

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2484/2000

New Delhi, this the 19 day of January, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Krishan Chander,
Vice Consul, ~~5155~~,
Consulate General of India
Houston Applicant
(By Advocate : Shri Ajit Kumar Sinha)

VERSUS

Union of India through its

1. Secretary,
Ministry of External Affairs,
South Block, New Delhi
2. Dr. Vishnu N. Hade,
Deputy Consul General
(HOC) Respondents
(By Advocate : Shri K.C.D. Gangwani)

ORDER

The applicant in this OA is aggrieved by the Respondents' Office Order dated 30th October, 2000 (Annexure-A) by which the decision of the Ministry to recall the applicant has been conveyed with the further stipulation that he was to be relieved from the post of Vice Consul at Houston with immediate effect. The same order also stipulated that the applicant would make necessary arrangement to return to India by 7th November.

2. The facts of this case are simple and brief. The applicant was posted as Vice Consul in the Office of the CGI at Houston vide Respondent No.1's letter dated 17th April, 1998 (Annexure-B). By the said letter, the applicant was transferred from India and appointed against the said post, which was a new post created by

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the Respondents. The aforesaid letter also made provisions with regard to Transfer Travelling Allowance, Joining Time etc as usual. The impugned office order has come as a surprise to the applicant and according to him, he has been recalled as a punitive measure, otherwise he would have been allowed to complete his tenure of three years at Houston. According to the applicant, since his tenure at Houston was to be three years and, therefore, his being recalled prematurely constitute a stigma and has to be looked upon as a measure of punishment inflicted on him.

3. The learned counsel appearing for the Respondents contends that recall, in fact, is a transfer back from Houston to Delhi and the transfer of an official is a routine incident of service and cannot be looked upon as a punishment. According to him, an order of transfer can be challenged only on the ground of malafide or violation of statutory orders. The applicant in this OA, according to the learned counsel, has not disclosed any malafide on the part of the Respondents and no specific statutory rule has been cited by the applicant which could be said to have been breached by the Respondents while recalling him as per the impugned office order.

4. The learned counsel appearing for the applicant has raised several contentions, one of which is that an order of transfer has to be made only in public interest and since the impugned order does not disclose in so

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Q many words that the same has been passed in public interest, it should be regarded as bad in law. I do not find myself in agreement with this view. According to me, as contended by the learned counsel for the Respondents, public interest has to be presumed insofar as transfer orders are concerned unless a different ground is specifically mentioned in the order. For instance, as stated by the learned counsel for the Respondents, if a transfer order is made on the request of the official transferred, the order usually contains a stipulation, that not being in public interest the allowances relating to transfer will not be admissible to the official concerned. The aforesaid plea taken by the learned counsel for the applicant is thus rejected.

5. The learned counsel appearing in support of the OA has next contended that the applicant's case is one of appointment to a new post at Houston and the same should not be regarded as the case of transfer. Accordingly, the applicant's recall, in the way it has been affected has to be regarded, for all intents and purposes as a punishment. In support of his contention, the learned counsel has relied on the use of the word "appointment" made in the subject quoted at the beginning of the Respondents' letter dated 17th April, 1998 (Annexure-B). The same is reproduced below for the sake of convenience:

"Subject : Appointment of Shri Krishan Chander as Vice Consul in CGI Houston against a new post" (emphasis supplied).

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Q I find that in the same letter the sanction of the President has been conveyed to the transfer of the applicant against a new post (emphasis supplied). Clearly, therefore, it is a case in which the applicant, an India based officer, has been transferred to Houston to occupy a newly created post. In the circumstances, the aforesaid plea advanced by the learned counsel for the applicant is found to be untenable and is rejected.

6. The learned counsel for the applicant has next proceeded to contend that the respondents have committed a serious breach of natural justice by not extending to the applicant a reasonable opportunity to state his case against the order of recall which entailed civil consequences. In support of his contention, the learned counsel has relied upon U.O.I. and Ors. V/s E.G. Nambudiri reproduced in JT 1991 (2) S.C. 285. The same, in paragraph 7 thereof provides as under:

"The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi-judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative enquiries."

According to the learned counsel for the Respondents, the aforesaid case is distinguished from the present one

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Q in that it relates to adverse entry made in the ACR of ¹² the applicant. According to him, recording of an adverse ACR normally entails a long term consequence for the career of the affected Government servant and, therefore, the same stands on an altogether different footing. Orders of transfer, on the other hand, are made on administrative grounds and in the exigencies of public service and, as already contended, are to be regarded as mere incidents of service. ~~Furthermore~~

~~from~~ The argument of civil consequence flowing from a transfer order can be advanced practically in all cases and therefore it will become impossible to transfer govt. officials on administrative ground and in the exigencies of public service if the principles of natural justice requiring issue of show cause notice are observed in such cases. Public administration will be rendered that much more difficult and often impossible. Furthermore, from the paragraph reproduced above, I find that according to the Hon'ble Supreme Court, the principles of natural justice find application in administrative enquiries. In the present OA, no such enquiry appears to have been made nor one was found to be necessary. The applicant has also not claimed that any such enquiry was made by the Respondents before he was recalled. In the circumstances, the aforesaid contention raised by the learned counsel for the applicant is also rejected.

