

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2633/2000

New Delhi, this the 2nd day of January, 2001.

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

Shri S.D.Singh S/O Late Shri Guru Dayal
Singh, R/O 3/10, Kendriya Vidyalaya
Teachers Colony, Air Force Station, Agra.

Presently working as

Deputy Director, National Sample Survey
Organisation (FOD) Agra.

....Applicant.

(By Advocate: Shri M.C. Dhingra)

VERSUS

1. Union of India, through its
Secretary, Ministry of Statistics
and Programme Implementation,
Sardar Patel Bhawan, New Delhi.
2. Director, Department of Statistics
and Programme Implementation,
Ministry of Statistics and
Programme Implementation, Sardar
Patel Bhawan, New Delhi.
3. Director (Admn.), National Sample
Survey Organisation, (Field
Operations Division), Ministry of
Statistics and Programme
Implementation, C/3rd Floor, Pushp
Bhawan, Madangir Road, New Delhi.

...Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R (ORAL)

After hearing the learned counsel on either side,
the following orders were passed on 2.1.2001.

"2. For reasons to be recorded separately,
the impugned transfer orders dated
1.12.2000 and 17.11.2000 are quashed and
set side. The applicant will consequently
stay on in Agra. The interim order passed
on 15.12.2000 has thus become infructuous."

2. I now proceed to record my reasons in support of
the aforesaid order.

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3. The applicant in this OA who is a Deputy Director in the NSSO at Agra and belongs to the Indian Statistical Service, is aggrieved by the orders dated 17.11.2000 and 1.12.2000 by which he has been transferred from Agra to New Delhi. As a matter of fact, the latter order has been passed and is based on the earlier order of 17.11.2000.

4. When the matter first came up before this Tribunal, an ad-interim order was passed on 15.12.2000 staying the operation of the original transfer order dated 17.11.2000. By virtue of the aforesaid order contained in para 1 above, the aforesaid stay order has become infructuous.

5. Vide order dated 26.10.97, the applicant was promoted to the rank of Deputy Director and was transferred to Agra at his own cost and it was at Agra, which is his home town, that he wanted to reside and settled down after retirement. The applicant's superannuation is due on 31.3.2002. Later, as his son was pursuing his studies at Delhi, the applicant requested for transfer to Delhi. His request was granted and he was transferred to Delhi vide respondents' order dated 26.5.2000. Since this transfer had been made on the applicant's request, the aforesaid order clearly showed that the applicant would not be entitled to transfer TA etc. However, soon thereafter, the aforesaid order of 26.5.2000 was cancelled by the respondents vide their order of 5.7.2000 without assigning any reason.

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The applicant accordingly assumed that his request for transfer to Delhi stood rejected and since by this time his son was nearing completion of his studies at Delhi, the applicant felt reconciled to the circumstances resulting from the cancellation order dated 5.7.2000. The applicant's wife also happens to be serving at Agra as T.G.T. in Kendriya Vidhayala. Following the aforesaid cancellation order, therefore, the applicant got busy in making arrangements for his post retirement life at Agra which as stated is his home town. In the circumstances, the applicant was greatly shocked to receive the respondents' order dated 1.12.2000 communicating thereby the order of his transfer once again from Agra to Delhi. This order would appear to have been made in the public interest and not in the light of the applicant's request inasmuch as the payment of transfer TA etc. involved in the applicant's transfer was to be borne by the respondents.

6. The learned counsel for the applicant has questioned the aforesaid transfer order in the light of the provisions made in the policy followed by the respondents in the matter of transfer etc. of ISS officers. A copy of the said policy dated 29.4.99 has been placed on record at Annexure A-4. Para 8 thereof provides as follows:-

"8. An officer with less than three years of service left before super annuation shall not be transferred, as far as possible, from that station unless specifically requested by him or on administrative compulsion...."

