

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1848/97

New Delhi this the 2nd day of January, 1998

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

Shri J.P.Gupta
Senior Audit Officer (Commercial)
Office of the Principal Director of Commercial Audit
and Ex-Officio Member, Audit Board-I
'A' Wing, 3rd Floor, I.P.Bhawan
New Delhi - 110 002.

R/o E-18, Shivaji Road
Adarsh Nagar Extension
Delhi 110 033.

...Applicant.

(By advocate: Mr E.X.Joseph)
with Shri S.P.Siddique)

Versus

UNION OF INDIA THROUGH

1. Secretary to the Government
Ministry of Finance
North Block
New Delhi.
2. The Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi 110 002.
3. The Chairman, Audit Board and
Deputy Comptroller and Auditor General of India
(Commercial Audit Wing)
Office of the Comptroller and Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi
4. The Principal Director of Commercial Audit and
Ex-Officio Member Audit Board-I
A-Wing, 3rd Floor, I.P.Bhawan
New Delhi.
5. Sh. A.P.Mittal
Deputy Director
O/o Principal Director of Commercial Audit
and Ex-officio Member
Audit Board-I, A-Wing, 3rd Floor
I.P.Bhawan, New Delhi
6. The Principal Director (Commercial)
O/o Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi.

...Respondents.

(By advocate: Mr R.P.Aggarwal)

ORDER

By Mr R.K.Ahooja, Member (A)

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Applicant who was holding the post of Senior Audit Officer (Commercial) in the office of the Principal Director of Commercial Audit (MAB-I), New Delhi, is aggrieved by order dated 9.7.1997 (Annexure A-1) whereby he has been transferred to the office of the Accountant General, Patna, Bihar. The applicant alleges that the impugned order of transfer is the outcome of his agitation regarding an incident which occurred on 17.7.1996 when he went to see a Director Shri T.L.Gupta in the office of the Principal Director of Commercial Audit-III allegedly without permission of his immediate superior Shri A.P.Mittal in the office of the Principal Director of Commercial Audit. He submits that the day the incident occurred was treated as unauthorised absence and his pay for one day was deducted from his monthly salary and on that account, he had refused to accept the pay for the month of July 1996 and had made a number of representations to his superior officer including the Comptroller & Auditor General of India. According to him, the impugned order of transfer is the outcome of this agitation and controversy. The impugned order is thus, according to the applicant, based on malafide and extraneous consideration. The applicant has also advanced certain additional grounds to show that the transfer is not a routine one as officers of his level are not sent out except on promotion. Further he claims that as he was neither the senior most nor the junior most nor had the longest stay in Delhi and there were also vacancies in Delhi, no transfer policy was involved and the action of the respondents was wholly arbitrary.

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2. Respondents in their reply have denied the allegations of the applicant. They have submitted that the applicant is holding a post with All India transfer liability. He has also been in Delhi for the last seven years. They also point out that there is no violation of transfer policy and submit that transfers made in public interest are not to be subject to judicial review.

3. I have heard the learned counsel. It is the admitted position that transfer is an incident of service and courts do not interfere with such transfers unless there is a pressing ground, e.g. violation of statutory rules or on grounds of malafide. (AIR 1989 SC 1433) Gujarat State Electricity Board Vs. A.R.Sungomal Poshani; JT 1989 (3) SC 131 U.O.I. Vs. H.N.Kirtania; JT 1997 (3) SC 444 Laxmi Narain Mohan Vs. U.O.I.

4. The question that arises is whether the impugned transfer order is against any statutory rules or is the outcome of malafide action. The applicant's whole case is based on the incident of 17.7.1996 which led to a show-cause notice being issued to him and he was marked absent for one day resulting in one day's loss of pay. Having gone through the history of that incident, I do not consider that the applicant has made out any nexus between that incident and the impugned transfer order. Firstly, as the respondents

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have pointed out, there is a gap of one year between that incident and the transfer order. Secondly, it is also the admitted position that the Head of Office of the applicant at ^{the time} the incident took place had been transferred long back and had been followed by two successors. Thirdly, there is no allegation of any animus nor any such person has been impleaded as respondent. In case the respondents wanted to punish the applicant, they could have taken action in 1996 itself on the basis of his alleged misconduct and did not have to wait for one year to do so by way of punitive transfer. I do not see much force in the argument of the learned counsel for the applicant that the repeated representations of the applicant and his continuing agitation against the wrong action of the respondents made the applicant a *persona non grata* in the eyes of the higher echelons in the department and culminated in the transfer order.

5. The applicant has also failed to show as to whether any transfer policy has been violated. He has tried to show through certain copy of correspondence which indicates that persons with 10 years posting in an office could be shifted to another MABs/AGs office at the same station. This cannot lead to an inference that officers of the level ^{at} which the applicant was working are never transferred or they are transferred only on promotion. The impugned order itself carries the name of another officer similarly placed as the applicant, who was transferred to Bhubaneswar. In the circumstances, it cannot be concluded

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that the applicant's transfer is unusual and against past practice.

6. In the light of above discussion, I find that the applicant has failed to establish that the impugned transfer order is the result of malafide action or contrary to any statutory rules on transfer policy. That being so, in terms of various judgements of the Supreme Court cited in paragraph above, there is no scope for interference of judicial review. Accordingly, the OA is dismissed. There will be no order as to costs.

R. K. Ahooja
(R.K. Ahooja)
Member (A)

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