

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1373/ 1989.

DATE OF DECISION September 27, 1989.

Shri G.S. BADHAN _____ Applicant (s)

Shri R.S. REEN _____ Advocate for the Applicant (s)

Union of India & Others _____ Respondent (s)

Shri P.P. KHURANA _____ Advocate 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 ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no.*
4. To be circulated to all Benches of the Tribunal ? *no.*

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was posted as Engineer-Officer Incharge in the Monitoring Station at Jalandhar under the administrative control of the Ministry of Communications (Department of Telecommunication), has challenged order dated 29.6.1989 (Annexure A-1 to the application), whereby he was transferred with immediate effect from Monitoring Station, Jalandhar to Monitoring Station, Ajmer as Inspection Engineer, and has prayed for the following reliefst -

"the Hon'ble Tribunal be pleased to issue suitable directions or orders quashing and setting aside the impugned orders with suitable directions to the Respondents that the Applicant be kept at the Monitoring Station, Jalandhar till the date of his retirement from service on the 30.6.1990.

Or

The Hon'ble Tribunal may pass such other orders as it may deem fit and appropriate on the facts and circumstances of the case."

Dear

2. Relevant salient facts of the case are given below: -

The applicant was selected as a Technical Assistant Grade II in the Ministry of Communication in August, 1960. In May, 1978, he was ultimately promoted on a regular basis to the post of Engineer (Inspection) in the old scale of Rs.700-1300 and posted at Jalandhar. In September, 1978, he was posted as Engineer-Officer Incharge in the Monitoring Station at Jalandhar where he was working till his transfer to Ajmer. In connection with the selection of a Peon for the office at Jalandhar, an anonymous complaint was received at the Headquarters alleging taking of bribe by the applicant from one of the candidates. Respondent No.3 was deputed by the higher authorities to proceed to Jalandhar to preside over the selection for the post of Peon and also to look into other matters of the office at Jalandhar. He submitted a report on his visit. Certain serious irregularities/indiscipline were reported. The respondents decided to transfer the applicant with a view to removing him from the scene so that further investigations could be carried out and the impugned transfer order was thus issued. An ad-interim order restraining the respondents from implementing the impugned order till 27.7.1989 was issued by the Tribunal on 13.7.89. The stay order became infructuous as per order passed on 4.8.1989 by Hon'ble Shri B.C. Mathur, Vice Chairman, because it was reported by the learned counsel for the respondents that the new incumbent had taken over the charge at Jalandhar on 6.7.89 i.e., a week before the interim stay was granted.

3. The applicant has pleaded that the impugned transfer order is against the instructions of the Government, according to which a Government servant should not be ordinarily transferred within two years of his date of superannuation and because the applicant was due to retire on superannuation on 30.6.1990, the order is violative of the instructions of the Government. He has also pleaded mala-fides against respondent No.3 and further that the orders have been issued as a punishment on the basis of wrong allegations against him in the anonymous complaint.

He has also contended that the impugned order of transfer is the result of colourable exercise of powers vested in the respondents.

4. The respondents, in their written statement, have refuted the above contentions of the applicant and stated that the transfer order of the applicant was passed in public interest to enable the respondents to be able to inquire objectively into the complaints against the applicant and that the matter of taking disciplinary action is also under consideration.

5. It is not disputed that there was an anonymous complaint against the applicant alleging that he had taken bribe in connection with the impending selection for the post of a Peon in the office of which the applicant was at that time 'Head of Office'. The respondents have filed a copy of this complaint as Annexure 'R' to the written statement which alleges receipt of a bribe of Rs.3,000 by the applicant in two instalments, first of Rs.500 and the second of Rs.7,500. The applicant contended that this was not the anonymous complaint which was shown to him by Respondent No.3 on his visit to his office, as the copy of the complaint filed by the respondents is in Hindi while the complaint shown to him was in Punjabi. Respondents have denied this. Respondents have admitted that the anonymous complaint was shown to the applicant at Jalandhar, but have stated that the complaint shown to him was the same, a copy of which has been filed along with the written statement.

6. The report of Respondent No.3 on his visit to Jalandhar on the instructions of his superior authorities was read out at the bar. This report casts reflection on the conduct of the applicant as well as functioning of his office and made a suggestion that the applicant's transfer may be considered pending further inquiry. The report was considered by the respondents and the competent authority decided to transfer the applicant. The fact that the applicant was due to retire in June, 1990 was also considered. The instructions to the

(cont)

effect that a Government servant should not ordinarily be transferred within two years prior to the date of his superannuation were not disputed, but it was argued by the learned counsel for the respondents that these are guidelines for departmental officers and does not confer any right on a Government servant. It was argued that this is not an ordinary case of transfer as the competent authority came to the conclusion that the transfer was essential to remove the applicant from the scene before further inquiries could be conducted.

7. The applicant has alleged mala-fides against Respondent No.3. It was also argued at the bar that Respondent No.3 has not filed any personal affidavit refuting the allegations against him. The learned counsel for the respondents argued that the visit by Respondent No.3 to the office of the applicant was on the instructions of the higher authorities and not on his own volition. Further, the transfer order has not been passed by Respondent No.3, but was issued under the orders of the competent authority. It was further contended that no particulars/mala-fide had been mentioned and the applicant had miserably failed to discharge the onus cast on him under law to establish the mala-fides alleged by him.

8. I have carefully considered the pleadings of the parties and the oral arguments by the learned counsel at the bar. In view of the facts and circumstances of the case, I find that this is not an ordinary case of transfer and the instructions of the Government to the effect that ordinarily a Government servant should not be transferred within two years prior to his superannuation have not been violated in this case as a conscious decision was taken to transfer him pending further inquiries into the complaints against the applicant. It cannot be said to be a colourable exercise of powers. I agree with the contention of the respondents that the applicant has failed to establish the mala-fides against Respondent No.3. In any case, the transfer order was not passed under orders of

Respondent No.3 and, therefore, the allegations against him in that respect are not really relevant. No rules have been shown to me by the applicant which may have been violated. In the case of UNION OF INDIA & ORS. Vs. SHRI H.N. KIRTANIA (Judgements Today 1989 (3) S.C. 131), a Division Bench of the Supreme Court observed as below: -

"5. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

In the case before me, I do not find either violation of any statutory rules or any mala-fide or any other strong ground for interfering in the impugned transfer order. The applicant has already been relieved of his charge at Jalandhar as already stated above.

9. In view of the above discussion, there is no merit in this application, which is rejected. The parties shall bear their own costs.

(C. C. 27/9/89)
(P.C. JAIN)
MEMBER(A)