7. The learned counsel appearing for the applicant has next referred to Article 77 of the Constitution,

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under Clause (3) of which the President is required to make rules for the more convenient transaction of the business of the Govt. of India. According to him, the rules framed by the President under the aforesaid Clause lead to administrative instructions which, in turn, lead to the guidelines framed for various purposes including for the purpose of affecting transfer of Govt. servants. Thus, according to him, the administrative instructions/guidelines relied upon by the respondents for the purpose of transfer should be ^{2 taken 2} to have the same sanctity as a rule framed by the President. Committing of a breach of the administrative instructions/guidelines, should, therefore, be, ^{2 regarded, 2} according to the learned counsel, ~~regarded~~ as breach of a rule, and in this view of the matter, the premature termination of the normal tenure of 3 years forming part of the guidelines is to be regarded as bad in law. The learned counsel appearing for the respondents has seriously disputed the aforesaid reasoning advanced by the learned counsel for the applicant. He has, in this context, made a reference to Rule 8 (2) contained in Annexure XII of the Hand Book of Rules and Regulations relating to the Indian Foreign Service Volume I (Corrected upto June 30, 2000). The same provides as follows:

"8. Journey on recall:- (1) A journey on recall means a journey from a place abroad, at which an officer is posted to India, performed by an officer and entitled members of his family and Indian servants, when:-

- (i) xxxxxxxx
- (ii) xxxxxxxx
- (iii) xxxxxxxx

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(7)

(iv) xxxxxxxx

(v) xxxxxxxx

(vi) the officer has been recalled to India under the provisions of sub-para (2) or sub-para (3) below.

(2) If the Ministry is satisfied that the conduct of an officer posted abroad or of any member of his family or any person living with him and under his general control:-

(i) has prejudiced or is likely to prejudice the maintenance of friendly relations between India and a foreign country; or

(ii) has brought or is likely to bring India into disrepute; or

(iii) has caused or is likely to cause embarrassment to the Government of India; or

(iv) has occasioned or is likely to occasion a breach of their security regulations of the Government of India or a danger to security; or

(v) has occasioned or is likely to occasion the commission of an act which may constitute an offence under the Indian Penal Code; or

(vi) involves moral turpitude; or

(vii) involves a serious breach of the Conduct Rules of his Service.

the Ministry may compulsorily recall the officer to India."

It would be seen that the aforesaid provision flows from a Memo dated 31st March, 1962 issued by the Ministry of External Affairs. It would appear from the aforesaid provision that action to recall can be taken for one or more of the reasons mentioned therein. However, the same provides only for recall or in another words, for the transfer back of an officer, and nothing more. The same clearly does not provide for any formal punishment which would necessitate observance of the rules of

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natural justice. Transfer, on whatever ground, cannot be treated as a punishment and has not been listed as such in any of the Rules framed by the Government in respect of disciplinary matters. The reasons mentioned in the aforesaid extract, no doubt, refer to certain acts which might and could as well lead to formal disciplinary action also against an officer, but in that situation, the disciplinary authority will, no doubt, proceed in accordance with the prescribed rules which necessitate observance of the rules of natural justice. In the same context, the learned counsel for the Respondents has placed reliance on Union of India & Ors versus S.L. Abbas decided on 27.4.1993. In that case, I find, the Hon'ble Supreme Court has dealt with a case of transfer though on a different ground. However, in deciding the case, the Supreme Court has made the following observations:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."(emphasis supplied)

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8. According to what the Supreme Court has observed, as above, the Respondents are no doubt obliged to keep the transfer guidelines in mind, but the existence of guidelines cannot confer upon the Government employee a legally enforceable right. In deciding the aforesaid case, the Supreme Court was aware of a representation made in that case by the applicant and had observed that the concerned authority was supposed to consider the same having regard to the exigencies of administration. In the present case I find that the applicant has not filed any representation at all, at any stage, against the impugned order of recall. The ground taken by the applicant that since he was relieved all at once, he had no opportunity to represent is not acceptable. After all, he succeeded in securing a stay order from this Tribunal in accordance with which he, though relieved of his duties at Houston, remained in transit for quite some time. During this period he could file before instituting the present OA a proper representation before the respondents. He has failed to do so.

9. The learned counsel for the Respondents has also drawn my attention to the following provisions made in the IFS (PLCA) Rules at page 17 of the Hand Book (supra):-

"24. Classification of station and home leave passage -

(1) xxxxxxxx

(2) The normal period of posting of a member of the Service at each category of

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post shall be as specified by the Government. The normal period of posting may be curtailed or extended by the Government in the exigencies of the public service."(emphasis supplied)

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It would appear there from that a definite rule exists which in no unmistakable terms stipulates that the normal period of posting of an officer can be curtailed by the Government in the exigencies of public service. According to me, this is precisely what the respondents have done in the present case and the same is wholly covered by the aforesaid rule. The related contention raised by the learned counsel for the applicant is also, therefore, rejected.

10. In the background of the aforesaid detailed discussions, I do not consider it necessary to go into the various other rulings cited by their learned counsel for the applicant on the ground that the facts and circumstances of the present OA are materially different from the facts and circumstances disclosed in those other cases. If anything, I would be more inclined to rely on what the Hon'ble High Court of Delhi had to say in Abhijit Biswas Vs Ministry of External Affairs decided on 11.9.2000, a copy of which has been placed on record by the Respondents. The ratio of the said judgement/order is that India based employees working in the Indian Embassies abroad can be repatriated on administrative grounds. The present case would appear to be covered by this decision/order.

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11. For all the reasons mentioned in the preceding paragraphs and having regard to the fact that the applicant already stands reverted to India and has been working in the Office of the Respondents in Delhi, I find absolutely no force in the present OA, which is dismissed as being devoid of any merit and also because it has become infructuous.

12. No costs.

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

(pkr)