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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No 1503 of 1997

Decided on: 25 3 98

Sh. Raj Pal Singh Applicant(s)

(By Shri D.S. Chaudhary Advocate)

Versus

U.O.I. Respondent(s)

(By Shri K.C.D. Ganwani Advocate)

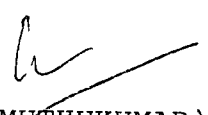
CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? YB

2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1503 of 1997

New Delhi this the 25th day of March, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Raj Pal Singh
S/o Shri Bihari Singh
R/o flat No.239-E, Pocket-I,
Mayur Vihar Phase-I,
New Delhi-110 091.

...Applicant

By Advocate Shri D.S. Chaudhary.

Versus

Union of India
Director,
Central Bureau of Investigation,
CGO Complex,
Lodhi Road,
New Delhi-110003.

...Respondents

By Advocate Shri K.C. D. Gangwani.

ORDER

Applicant is aggrieved by his transfer from New Delhi to Patna ordered by the respondents by their order dated 25.6.1997 impugned as Annexure A-1. The applicant is an Senior Public Prosecutor under the respondents and he was posted to the Patna Branch office by the aforesaid order. His grievance is that he was transferred in 1991 to Srinagar and was again transferred to Delhi in 1994 and although there are other Senior Public Prosecutors working at Delhi since their appointment itself have not been transferred, he has been subjected to transfer again. He submits he has not completed normal tenure of posting since his last posting in Delhi. He cites the cases of one Shri Om Prakash, Senior Public Prosecutor who has not been transferred since 1983 and also the cases of Shri S.K. Bhatnagar since 1986 and also of Shri Wadia and Shri B.N. Ojha. He has also cited a few other cases where the officers had spent their entire service career in Delhi.

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The applicant alleges discrimination in transferring him and avers that the respondents had not followed any criteria such representation was rejected, the applicant had filed this petition and pending the decision in his case by the Tribunal, he had joined the new place of posting. The applicant also has averred that he is a candidate from Scheduled Caste community and because of this reason and also because of the fact that he has challenged the administrative and disciplinary control of police officers over Public Prosecutors in the organisation, he has been subjected to this harassment.

2. The respondents have strongly denied the allegations of the petitioner. They maintain that the transfer is an incidence of service with all India transfer liability under which the applicant is covered by the conditions of his appointment and, therefore, he cannot complain against this transfer. They submit that the transfer was made in administrative exigency and there was no mala fide or arbitrariness or discrimination against the applicant. The respondents have also filed the transfer profile of various officers mentioned by the applicant as annexure to the detailed reply and assert that all the officers shown therein had also been subjected to transfer and posting at different places from time to time. They, therefore, maintain that there has been no discrimination. They also assert that the applicant cannot adduce the ground of harassment on account of ^{his} social origin. There is no question of his not being accepted by the Superior Officers at Patna as averred by him and it is stated by the respondents that the applicant will be happily accepted by the superior officers posted at Patna and there is no harassment or

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discrimination against him by posting him to Patna. They have also asserted that out of total 15 years of service, the applicant has remained posted in Delhi for almost 12 years and, therefore, he should not have any grievance against his transfer, ordered by the competent authority.

3. In reply to the contention of the applicant that certain officials named by the applicant have been retained in Delhi for longer periods, the respondents initially filed an affidavit containing details of previous posting of six officers and the matter came up for hearing on 4.11.1997. The counsel for the applicant submitted that the list as furnished by the respondents, contained several omissions and did not give the complete picture in respect of the Senior Public Prosecutors posted in Delhi. The respondents thereupon, filed another list of Senior Public Prosecutors who are Delhi based and with their transfer profile from time to time. The counsel for the applicant submitted that from the details furnished by the respondents it is fairly evident, that they have not followed any consistent policy and have retained certain officers for long periods while the applicant was transferred out within 3 years of his reposting to Delhi.

4. The Counsel relied on the following decisions:-

- (a) Sh. Charanjit Lal Vs. U.O.I. & Others, 1986(4) CAT page 524.
- (b) Shri H.N. Patro Vs. U.O.I. & Others, 1991(2) CAT (Ahmedabad) SLJ 109.

