

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No.O.A. 1674/1989.

DATE OF DECISION: March 23, 1992.

Onkar Singh Chandel

....

Applicant.

V/s.

Union of India & Another

....

Respondents.

CORAM:

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

Shri B.B. Raval, counsel for the applicant.

Shri J.C. Madan, proxy counsel for Shri P.P. Khurana,
counsel for the respondents.

JUDGMENT

The applicant is aggrieved by his transfer from the Headquarters office of the Research and Analysis Wing (for short, R&AW), Cabinet Secretariat, Government of India, New Delhi, to J&K, vide Order dated 6th April, 1989 (Annexure A-2) and Memorandum dated 8th August, 1989 (Annexure A-9), by which he was relieved from his duties with the direction to report to Deputy Commissioner, SB Jammu, after availing of usual joining time. He has prayed for quashing of the above two impugned orders on the grounds of being arbitrary and malafide, and for a direction to the respondents to allow him at Delhi and continue his medical treatment to the complete satisfaction of his specialised doctors.

2. By an order passed on 25.8.1989 by a Single Member Bench of this Tribunal, the operation of the order dated 8.8.1989 was stayed till 7.9.1989. This interim order was extended from time to time and is still operative.

3. The respondents have opposed the O.A. by filing a reply, to which the applicant has also filed a rejoinder. The respondents also moved M.P. No.1622/1991 for vacation of the stay order dated 25.8.1989 and by order dated 24.1.92, this M.P. was directed to be heard along with the final hearing of the case. Accordingly, learned counsel for the parties have been heard both on the O.A. as well as on the aforesaid M.P. I have also carefully perused the material on record.

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4. The relevant facts, briefly stated, are as below: -

The applicant was appointed as a Security Assistant in the Intelligence Bureau (for short, I.B.) with effect from 17.10.1967. His services were placed at the disposal of the Cabinet Secretariat with effect from 21.10.1968 on the formation of R&AW. On coming to the new organisation, he was redesignated as Field Assistant and was promoted as Senior Field Assistant (G.D.) in 1979 and as Assistant Field Officer (G.D.) in June, 1986. He was posted at Simla from 17.10.67 to 16.9.70. On transfer to Leh, he was relieved from Simla on 16.9.70. On his transfer from Leh to Patiala, he was relieved on 11.12.75 and reported for duty at Patiala on 20.12.75. On transfer from Patiala, he was relieved on 31.3.77 for going on transfer to SB Simla, where he reported for duty on 21.4.77. In May 1983, he was transferred to Delhi and posted at the Headquarters. His representations against his transfer to J&K were rejected once by the Joint Secretary (Personnel) and again by the Additional Secretary (Personnel). His representation made to the Secretary was withdrawn by him and thereafter he was relieved of his duties at the Headquarters on 8.8.1989. However, learned proxy counsel for the respondents clarified at the bar that he was taken back on duty in pursuance of the interim order passed by this Tribunal on 25.8.1989. The applicant seeks relief prayed for by him mainly on medical grounds. It is stated by him that while on duty on 27.2.1986 at Saket, he met with an accident and was hospitalised as an indoor patient in Safdarjang Hospital, New Delhi from 27.2.1986 to 18.4.1986. Thereafter for a period of four months, he remained confined to his house in plaster right upto chest. Even after opening of the plaster and resuming duty, he had to continue treatment for most of the time as the iron rod which was inserted at the time of operation after the accident had to be extracted by another operation. In December, 1988, when his condition again worsened, the Orthopaedic Surgeon of Safdarjang

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Hospital referred him to Neuro Surgeon again who advised him to undergo EEG and CAT scan and the treatment of the Neuro Surgeon still continues and on one such visit to him on 21.7.1989, he was advised to do light duty and avoid mental tension. It is also stated that he was advised to avoid field duty and was also referred for admission for operation on 2.12.1989. The facts about the accident and resultant operation and illness are not in dispute.

5. The case of the respondents is that it is on account of the illness of the applicant and on his representation received in April, 1988 and as per his request, his name was not referred to the Departmental Transfer Advisory Committee 1988, although he had completed his required tenure at the Headquarters. Accordingly, his name was not considered by the Committee in 1988. But his name was referred to the Committee which met in March, 1989 and as per the recommendation of that Committee, the impugned transfer order was issued. He submitted his representation on 11.4.89 for cancellation of his transfer order on medical grounds and because the date for orthopaedic surgery was fixed on 10.7.89. On consideration of his request, his transfer was deferred till 31.7.89. It is also stated by them that all his representations for cancellation of his transfer order subsequent thereto were also duly considered and it was decided that since the applicant will have to take leave to undergo operation in December, 1989, he could do so by taking leave from his new place of posting and that he was also informed that the Controlling Officer at SB Jammu had been requested to accommodate him at a place where adequate medical facilities are available and also to grant him leave as and when required by him for undergoing operation.

