

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1030 of 2000

New Delhi, this the 9<sup>th</sup> day of August, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL.)  
HON'BLE MR. S. A. T. RIZVI, MEMBER (A)

Kiran Pal Singh  
S/o Shri Ram Gopal  
Aged about 35 years,  
R/o S-178A, Pandav Nagar,  
Delhi-110 092.

And employed as

Security Assistant (General)  
PIS No. 103398  
In the Intelligence Bureau,  
Ministry of Home Affairs,  
Petrol Pump,  
North Block,  
New Delhi.

APPLICANT

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India  
Through the Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block,  
New Delhi-110 001.
2. The Director,  
Intelligence Bureau,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.

-RESPONDENTS

(By Advocate: Shri R.V. Sinha)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By filing this OA the applicant has prayed for quashing of the order dated 22.3.2002, Annexure A-1 vide which he had been transferred from IB Headquarters (Petrol Pump) to Aligarh. He has also prayed for quashing of the order Annexure-B vide which his application requesting for cancellation of his transfer to



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SIB Aligarh and his promotion to the rank of J10-11/G had been rejected.

2. The applicant has filed separate OAs challenging the transfer order and seeking the promotion. This OA will deal with the question of transfer.

3. The case of the applicant is that prior to joining the respondents organisation, he was working as Constable with Central Reserve Police Force (hereinafter referred to as CRPF) and served there upto 31.5.1986 and thereafter he came on deputation to the Intelligence Bureau as Security Assistant (hereinafter referred to as SA) with effect from 2.6.86 and was absorbed as SA in the Intelligence Bureau w.e.f. 2.3.93.

4. The applicant further contends that his eligibility for consideration to the next promotion for Junior Intelligence Officer Grade-11 is 8 years service whereas the applicant has rendered nearly 17 years of service and yet he has not been considered for promotion and despite the fact that he had made representations and even the Deputy Director, VIP Security made a significant endorsement on his representation where he had also noted down that his case may be examined as he is the only SA with 13 years service in the IB who has not yet got any promotion.

5. The grievance of the applicant is that the Ministerial Staff dealing with the promotion and transfers did not like the applicant making repeated

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representations and personally meeting senior officers to seek justice and so for that reason it appears that the Ministerial Staff has not taken it in the right spirit and instead of making a proposal for his promotion, made a proposal for transfer, which resulted in the impugned order of transfer Annexure-A.

6. To challenge the order of transfer, the applicant also contends that he has been transferred without a substitute meaning thereby that the post which he was holding at Delhi would be rendered vacant on his transfer so there was no public interest or exigency of service on the ground of which he may have been transferred and it is purely because of the ill-will of the Ministerial Staff that since the applicant was making repeated representations, the Ministerial Staff instead of putting up proposal for his promotion had put up a proposal for his transfer.

7. The next ground taken by the applicant is that for the post of SA, the IB is having a decentralised cadre and this transfer order has been issued with a motive that the applicant when transferred to another unit will lose his seniority and may not get promotion at all. Thus his transfer is mala fide and punitive as such it is stated that the order of transfer is in public interest and the same should be quashed.

8. The respondents are contesting the OA. The respondents submitted that the applicant has not approached the court with clean hands so on that ground alone the OA is liable to be dismissed.

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9. The respondents further admit that the applicant was working as Constable in CRPF and was on taken on deputation as SA and was absorbed w.e.f. 26.3.93 with the concurrence of his department and he was assigned seniority at S.No.445 among the directly recruit SAs/G at IB Headquarters. It is admitted that the cadre of the SA is decentralised cadre but it is stated that there are more than 300 SAs senior to the applicant who are awaiting for promotion as JIO.

10. It is further stated that the applicant has been transferred from IB Headquarters to SIB Aligarh in exigencies of service and for administrative needs of the department. It is submitted that the appointment as Security Assistant with IB carries all India transfer liability and the applicant has accepted the same. Though the cadre is decentralised but the applicant cannot say that he cannot be transferred. Mala fide on the part of the Ministerial Staff is also denied.

11. We have heard the learned counsel for the parties and gone through the records of the case.

12. As regards non-grant of promotion is concerned though the applicant alleges that his seniority should be reckoned from the date he has started working as Constable in CRPF organisation because since he was working in an identical post so as per the judgment of the Hon'ble Supreme Court in Roop Lal and Another Vs. Lt. Governor (2000) 1 SCC 644, the applicant is entitled to count his seniority from the date he had worked as

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Constable in CRPF but the Ministerial Staff with a mala fide motive have not done so. However, in our view this contention with regard to the seniority has to be dealt with separately. The department has taken a plea that there is no wilful mala fide rather the applicant is entitled to reckon the seniority from the date of his absorption and there are 300 SAs senior to the applicant which are still awaiting promotion as JIO. In our view the contention of the applicant that in order to deprive him of his seniority and promotion the ministerial staff is not behaving with him properly has no merits because for that purpose the applicant could have approached the court for getting his right adjudicated and getting his seniority determined. Since the applicant has filed a separate OA for getting his seniority determined so whatever benefit he will get in that OA, he will get with all the consequences. So merely on this ground it cannot be said that any particularly individual who is dealing with transfer/promotion has adopted mala fide attitude towards the applicant and that is why he has not put up his case for promotion. But it is also pertinent to mention here that before the transfer order the applicant has not challenged the seniority list earlier so now this plea of seniority to attack the transfer order cannot be considered in this OA.

13. As regards the cadre being decentralised is concerned, the respondents have admitted that the cadre of SA is decentralised cadre meaning thereby that the seniority of SA is being maintained in the unit wise where he is deputed but at the same time we may mention that the respondents have placed on record a format with



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regard to the recruitment of SAs which shows that the SA also have an all India transfer liability. The applicant's apprehension that after being transferred to another unit he will lose seniority is ill founded because the applicant is being transferred by orders passed by the respondents in public interest or in the exigency of service. Even at the same time he cannot be made to lose his seniority being maintained by his unit where he had been deputed because in that event the department is bound to consider his case for promotion whenever his turn matures or any of his junior is being given promotion. The department would be under legal obligation to consider the case of the applicant also for promotion and since in this case the respondents have stated that there are about 300 SAs over and above to the applicant and his turn for promotion has not matured so merely for that reason the applicant cannot assail the order of transfer when he has an all India transfer liability as per the format filed by the respondents during the course of arguments which shows that the SA has also all India transfer liability and we are sure that when the turn of the applicant will mature for promotion the department will consider his case for promotion.

14. As regards the next plea taken by the applicant that the transfer order shows that he has been transferred without substitute and he wanted that the court should draw an inference that the post available at Delhi will remain vacant. To that we may mention that transfer order Annexure A which says that vide this order about 34 SAs have been transferred from one unit to





another unit and out of these 34 only SA at S.No.7 has been transferred vice Shri Aminchand posted to ITBF Leh whereas all the remaining 33 SAs have been transferred without substitute so it is not the sole transfer of the applicant which is without substitute which may indicate that there is some element of mala fide but the fact that 33 SAs have been transferred without substitute goes to show that it may be practice prevalent in the office of the respondents to transfer the SA even without substitute. It is not the case that the applicant is being singled out without substitute.

15. The applicant also admits that he is in Delhi for last about 17 years which shows that he has quite a long stay in Delhi and since he has got an all India transfer liability so he cannot suggest that his transfer order is tainted with any mala fide.

16. No other contention has been raised before us.

17. In view of the above, OA has no merits and the same is dismissed. No costs.

  
(S.A.T. RIZVI)  
MEMBER (A)

  
( KULDIP SINGH )  
MEMBER (JUDL.)

Rakesh