

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

R.A. No. 32 of 1994

IN

O.A. No.2608 of 1993

Dated New Delhi, the the 19th day of April, 1994

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

Union of India, through

1. The Secretary
Ministry of Defence
South Block
New Delhi.
2. Director General
Ordinance Services
MGD Branch, Army HQ
D.H.O. P.O. South Block
New Delhi.

... Applicants

By Advocate Shri H. K. Gangwani

VERSUS

Shri R. Biswas
D-1/A-20
Lodhi Colony
NEW DELHI-3.

... Respondent

By Advocate Shri A.S. Dhupia

O R D E R

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

This R.A.No 32/94 in O.A.No.2608/93 in the matter of R. Biswas as applicant versus U.O.I. & Ors has been filed against the judgement and order dated 20th December, 1993 delivered by the Central Administrative Tribunal, New Delhi. It was an ex-parte order without giving the respondents an opportunity to be heard. The order was also passed on the basis of certain facts which were not brought before this Tribunal while arguing the case by the learned counsel for the applicant in O.A.

2. The facts which were not brought before the Tribunal were that Shri R. Biswas had been

struck off strength u.e.f. 10th November, 1993 and

that he had also been given the Movement Order

8

through S.O.S. to his new unit w.e.f. 4th November, 1993. These were material facts which were not brought to the notice of the Tribunal when the case was argued.

3. The power of transfer is an inherent administrative power and may be exercised in respect of an employee unless that employee has been specifically recruited and appointed only for a particular post. The competent authority is empowered to effect transfer on completion of tenure of a Government servant in the form of general routine transfers. The competent authority is also empowered to make transfer in the exigencies of public service or transfer on promotion, or transfer on administrative ground. The competent authority is also vested with the power of effecting transfer on compassionate ground or mutual transfer without payment of any TA/DA to the employee concerned. The Hon'ble Supreme Court in the case of K. Gopaul Vs U.O.I.(1967) 3 SCR p.627; Paresh Chandra Nandi Vs. Controller of Stores(1970) s SCC 870, Shanti Kumari Vs. Regional Deputy Director(1981) 2SCC 72 and Dr C. C. Kar Vs WB(1986) 90 CWN 88 have upheld the validity of the aforesaid type of transfers effected by competent authorities. Tribunal, in the case of Mon Mohan Singh Vs U.O.I. (1988) 6 ATC 218 and Amrik Singh Vs UOI(1986)1ATC 265(CAT Delhi)

9

have also upheld the power of transfer in all such

cases. Only in exceptional cases where malafide or malice is made out that a transfer can be interfered with by the Tribunal.

4. Coming to the facts of this case, the learned counsel for the respondent, Shri A. S. Dhupia, argued that this RA is not maintainable, and he further stated that the Review Applicants should have gone in appeal to the Hon'ble Supreme Court because none of the three grounds for review are available to the Review Applicants in the present case.

5. It is difficult to accept the argument of the learned counsel. It is true that the Tribunal has no inherent power of review. It exercises the power under Order 47 Rule 1 CPC read with Sec 114. The power of review lies from the discovery of a new and important matter of evidence which could not be produced before the Tribunal at the time of hearing. In the present case, no notice was served on the respondents in the O.A. and as such the fact of the applicant having been relieved on 4th November, 1993 and Movement Order issued to him on the same date with S.O.S. to Pune, the unit where he was required to report, was not brought to the notice. This fact could have been brought to the notice of the Tribunal by the respondent when ^{notice} a could have been served on them and they could have been given a chance to

produce the evidence of this fact. If this

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10

evidence could have been produced, there could not have been an order of stayal of the transfer order. This fact was in the knowledge of the applicant and also in the knowledge of the learned counsel for the applicant ^{in O.A.}. But these facts, in the interest of natural justice and fair play, should have been produced before the Tribunal, but were not produced. Thus, the order was passed on a mistaken notion that the transfer order has not been implemented.

6. The facts of the rulings quoted by the learned counsel for the respondent have no bearing on the facts of the present case. The cases referred are: AIR(1980) 1SC 674 Northern India Caterers(India)Ltd. Vs. Lt. Governor of Delhi and ATR 1989 1 CAT p.61. In those cases two parties had been heard. In the instant case, the Review Applicants who were Respondents in the O.A.2608/93 were not given an opportunity to be heard and to place their point of view. No notice was served on them and therefore there was a material omission ^{with the result that} ~~in the sense of~~ certain vital facts like the release of Shri Biswas and his movement order on the same date and communicated through S.O.S. to the Reporting Unit, Pune, were not brought to the notice of the Tribunal on that date when the orders were passed. These were vital facts which ^B could have been placed before the

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the knowledge of the applicant and his learned counsel was not produced and this resulted in passing the ex-parte judgement based on hardship and compassion only ignoring facts of the case and the discipline, of the latter being a paramount importance even in case of civil employees of the Armed Forces. Thus, these all ended in a legal lacuna also since these were not based on facts. The order dated 20th December, 1993 was contrary to the facts on records of the case.

