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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1141/ 1989
~~T.A. No.~~

DATE OF DECISION October 6, 1989.

Shri H.C. MALHOTRA Applicant (s)

Shri R.L. Sethi Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Mrs. Raj Kumari Chopra Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.

No.

No

JUDGEMENT

The applicant, who is a Lower Division Clerk in the office of Joint Chief Controller of Imports & Exports (C.L.A.), New Delhi, has challenged in this application under Section 19 of the Administrative Tribunals Act, 1985, Office Order No.40/89 dated 15.5.1989 by which he has been ordered to be transferred in the public interest from CLA, New Delhi to Moradabad, and has prayed that the impugned transfer order be set aside. As an interim order, he requested for stay of the operation of the impugned order. The interim stay granted on 2.6.1989 was not continued when the case came up on 7.6.1989 for hearing on interim relief.

2. The impugned transfer order has been challenged on the following grounds: -

- (1) That it is not honest, bonafide or reasonable or in the public interest;

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- (2) that it stems out of malice in law to punish the son for the alleged misconduct of his father;
- (3) that it has the effect of uprooting the applicant's family since he has already got his children admitted in the next higher classes paid their fees and purchased books etc.;
- (4) that the applicant is neither senior with longest stay in Delhi nor juniormost and he has been arbitrarily discriminated;
- (5) that it is punitive;
- (6) that the transfer is not within the zone where he is reckoning seniority; and
- (7) that it violates the guidelines laid down by the Full Bench of the Central Administrative Tribunal in the case of Shri KAMLESH TRIVEDI Vs. I.C.A.R. & Another.

3. The respondents, in the counter-affidavit, have stated that the order has been issued in public interest and the allegations of arbitrariness, malice and the order being a 'fixed' one etc. have been denied. They have also raised the plea of constructive resjudicata as the order of the applicant's transfer to Moradabad issued on 2.5.1988 was challenged by him in O.A. 875/88 before the Principal Bench of the Central Administrative Tribunal; in that application he had taken all the pleas which he has now taken in this application; and the case was decided on merits.

4. In his rejoinder-affidavit, the applicant has asserted that the impugned transfer order in this case has no nexus with any past, present or future orders on the subject and that it is quite independent and bears no reference to any past orders.

5. I have gone through the pleadings of the parties and have also heard their learned counsel.

6. It is not disputed that there are no statutory rules on the subject of transfer which might be applicable

to the applicant. No administrative instructions / guidelines have been produced or cited by either party. The impugned order is stated to have been issued in the public interest and exigencies of service and that for a new office at Moradabad, a mix of senior and experienced staff with comparatively junior staff is considered administratively necessary. The application filed by the applicant in O.A. No.875/88 is also on the file of this case. That application along with the judgement delivered on 21.10.1988 establishes beyond any doubt that the grounds of attack on the impugned transfer order in this application are virtually the same as in O.A. No.875/88. The findings of Hon'ble Mr. Ajay Johri, Member (A), who delivered the judgement in that O.A. were that there was no element of mala-fide or unreasonableness in the order of transfer issued by the respondents. The judgement also shows that during the oral hearing, a submission was also made by the applicant that he had no objection if 'he is transferred at the end of the scholastic session, i.e., some time in April, 1989'. The direction in the judgement in regard to the issue of transfer was as below: -

"9. (ii) The applicant should be continued in Delhi till the end of the present scholastic session, i.e. 30th April, 1989, as stated by the learned counsel for the applicant. Thereafter the respondents, if they so desire, will be at liberty to transfer the applicant out of Delhi."

7. From the above, it is clear that the impugned order of transfer in this case before me is really a fall out of the decision in O.A. No.875/88 on the same subject of the applicant's transfer to Moradabad and in consonance with the submissions/undertaking given by the applicant in that case. Therefore, the allegations of arbitrariness, mala-fide, etc. are not tenable. In view of this, the reliance by the applicant on the Full Bench judgement of the Central Administrative Tribunal in the case of Shri KAMLESH TRIVEDI

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Vs. I.C.A.R. and Another (O.A. No.770/87 decided on 27.4.88) is not relevant, and in any case, no violation of the principles enunciated therein has been established, as is clear from the judgement in O.A. No.875/88 (supra).

8. In view of the above discussion, I see no merit in this application, which is accordingly rejected. The parties shall bear their own costs.

Cc 6/10/87
(P.C. JAIN)
MEMBER(A)