha Ray who was transferred from Calcutta to Delhi and displaced the applicant. He also argued that for all purposes apart from the grant of DA and HRA, etc to Central Government employees Delhi and in Faridabad are considered two separate stations and are under two different parts of administrative units.

7. I have considered the matter carefully. It is now well settled that transfer being an incidence of service, the only point to be left for judicial review is whether the transfer has been in any way made contrary to the guidelines framed by the Department or it has been actuated by any malafide. The only ground on which malafide is sought to be established here is that the applicant belongs to the Geophysics discipline while 91% of

QW

-5-

(2)

the remaining officers belong to the Hydrogeology discipline. This can in no way be seen as a valid basis for the allegation of malafide. No indication has been given as to how this difference in discipline alone has resulted in discrimination to the applicant. Most of the departments particularly technical departments involve inter disciplinary inputs and though there are often disputes on percentages fixed for the number of posts in the narrow upper segments of the hierarchy, even that point has not been agitated in this OA. As has been held by the Supreme Court in M.Sankaranarayanan, IAS Vs. State of Karnataka and Others, 1993(1) SCC 54 "it may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture." In the present case no facts whatsoever have been mentioned much less established to allow an inference of malafide. In the circumstances the transfer cannot be said to have been done as an act of malice or malafide as alleged by the applicant.

8. The other ground taken by the applicant is that transfer has been made as contrary to the guidelines framed by the respondents' department. In particular the applicant has pointed out to the revised transfer policy in which it has been laid down that the officials who have stayed longest at the same station should be transferred first. The applicant points out that Respondent No.3 has been in Delhi/Faridabad for a continuous period of 23 years while the applicant has been only for eighteen months. While it is correct that the normal policy should be that 'First Come First Go', there are other instructions which would constitute an exception to this dictum. The policy itself

(2)

(9)

laysdown that officers due for retirement on superannuation within a period of three years shall as far as possible be transferred/retained at the place of their choice. There is no dispute that Respondent No.3 falls in this category. Therefore, through Respondent No.3 is liable to be transferred on the basis of longer stay, he is equally entitled to be considered for retention in Delhi if that be his place of choice. Thus, on the point of transfer policy and guidelines, the applicant cannot be said to have a better claim prima facie than Respondent No.3.

9. In view of the above position, it is not necessary to go into the rival contentions as to whether the applicant's transfer was or was not in public interest. The superior authorities are the best judge of administrative requirements and the suitability of a Government employee for a particular post. Unless the action of the administrative authority is manifestly actuated by malice or is in contravention of the guidelines laid down, the scope of judicial review and interference is minimal.

10. In view of the above discussion and the facts and circumstances of the case, the OA is liable to be dismissed. No costs.

  
(R.K. AHOOJA)  
MEMBER(A)

/rao/