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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 200/ T.A. No. 1988

DATE OF DECISION 23.12.1988.

Baldev Raj Dhamija Petitioner Applicant

Shri G.D. Gupta Advocate for the Petitioner(s) Applicant

Versus

Union of India and Another Respondent

Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. KAUSHAL KUMAR, MEMBER.

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. Whether to be circulated to other Benches? No


(KAUSHAL KUMAR)
MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Regn. No. O.A. 200/1988.

DATE OF DECISION: 23.12.1988.

Baldev Raj Dhamija Applicant.

V/s.

Union of India and Another Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant Shri G.D. Gupta, Counsel.

For the Respondents Shri P.H. Ramchandani, Counsel.

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who had been serving in the office of the Controller of Defence Accounts, Central Command, Meerut as an Auditor has called in question and challenged the validity of the order dated 11.2.1987, filed as Annexure A1 to the application, transferring him to the office of the Controller of Defence Accounts, