

Central Administrative Tribunal
Principal Bench: New Delhi

OA 2358/97

(5)

New Delhi this the 25 day of November 1997.

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

Shri K.N. Sharma
Deputy Director
Sports Authority of India
Jawahar Lal Nehru Stadium
Lodhi Road
New Delhi - 10 003.Applicant.

(By advocate: Mr C.P.Saxena)

Versus

1. Director General
Sports Authority of India
Jawahar Lal Nehru Stadium
Lodhi Road
New Delhi - 110 003.
2. Secretary to the Govt. of India
Dept. of Youth Affairs & Sports
Ministry of Human Resources Development
Shastri Bhawan
New Delhi - 110 001.Respondents.

(By advocate: Mr M.K.Gupta)

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O R D E R

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

(b)

The grievance of the applicant who is Deputy Director, Sports Authority of India, relates to his transfer from Delhi to Bangalore by impugned order dated 29th August 1997. The applicant states that he was promoted as Deputy Director, Sports Authority of India (hereafter referred to as SAI) w.e.f.1.8.1996. It is his claim that he had in fact become eligible for promotion as Director/Regional Director w.e.f. 5.8.1991 when allegedly his juniors were considered and promoted. Thereupon, he filed a writ petition No.2187/92 in the Delhi High Court which was ultimately transferred to this Tribunal and registered as T.A. No.7/96. The applicant went on two months foreign leave on account of his wife's sickness. The leave was further extended and sanctioned. The applicant states that during this period, his case came up before the Tribunal on 26th August 1997 but as time was sought by the counsel for the respondents, the same was adjourned to 28th of August 1997 and then to 9th of September 1997. In the meantime, on 29th August 1997, the impugned transfer order was issued in which all transfers except of the applicant were within Delhi and no change of station was involved. The transfer order was received by the applicant on 15th September 1997. He thereupon filed a representation in which he pointed out that he was due to retire in December 1999 and as per office order dated 25th March 1994 issued by the respondents, an officer who is retiring within two years should be given a place of posting of his choice, if possible. The applicant says that his case was also decided by the Tribunal vide order

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order dated 15th September 1997 directing the respondents to complete the process of selection within 12 weeks and in any case within four months from the date of receipt of that order. It is the case of the applicant that his transfer is motivated and that if he is compelled to join at Bangalore, ^{in case} he will not be in a position to defend his case. The respondents decided to file an appeal against the order of the Tribunal in the High Court. In view of these allegations he seeks quashing of the impugned order of transfer.

2. The respondents have denied the allegations of the applicant. Their case is that the transfer has been done according to administrative requirements and exigencies; such transfers are normal incidence of service and it is for the appropriate authority to decide who should be transferred where and/or what work should be allotted to an employee. The respondents also point out that the applicant has more than two years to go before his retirement and is thus, even otherwise, not within the ambit of the provisions/guidelines regarding the place of posting as pointed out by the applicant..

3. Counsel for the applicant, in his arguments, has strenuously stressed on the guidelines issued by the respondents dated 25th March 1994, para 5 of which reads as follows:

"Officers who are retiring within two years, if possible, be given the posting to a place of their choice."

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Learned counsel for the applicant has also pointed out that the applicant has been fighting alone for obtaining his rights regarding his promotion which was due right from 1991. On the other hand, he alleges, the vested interests in the S.A.I. are out to ensure that the applicant is not considered for promotion. To that end, the respondents were planning to approach the Delhi High Court in appeal. This was also, according to him, established by the fact that the respondents have so far not taken any steps whatsoever to implement the orders/directions of the Tribunal. The learned counsel also submitted that the manner in which an officer from Bangalore has been brought to Delhi (Annexure-A), even as the applicant had come before the Tribunal and obtained an order of status-quo as regards his transfer, amply demonstrates their malice and bias against the applicant.

4. On consideration of the facts and circumstances of the case as also the arguments by the counsel on either side, I find that there is no merit in the case of the applicant. The applicant has admittedly got more than two years of service yet and, therefore, his case does not come within clause 5 of the office order dated 25th March 1994. The other point adduced is that the respondents want to prevent the applicant from pursing his case before the High Court. In the first instance, no appeal has so far been filed by the respondents before the High Court against the order passed by this Tribunal dated 15th September 1997. Secondly, the fact that litigation is going on between the parties cannot be a sufficient ground to stay the transfer on administrative exigencies. As held by the Hon'ble Supreme Court in the case

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of Shri N.K.Singh Vs. U.O.I. 1994 (6) SCC 98, a person challenging his transfer on the ground that it is prejudicial to public interest must establish that the transfer was avoidable and that the successor was not suitable. There is no such contention by the applicant. What he says is that the work at Bangalore could have been looked after by some other person. As held by the Supreme Court in N.K.Singh Vs. U.O.I. (Supra), suitability is a matter for objective assessment by the hierachial superiors in administration. Therefore, as to whether the applicant would be suitable for Bangalore or somebody else would be suitable is simply a matter to be decided by the superiors of the applicant. I also find that although the applicant alleges malafide, he has named no one nor has he made anyone a party by name. As held by the Hon'ble Supreme Court in Dr J.N. Banavalikar Vs. M.C.D. & Another, 1995 Supp (4) SCC 89, in the absence of impleadment of the persons who are alleged to have been favoured by the course of action leading to transfer of the applicant and the person who had allegedly passed malafide order in order to favour such persons, any contention of malafide action in fact i.e. 'malice in fact' should not be countenanced by the court.

5. In any case, I find no nexus between the order of this Tribunal dated 15.9.1997 and the impugned order of transfer which had already been passed on 29.8.1997. The scope of judicial intervention in matters of transfer is limited and intervention is called for only when the impugned orders are

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contrary to established policy or found to be an act of malafide. Neither of these grounds has been established in the present OA. Accordingly, this OA, being devoid of merits, is dismissed. No order as to costs.

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

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