

Principal Bench, New Delhi.

O.A.No.2355/94

New Delhi this the 26th Day of July, 1995.

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

Shri Gokal Chand,
S/o late Sh. Srikaran Singh,
R/o X-1032, New Chand Mohalla,
Raghupura I, Gandhi Nagar,
Delhi-31.

Applicant

(through Sh. M.L. Chawla, advocate)

versus

1. Union of India,
through the Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi-1.
2. Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi-1.
3. Addl. Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
Chandigarh-160019.
4. Sh. S. Jayaraman,
Deputy Director,
Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi-1.

Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This O.A.No.2355/94 has been filed against
the transfer order No.7/C-III/89(73)-3306 dated
19.10.94 read with Office Order No.329/94 dated
8.11.94.

The admitted facts are that the applicant
belongs to Scheduled Caste community and is working in

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Intelligence Bureau and has been subjected to frequent transfers, the last being the impugned order. A miso. petition regarding the stay of the transfer till July was considered by the respondents and subsequently he joined at his new place of posting. Both the parties admit that the applicant having joined, the application has become infructuous. However, the learned counsel for the applicant chose to argue the case on the question of malafidies. It is true that he quoted various orders issued to show that other similarly circumstanced people have been allowed to stay in one place for 3 1/2 to 7 years but the applicant has been subjected to frequent transfers not warranted by the Government circular and guidelines and there is an element of victimisation which has also been forbidden by the D.O.P.T. circular in case of SC/ST. A perusal of the O.A. indicates that the applicant has not been able to complete his normal tenure at one place. The respondents in their counter have stated that he had been leaving the office early and coming late. He used to come at 11.00 A.M. and go away at 4.00 P.M. and this is against the prescribed hours for duty. On this ground alone the applicant was liable to be punished but the respondents did not initiate any proceeding against him and only shifted him and that transfer is a condition of service. The applicant has an all India transfer liability and as such he is liable to be transferred from one part of the country to the other. The Hon'ble Supreme Court in a catena of judgements have upheld the prerogative of Government to transfer its employees on administrative grounds or in public

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interest. The law laid down by Hon'ble Supreme Court is that Courts should decline to interfere unless there is a breach of statutory rules or there is malafide involved. It has been clearly laid down in the case of Gujarat State Electricity Board Vs. A.R. Sungomai Poshani reported in 1989 SC 1433, that transfer from one place to another place is a condition of service and the employee has no choice in the matter. In the case of hardship he can submit a representation but if the representation is rejected, the Government servant has no option but to comply with that order and if he does not comply he is liable to be dismissed from service after initiating departmental proceedings. The same view was reiterated in the case of Bank of India Vs. Jagjit Singh Mehta reported in 1992(1) SCC 306. The same view was held in case of Shilpi bose Vs. State of Bihar (supra) wherein it has been held that the power of transfer is an inherent administrative power and the court should not interfere with an order of transfer on administrative grounds or in public interest unless it is shown that it is arbitrary and malafide. Inspite of the best efforts and also relying on the judgement of Justice D.L. Mehta in case of B.S. Verma Vs. Union of India & Ors, the learned counsel for the applicant could not prove that the transfer order was arbitrary and malafide. Hon'ble Mr. Justice Chandrachud in the case of K. Nagraji Vs. State of A.P. reported in 1985(1) SCC 523 para 36 has observed that "the burden to establish malafide is a heavy burden to discharge. Vague and

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casual allegations suggesting that certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof." (b)

Though the charge of mala fide is not proved and the applicant has already joined his new place of posting and the application is liable to be dismissed, this Tribunal would like to observe that the applicant belongs to S.C. community and as such the respondents may tolerate some of his angularities and try to improve his efficiency and quality of work by showing goodwill gesture towards him and also to allow him to complete his normal tenure in a particular station because though the transfer is a condition of service but there is no doubt that it entails dislocation of the entire family from one place to the other and it costs greater hardship to the children who have to switch over from one medium to the other. It is not always possible for a person to maintain two establishments i.e. to live singly in a transferred place and leave the family behind. This also creates serious problems not for him alone but also for the entire family. This being so atleast in future respondents will take care to see that he is not subjected to frequent transfers and he is allowed to complete his normal tenure unless there are very strong reasons to shift him either on administrative grounds or in exigencies of public service.

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With these observations, this O.A. is dismissed as infructuous but without any order as to costs.


(B.K. Singh)

Member(A)

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