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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2081/94

New Delhi: November 15, 1994.

HON'BLE MR.S.R.ADIGE ,MEMBER (A).

Shri N.N.Debnath,
Office of the Development Commissioner (SSI),
Nirman Bhawan,
New Delhi -110011

....Applicant.

By Advocate Shri K.B.S.RAJAN

Versus

1. Union of India,
represented by
Secretary, Ministry of Industry Department of
(SSI & ARI)
Udyog Hawan,
New Delhi- 110011.

2. The Additional Secretary And
Development Commissioner (SSI),
Ministry of Industry,
Department of (SSI & ARI)
Nirman Bhawan,
New Delhi - 110011.

3. The Director Administration,
Office of Dev. Commissioner (SSI),
Nirman Bhawan,
New Delhi -110011.

4. Shri D.K.Seth,
Director,
Office of Dev. Commissioner (SSI),
Nirman Bhawan,
New Delhi-110011.

.....Respondents.

By Shri M.M.Sudan, for official respondents,

and Shri S.S.Tewari, Advocate for respondent No.4.

JUDGMENT

In this application, Shri N.N.Debnath,
Deputy Director, Development Commissioner (SSI)
Office, New Delhi has impugned the order dated
17.10.94 (Annexure-A1) transferring him from
headquarters office to CFTC , Madras.

(6)

2. Shortly stated, by notification dated 12.10.94 (Annexure-A3), the applicant was promoted as a Director (Leather/Footwear) on adhoc basis for a period of one year w.e.f. 22.9.94 and by order dated 22.9.94 (Annexure-A2), he was ordered to be retained in the Headquarters Office vice Shri D.K.Seth (respondent No.4), who was transferred to CFIC Madras. The applicant alleges that in order to avoid movement, respondent No.4 proceeded on leave, and made all attempts to nullify his transfer from Delhi to Madras. Thereafter, barely a week later, vide impugned order dated 17.10.94 (Annexure-A1), the earlier order was modified and while respondent no.4 was retained at headquarters upon his return from leave, the applicant^{himself} was transferred to Madras. It is ~~against~~ⁱⁿ this order which has been challenged on the ground that the guidelines for transfer of officers (Annexure-A4) have not been followed, and while the impugned order ~~ostensibly~~ⁱⁿ says that these transfers have been made in public interest, in actual fact, it has been made to suit the private interest of respondent No.4, and, therefore, is a colourable exercise of power and is malafide.

3. The respondents in their reply have denied the allegation that the impugned order dated 17.10.94 involves a colourable exercise of power. They state that the guidelines are only indicative and do not bestow any right on any Officer to seek or resist transfer. It has also been contended that the Additional Secretary cum Development Commissioner, who was the Head of the Department, was fully competent to exercise

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his discretion in the public interest as to which officer should be posted where.

4. I have heard Shri K.B.S. Rajan, learned counsel for the applicant and Shri M.M.Sudan for the official respondents and Shri S.S.Tewari for respondent no.4.

5. Shri Rajan has reiterated the contents of O.A. and has fortified his arguments with the decisions in K.Rama Chandran Vs. UOI - ATC 1994 (27) 650 and H.R.Kamath Vs. Railway Board-1994 (27) ATC 416. On the other hand, Shri Sudan relies upon the judgment delivered in AIR 1991 SC 532 Shilpi Bose Vs. State of Bihar and S.L. Abbas Vs. UOI -JT 1993(3) SC 678.

6. I have given careful consideration to this matter.

7. Admittedly, the applicant was promoted as Director only on adhoc basis, as against ^{which} the respondent No.4 ^{and} ~~who~~ is a Director on regular basis and is much senior to the applicant. As the number of posts are limited, either the applicant or the respondent No.4 has to be transferred out of Delhi and the applicant's promotion as Director being only on adhoc basis gives him no enforceable right to continue in Delhi, at the cost of displacing his senior. Admittedly, both the applicant as well as the respondent No.4 have completed five years in Delhi, ^{and} ~~one~~ or the other has to be transferred out. The official respondents have admitted that by earlier order, the respondent No.4 stood

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transferred upon which he filed a representation and after considering the same, it was decided to retain respondent No.4 at headquarters and transferred the applicant to Madras. Such consideration of a representation cannot by any stretch be construed to mean a colourable exercise of power and a malafide action. The applicant has not alleged either in the O.A. or in the rejoinder that the competent authority namely the Additional ^{Secretary and Asst.} Development Commissioner bore personal animus towards him, to lead one to conclude that the action was malafide.

8. Ub UOI Vs, H.N. Kirtania, JT 1989 (3) SC 131, the Hon'ble Supreme Court has held that transfers should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal, on the ground of violation of statutory rules, or on ground of mala fides. In this case there ~~was~~ ^{has} been no violation of any statutory rule, and they are not sufficient ^{grounds} to hold that the respondents have acted in a malafide manner, to lead one to conclude that the transfer is illegal, which would call for interference by the Tribunal.

9. In the result, this application fails and it is dismissed.

10. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)