

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI



OA. No.1126 of 1994

Dated New Delhi, this Twenty Third day of November, 1994

Hon'ble Shri B. K. Singh, Member(A)

Shri V. K. Wadhwa  
R/o C-1A/43C, Janakpuri  
NEW DELHI.

...Applicant

By Advocate: Shri Hemant Choudhury

Versus

Union of India, through

1. Secretary  
Ministry of Urban Development  
Nirman Bhawan  
NEW DELHI-11

2. The Director  
Directorate of Printing  
Nirman Bhawan  
NEW DELHI-11.

... Respondents

By Advocate: Shri M. M. Sudan

JUDGEMENT

Shri B. K. Singh, M(A)

This application has been filed by the applicant against the order No.31/18/91-A.III(Vol.III) dated 22.12.93 by which the applicant was transferred from the Headquarters Office of the Directorate of Printing to the Department of Publications.

2. The facts of the case are that the applicant has worked for 28 years in the Directorate of Printing in various capacities; as Clerk from 1965 to 1971, Technical Assistant(I.B.M.) from 1971 to 1981 and to date as Accountant in the grade of Rs.1400-2300. While he was



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working as Accountant in the Norms Cell at the Headquarters Office of the Directorate, vide the impugned order dated 22.12.93, he was shifted from Headquarters office Printing Division to the Publication Division under the same Directorate, i.e. Director of Printing who is also in charge of Publications. The Director of Printing and Publications in a minor Head working under the Department of Works and Housing, Ministry of Urban Development. The applicant filed several representations against his shifting from Printing to Publications Division, but to no avail. Aggrieved by the rejection of the representations by the competent authority, the applicant has filed this OA in the Tribunal on 19.5.94.

3. The applicant has prayed for the relief that the impugned order dated 22.12.93(Annexure A-1) be quashed and set aside.

4. A notice was issued to the respondents who filed their reply contesting the application and grant of relief prayed for

5. We heard the learned counsel for the applicant, Shri Hemant Choudhury and the learned counsel for the respondents, Shri M. M. Sudan and perused the record of the case.

(a)

3. It is not a transfer in the strict sense of term. Transfer can be from one station to the other or it can be from one department to the other. If a transfer takes place from one station to the other, a person is entitled to all the transfer TA/DA etc. and joining time admissible to him as per the distance of the destination involved in the transfer. A transfer can be from one department to the other where no TA/DA is admissible. Transfer is necessitated in the exigencies of public service from one division to the other in the same department. The transfer of the applicant falls within this category. He has been shifted under the same Minor Head of the department, i.e. Director of Printing and Publications from one division to the other, i.e. from Printing to Publications. These are not departments. Director of Printing is in charge of Printing Press and Publications both. The Government circular also envisages rotation of non-gazetted employees from one division to the other or from one Desk to the other. The Government instructions also stipulate that in case of sensitive posts, the rotation should take place even before one completes three years. In the OA it has been clearly admitted that the applicant has stayed in the same division right from the stage of Clerk to that of Accountant till his transfer in December, 1993 to another division in the same department of Works and Housing and under the same Minor Head of department, i.e. Director of Printing in charge of Press and Publications. It is actually a shifting from one

(b)

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division to the other.

4. Transfer is an inherent administrative power as has been held by the Hon'ble Supreme Court. Tribunal can interfere only in exceptional cases where malafide or malice is made out. The transfer being one of the terms and conditions of service, is not to be lightly interfered with by Courts and Tribunals. The Hon'ble Supreme Court has categorically stated that transfer of a Government servant is an ordinary incident of service and therefore it does not result in any alteration of any of the service conditions to his disadvantage. This law was laid down by the Hon'ble Supreme Court in the case of B. N. Baripada Vs State of Karnataka (1986(4) SCC 131. The same view has been reiterated in the case of Kamlesh Trivedi Vs ICAR (ATC 1988(3) SCC 445). The law has been finally settled by the Hon'ble Supreme Court in the case of Silpi Bose Vs State of Bihar 1991 LAB IC(SC) 360). In this, while upholding the right of the executive to transfer in the exigencies of public service or in public interest or on administrative ground, they have also observed that Courts or Tribunals should not interfere with an order of transfer made on administrative grounds or in public interest. The Hon'ble Supreme Court has even gone to the extent of observing that transfer being a condition of service, the employee has no choice but to comply

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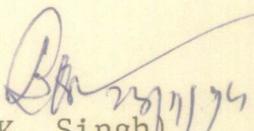
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with it. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules. ~~as xx has xx happened xx in xx x present xx case.~~ The applicant ~~lost~~ his service as he refused to comply with the transfer order from one place to the other. (Gujrat State Electricity Board Vs A. R. Sungomal Poshami AIR 1989 SC 1433). In the instant case, the applicant has not been transferred from one place to the other, but he has been shifted from one division to the other, and, therefore, this observation of the Hon'ble Supreme Court holds <sup>much more</sup> good in the present case. The same view was reiterated by the Hon'ble Supreme Court in the case of UOI Vs H. N. Kirtania (JT 1989(3) SC 131). It was further reiterated in the case of Bank of India Vs Jagjit Singh Mehta 1992(1) SCC 306. The power of transfer is exercised under FR.15 or other corresponding rules. All such transfer orders being administrative in nature, are not lightly to be interferred with by the Courts or Tribunals. In the present case, the applicant has not been able to establish a right to continue in the same division nor has he been able to show that the authority has acted beyond its powers and malafide. Malafide alleged in the case of Ms Sujata Banerjee has nothing to do with the transfer of the applicant. Ms Sujata Banerjee is not

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the competent authority to issue the transfer order, so malafide on the part of Ms Banerjee has no relevance in regard to the transfer of the applicant. Malafide, according to Hon'ble Chief Justice Chandrachud, is a very heavy burden to discharge. "Vague and casual allegations specially that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof." (K. Nagaraja Vs State of A.P. 1985(1) SCC 523).

5. After hearing the rival contentions and going through the pleadings on record, I do not find any merit in this application and the same is dismissed accordingly, leaving the parties to bear their own costs. While parting, I would, however, direct the respondents to complete the service records of the applicant expeditiously so that he does not face any problem when he superannuates after three years from service.

  
(B. K. Singh)  
Member(A)

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