

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 807 of 1989

Date of decision: 4.7.89

Shri N.S. Bhatnagar

....

Applicant

Vs.

Delhi Administration

....

Respondents

PRESENT

Shri P.K. Sharma, counsel for the applicant.

Shri M.M. Sudan, counsel for the respondents

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri N.S. Bhatnagar, Head Clerk, Maulana Azad Meedical College, New Delhi, against impugned orders dated 21.3.89 passed by the Delhi Administration transferring the applicant to the office of the Deputy Commissioner, Delhi, without applying the mandatory provisions of the Pension Rules.

2. The brief facts of the case, as stated in the application, are that the applicant has been working as Head Clerk in the Maulana Azad Medical College for more than 36 years. The Deputy Secretary (Services) issued transfer orders of the applicant alongwith the others where the applicant's name is at Sl. No. 107. The applicant made a representation to the Chief Secretary on 15.6.88 and the Chief Secretary cancelled the transfer orders. The respondents have again ordered transfer of the applicant to the DC's Office in violation of the Pension Rules by ignoring the fact that the retirement of the applicant is due on 31.10.1990. The applicant's mother who is 80 years old is a T.B. patient and undergoing treatment in G.B. Pant Hospital and needs proper nursing care and regular attendance of the applicant to look after her. The applicant has been facing an enquiry in which chargesheets have been issued with regard

to the alleged theft which took place in G.B. Pant Hospital in 1978 while the applicant was working as Cashier. The matter was reported to the Police who found that the applicant was not at all connected with the alleged theft. FIR No. 1315 dated 13.10.78 was registered against Shri H.L. Gulati who was also discharged by the Metropolitan Magistrate. The case of the applicant is that transfer under pending enquiry is malicious and the Departmental enquiry is malafide in spite of the clear report of the investigating agency. As he has less than two years to retire, the applicant prays that the transfer should be quashed. He is also a heart-patient and has been advised regular treatment and avoidance of stairs/exertion. At the office of the Deputy Commissioner, Delhi, he will have to climb stairs which will be detrimental to his health.

3. The respondents in their reply have stated that under Rule 20 of the Delhi Administration Subordinate Service Rules, 1976, the Chief Secretary may transfer the cadre officers from one office to another office within the service, from time to time. Under the general transfer policy followed by the Services Department, 142 officers of Grade II of D.A.S.S. were transferred vide orders dated 10.6.88 and in the transfer order (Annex. R-II), the applicant was at Sl. No. 107. This order was issued keeping in view the stay of the officers in a particular Department, namely, 3 years minimum of the stay in sensitive Departments and 5 years in non-sensitive Departments. The applicant was working in the Maulana Azad Medical College since 1982 and had completed approximately 6 years of service there and was, therefore, transferred in the normal way. The applicant made a representation to the Chief Secretary on 15.6.88 on medical grounds. The Chief Secretary made certain observations on the representation of the applicant and his case was examined and put up to the Chief Secretary for final orders. A complaint

had also been received against him from the Employees Union of the Hospital and, therefore, the Chief Secretary wanted to ascertain the facts of complaint and enquiry charges framed by the Directorate of Vigilance. D.S. (Vigilance) was asked to furnish details of the charges and statement of imputations and the result of the disciplinary proceedings which has not yet been received. The case of the applicant along with the other officials who were not relieved on transfer by their respective Departments was again put up before the Chief Secretary who ordered that all such transferees stand relieved w.e.f. 15.2.89. and the representations were treated as rejected. It was ordered that all the officials be physically relieved by 15.2.89. The applicant made another representation to the Chief Secretary on 22.2.89 and it was observed that comments of the Dean of the Maulana Azad Medical College be obtained in order to give a fair chance to the applicant. The Dean instead of offering comments, stated that it was not possible to comment on the complaint from the Union which was not on their record and that the enquiry pending related to a period when he was working as UDC in G.B. Pant Hospital. He further informed that the overall performance of the applicant had been satisfactory and that he was due to retire on 30.10.90. Before deciding the case of the applicant for his retention in the MAM College, the applicant has filed the Application before the Tribunal.

4. The respondents have denied that the applicant had been working in the Maulana Azad Medical College for the last 36 years. He has been working there since 1982. They have also denied that the Chief Secretary ever cancelled the transfer of the applicant, but he did make certain enquiries as there were certain complaints against the applicant against whom an enquiry was also pending. It has also been denied that the order of transfer is against the principles of natural justice or is arbitrary as it was a general transfer order and the transfer orders were issued when the applicant had more than two years to retire. The original transfer order was made on 10.6.88

whereas the applicant is to retire on 31.10.1990.

5. The respondents also brought their File No.F 3/1/87 SII/Vol.I in which the whole question of the transfer of the applicant alongwith the others was discussed. It appears that the Secretary (Services) wanted a statement of Head Clerks/Assistants who had stayed at one place for more than 5 years. In this statement all officials who were to retire within two years were excluded. This statement shows that the applicant was included in the list of officials transferred on account of length of stay and not because of any other consideration.

6. The case of the applicant is that his transfer is malafide because of a departmental enquiry which itself is malafide because the occurrence took place several years ago and the persons mentioned in the F.I.R. have already been discharged. It has also been brought out that some other persons like Shri A.M. Bhardwaj and Shri T.S. Ravichandran, both U.D.Cs, have been working in the same Department for over 10-11 years. One Shri Hukum Chand, UDC, and Shri Ashok Mishra, UDC (Estt.) have not transferred while they are working in the same Department for over 13-14 years. Some transfers were also cancelled and the officers retained in the same Department in violation of the so called principles of 3 years and 5 years stay in one Department. The Dean of the institution has spoken well about the performance of the applicant. The applicant has also denied any complaints by Staff Association against him and has produced a statement from the Hospital's Operation Theatre Technical Staff Association indicating that there have been no complaints against him. Similarly, a statement has been produced from the President of the GB Pant Hospital Employees Union and from other Unions as well.

7. Normally, the courts would not like to interfere in transfers which are made under the normal policy. In this particular case, the transfer order is within Delhi itself and





even if a person is transferred within two years, it would not create any undue hardship to him. Officials are not transferred within two years so that they can prepare for their superannuation including pension papers in time. In this particular case, however, it is seen that the transfer order has been influenced by the fact that the Services Department of Delhi Administration had come to the conclusion that it was undesirable for the applicant to stay at the MAM College due to some complaints against him and due to a chargesheet pending against him and not merely because of his six years' stay at the College. Annexure R-IV, filed by the respondents, is a letter addressed to the Dean of the MAM College stating that further stay of the applicant in the College was undesirable due to complaints from the Class IV Employees Union and because of the enquiry by the Directorate of Vigilance. No copy of such complaint or the report of the Vigilance has been brought out in the counter. The Dean has not said anything about the complaints as there was no complaint on his file and has stated that the work of the applicant was satisfactory. It is also clear that the applicant has actually not been transferred or relieved till 31.3.89 and according to the policy of transfers of Delhi Administration, such persons are generally not transferred from one office to the other. If the transfer is based on some vigilance enquiry or the complaint of the Union, it may cast a stigma on the applicant and to that extent, the transfer order does become punitive in nature. Every transfer does cause some hardship, but in this case the applicant is going to retire within a year or so and is also suffering from angina, his case does deserve sympathetic consideration. Taking these factors into account, it is held that the transfer order of the applicant is not based on any public policy or public interest and the respondents are directed to let the applicant continue at his present place of posting at the Maulana Azad Medical College. In the circumstances, the application is allowed. There will be no orders as to cost.

B.C. Mathur
(B.C. Mathur) 4-7-88