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5. I have heard the learned counsel for the parties and have perused the record.

6. It is an admitted position that pending the adjudication of this matter, he was relieved on 25.6.97 and had joined the new place of posting. Transfer is an incidence of service and it goes without saying and as observed by the Apex Court in B. Varadha Rao Vs. State of Karnataka and Others, 1986(4) SCC 1955, "it is no doubt true that Government has a power to transfer his employees employed in the transferable post but this power has to be exercised bona fide to meet the exigencies of administration. If the power is exercised mala fide, then obviously the transfer order is liable to be struck down". The applicant has not alleged any personal mala fide against any particular authority, although he alleges harassment of the respondents for the reason that he belongs to SC community and to this extent, therefore, attributed a general mala fide action. The respondents have totally denied this. As held by the Hon'ble Supreme Court in State of U.P. & Others Vs. Dr. V.N. Prasad, 1995 (SCC) L&S page 78, the nature of evidence to establish mala fide has to be really very strong and convincing. In this case, there is no material to establish strong evidence of mala fide. His main contention is that respondents have acted in an arbitrary and discriminatory manner by picking the applicant alone for the transfer even though he had been in Delhi for 2 years or so since his last transfer from Jammu, whereas the respondents have retained certain officers in Delhi for a number of year. From the details of the additional affidavit filed by the respondents

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dated 4.12.1997, it is seen that at least in few cases, the respondents have, in fact, retained certain officers for long number of years at Delhi (from 1982/1984 onwards). In the absence of detailed reasons, it will not be appropriate to conclude that their retention for long number of years at Delhi was wholly unjustified but the fact remains that respondents have retained a few officers for a long number of years. There could be compelling administrative reasons and considerations in those cases. It goes without saying that in matters of transfer policy, the overriding consideration, no doubt, should be public interest. So within the requirements of administrative exigency and public interest, respondents do exercise their discretion on sound and valid reasoning in certain specified cases which should be bona fide and also must be transparent enough. In the instant case, it is stated by the respondents that the applicant had spent almost 12 years out of 15 years of service at Delhi; So, he was also a beneficiary of fairly long period of stay at Delhi. His grievance is that while certain others have not even seen a single transfer outside Delhi, he was posted to Jammu and he returned only in 1994.

7. Another point stressed by the counsel for the applicant is that from the impugned order of transfer it was clear that the applicant was to go to Patna in the place of one Shri P. Prasad who was transferred to Delhi. The respondents cancelled the transfer of Shri Prasad and retained him at Patna. The counsel, therefore, argued that there was no real need for transfer of the applicant to Patna vice Shri Prasad in

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the same office. The respondents, however, maintain that the order of Shri Prasad had to be cancelled due to his medical condition as he was suffering from High Blood Pressure/Hypertension and suspected Sub-Archnoid Haemorrhage and actually remained on leave from April, 1997 to June, 1997 and he was also due to retire on 31.12.1998. The respondents aver that taking into account the workload at Patna, it had not been possible for the respondents to revise the transfer order of applicant although his representation was duly considered at the highest level.

8. Taking all these aspects into account, I am of the considered view that the transfer of the applicant cannot be considered to be arbitrary. It is not for the Courts or Tribunals to go into the necessity of a transfer so long as the transfer is made on bona fide administrative grounds. There is nothing on record here to show that the transfer has been ordered as a punitive measure.

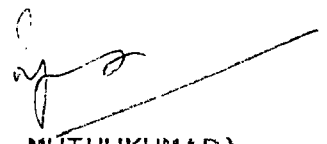
9. In the circumstances, it will not be appropriate to interfere with the impugned order of transfer of the applicant. However, taking into account the fact that the applicant had complied with the orders of transfer and actually joined at the new place of posting, it is open to the applicant to make a fresh representation, and if and when such a representation is made, the respondents, subject to administrative exigency, will no doubt consider his representation sympathetically taking into account the fact that he has been re-transferred to Delhi from Jammu only about 3 years back and pass suitable orders in

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this behalf. The application is disposed of on these lines.
There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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