7. The learned counsel for the respondent argued that the respondent belongs to SC and he quoted a circular which only says that there is a tendency on the part of the authorities to harass members of SC/ST. These are not true in the case of the present respondent. He has not been harassed by any-one nor is there any discrimination meted out to him. The two cases cited by him of Shri S. K. Gupta and Shri V. K. Agarwal are not comparable to the case of the respondent. The policy of transfer has been evolved by Army HQs and circulated vide their letter No. A/09394/Policy/OS-8 D - dated 22nd October, 1992. Therein it is stipulated that an officer is required to have a tenure of only six years in Delhi station. This is contained in para 3 of this policy letter. The Tribunal or the Court cannot interfere with the policy decision of the executive. It is in the interest of the work ethos and discipline that such policies are

framed by the Government and these policies are within the domain of the executive and as such there is hardly any scope for interference by the Tribunals or Courts unless it is shown that the policy is against any provision of the Constitution or Statutory Rules. The policy has not been challenged and it has not been shown that this is arbitrary, perverse or it is against any provision of Constitution or any Statutory Rules, and as such the validity of this policy decision evolved by the Army HQs cannot be questioned. The material

8. The material averments in the R.A. is that the Delhi station constitutes ^{one} group of units located in the Union Territory of Delhi viz., Army HQs, OD Shakur OS Directorate, Basti, COD Delhi Cantt., CVD Delhi Cantt. OSS 505 Army Base Workshop. These have also been referred as constituting one group of units in para (c)(i) of the present policy. The transfer of Shri S. K. Gupta and Shri V. K. Agarwal has no bearing on the case of Shri R. Biswas. Shri S. K. Gupta has been brought to Army HQs from C.O. Delhi Cantt. and till date Shri Gupta has served only for 3 years and 6 months which includes his tenure of COD Delhi also as against 6 years minimum tenure specified. Similarly, Shri V. K. Agarwal has been side-stepped to the Army HQs from COD Delhi Cantt. and the officer till date has served for 4 years in Delhi station which includes his stay at COD Delhi. Shri Biswas has stayed ^{for more than 10 yrs} in Delhi

3

as against stipulated policy of six years and thus his case is completely distinguishable from those of Shri S. K. Gupta and Shri V. K. Agarwal who were brought in the picture at the time of ex-parte hearing without mentioning these facts. This was another material omission on the part of the respondent and his learned counsel. Shri Biswas has already over-stayed by 4 years since he has spent ten years as against the policy of six years prescribed for stay in Delhi.

9. Even to-day, the learned counsel for the respondent, Shri Dhupia only referred to the case of hardship. Hon'ble Supreme Court, as cited in the rulings above, have laid down ^{that} Courts should not interfere with the transfer orders unless there is malafide. It may be pointed out that the charge of malafide or malice alleged by the learned counsel for the respondent is not directed against anyone but against the Army HQs or Director General in ^{general} ~~particular~~. Mere accusation or allegation without strict proof and concrete evidence, cannot be accepted. Malafide is easy to allege but difficult to prove. It requires concrete instances to show that there was malafide on the part of the employer in effecting the transfer order. As per policy evolved by Army HQs dated 24th October, 1992, 14 officers have also been transferred and they have

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complied with the transfer orders. The DG(OS) being the Head of the Department, is competent authority to issue transfer orders of officers serving under him. Shri Biswas has not been transferred to a far off place nor to an insignificant place. Shri Biswas has been transferred to Dehu Road, Pune and in the same status as he was holding in Army HQs as a CSO. All transfer orders are issued in public interest. As already stated, some orders are on compassionate ground, administrative/disciplinary ground ^{and someone} or mutual transfers. The present transfer is based on a definite policy evolved by the Army authorities i.e. DGOS and officers have been rotated on the basis of their tenure. There has been no discrimination or harassment to anyone. At least there is no ^{evidence} ~~mention~~ on record to show this. The fact that officers have school-going children and family to look after, cannot be a ground to interfere with the transfer based on a specific policy evolved by the authorities. When one opts for a service, transfer is one of its ^{inherent} conditions and hardship is certainly entailed when a transfer takes place because there is dislocation.

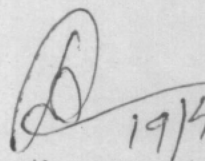
10. Taking a synoptic view of the facts and circumstances of the case, the RA is allowed and

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the order and judgement dated 20th December, 1993

are recalled, leaving the parties to bear their
own costs.


19/4/94
(B. K. Singh)
Member (A)

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