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7. The learned counsel has argued that the impugned transfer order is based neither on the applicant's request nor has been made on the basis of any administrative compulsion. That the impugned order has not been made on the basis of the applicant's request is self-evident inasmuch as the impugned transfer order, as already stated, makes a provision for the payment of transfer TA etc. to the applicant. What has to be seen, therefore, is whether there were in existence reasons enough to conclude that the applicant was transferred on the basis of administrative compulsions.

8. A perusal of the pleas advanced by the respondents in their reply reveals a somewhat confusing picture. For instance, at one place the respondents have pointed out that the applicant has never mentioned that his request for transfer to Delhi might be treated as withdrawn, implying thereby that the impugned transfer order by which the applicant has been transferred to Delhi could as well be covered by the request earlier made by the applicant. The fact of the matter, however, is that by the impugned transfer order, the applicant has been transferred in the public interest and not on the basis of his request made way-back in December, 1999 and which had already been acceded to in May, 2000.

9. The respondents have next tried to build up a case of administrative compulsion. Accordingly, they have in their reply stated as follows:-

"4.18 Now, the respondents have also received certain complaints against the applicant regarding irregularities committed by him while holding the post

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of Deputy Director, RO, FOD, NSSO, Agra. In the light of the above complaints and keeping in view the fact that there should be proper investigation in the matter to arrive at truth, it is necessary that the applicant should not be allowed to continue as Deputy Director, FOD, RO, FOD, NSSO, Agra, who is incharge of Regional and sub-regional offices Agra region."

The learned counsel appearing for the applicant has categorically asserted that no complaints of the sort referred to above were available with the respondents when the impugned transfer order was passed. On being asked to clarify the position, the learned counsel for the respondents has not been able to provide any detail whatsoever of the complaints, if any, received against the applicant. The learned counsel sought spot instructions/clarifications from the Departmental Representative present in the Court. Even then, he could not place before me a satisfactory picture about the complaints, if any, received against the applicant. For instance, the aforesaid Deptt. Representative, at one stage, clarified that certain complaints had been made over the telephone and a little later, further clarified that no enquiry whatsoever had been made into the complaints with a view to make sure that a prima-facie case existed against the applicant before the transfer orders were passed. Clearly, therefore, the respondents are prevented from advancing a genuine ground of administrative compulsion in support of the impugned transfer order.

10. The learned counsel for the respondents has next contended that the transfer orders cannot be interfered with by the Court except on the ground of malafide/bias

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or unless the orders are in violation of a statutory provisions. In support of this contention, the learned counsel has placed before me the judgement/order dated 27.4.93 of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. S.L. Abbas reported as (1993) 4 SCC 357. In the present case, I find, the impugned orders do not contravene any statutory orders. However, the same are liable to be questioned on the ground of malafide. The applicant, it is admitted, is going to superannuate on 31.3.2002, i.e., within 15 months from now. The transfer policy formulated by the respondents clearly provides for two different situations in which an officer so close to superannuation can be shifted out on transfer. These are: own requests or administrative compulsions. It has already been stated that the impugned order has not been made on the request of the applicant. It has also² been brought out that the respondents, at the time of hearing, failed to substantiate, even on a prima facie base, the existence of complaints of irregularities against the applicant so that the impugned order of transfer on the ground of administrative compulsion could be justified. After a careful perusal of the aforesaid judgement of the Supreme Court, I find that the facts and circumstances of the present case are distinguishable from the facts and circumstances of the case decide by the learned Court. Furthermore, there is a catena of judgements of the Supreme Court and various High Courts to the effect that administrative action should not suffer from the vice of arbitrariness. The impugned order, I find, not only raises a question mark as regards the bonafide of the

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(7)

respondents but also suffers from the vice of arbitrariness apart from showing a total non-application of mind. It is accordingly not possible to sustain the impugned orders which deserve to be quashed and set aside.

11. In the circumstances, the OA is allowed as stated in para 1 above without any order as to costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

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