6. It is clear from the material on record that the operation first fixed in July, 1989 and again in December, 1989 for extracting the rod inserted in the course of the first operation has not been done so far. There is no

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document on record to show that this has been postponed till date on the medical advice of the doctor concerned. On the other hand, the respondents have placed on record a copy of letter dated 8.3.91 from the Head of the Department of Central Institute of Orthopaedics, Safdarjang Hospital, New Delhi in reply to a reference made by the Director (Personnel), Cabinet Secretariat. The points on which the advice was sought by the respondents and the reply referred to above are as below: -

- (a) Whether the iron rod is still required to be removed - Yes.
- (b) If so, how early it could be removed and when he would be fit enough to move out of Delhi - There is no emergency.
- (c) Whether removal of rod can be done in Govt. hospitals at places like Jammu, Amritsar also. - Yes very much possible.

Thus, it is seen that the surgery required for extraction of the rod, which was fixed in July, 1989 and then in December 1989 has not taken place so far and it cannot be stated, on the basis of the material on record that the delay in this regard is due to medical advice, and that the rod can be extracted by surgery in Government hospitals at a place like Jammu where the applicant has been ordered to be transferred, at his convenience as the above advice says that there is no emergency. His transfer order had earlier been deferred by the respondents on account of the surgery having been fixed in July, 1989. Even during the period, the transfer order has not been implemented since then under the interim orders passed by the Tribunal, the applicant has not undergone the surgery. Thus, on the medical grounds, on the facts and in the circumstances of the case, no intervention is called for from the Tribunal in the matter of transfer of the applicant from Delhi where admittedly, by now, he has stayed nearly for nine years, the normal tenure being stated to be around three years only.

7. The allegation of malafide cannot be upheld. No person against whom malafide might have been alleged has been made a party by name in these proceedings. Particulars of malafide as such have also not been furnished. Similarly, the allegation of arbitrariness cannot be sustained. The facts that as against the normal tenure of about three years, the applicant was ordered to be transferred after a tenure of nearly six years on account of his meeting with an accident and consequential hospitalisation and medical treatment, as also the deferment of the transfer order for a few months in 1989, are sufficient to show that the action of the respondents in transferring the applicant, who is undisputedly liable to be transferred to any place in the country, cannot be stated to be arbitrary. Another contention of the applicant is that he has been advised to avoid field duty and mental tension till such time he gets admitted to the hospital and operated again. The respondents have stated that the applicant's movements inside and outside the office are free of any apparent handicaps. They have also stated that he has been attending office regularly and that his transfer was ordered only when he was found performing his duties normally and comfortably not only in the office but also outside the office particularly when managing chartered buses where physical strain is more than in the office. It is also stated that arrangements were made to provide a place of posting having adequate medical facilities and that he can be granted leave even for his treatment at Delhi. Learned proxy counsel for the respondents also made a statement at the bar that the applicant will be posted at Jammu until he has undergone the second operation instead of being posted at some interior place. These, in my view, should be sufficient to take care of the medical problems of the applicant.

8. Another ground taken by the applicant is that his wife lived at the native place in Himachal Pradesh, but because of the injury suffered by him, he was compelled to

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bring his two sons from his native place in Himachal Pradesh to Delhi to help him physically in his daily requirements and if he now moves to J&K set up, he will have to create a third establishment for which he has no means. Problems of family, including the problem of education of the children, of a Government servant are not uncommon in the cases of those who are appointed to posts having transfer liability. It has been held in a number of cases decided by this Tribunal that such difficulties are not good grounds for interference in the process of judicial review in the matters of orders of transfer. In the case of GUJARAT ELECTRICITY BOARD & ANOTHER Vs. ATMA RAM SUNGOMAL POSAHAN I (Judgements To-day 1989 (3) SC 20), the Supreme Court observed as below: -

"4. Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No Government servant or an employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer."

9. Another contention is that the applicant's transfer has been ordered on the basis of pick and choose. This contention is not substantiated from the material on record. The impugned order itself shows that apart from the applicant, 15 other persons were also ordered to be transferred from one place to another along with the applicant. Further, as already stated above, the applicant was not transferred for a period of six years as against the normal tenure of three years. Again, the transfer is based on the recommendations of a Committee and not on the basis of the decision of any single officer.

10. In the light of the foregoing discussion, I see no reason to interfere in the order by which the applicant has

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been transferred from the Headquarters to J&K Set-up. However, the statement of the learned proxy counsel for the respondents made at the bar that on the applicant's going on transfer to the J&K Set-up, he will be accommodated at Jammu itself until he undergoes the operation for extraction of the rod is noted. The O.A. is accordingly dismissed. The interim order passed on 25.8.1989 stands vacated. No costs.

Ceasing 23/3/92
(P.C. JAIN)
MEMBER (A)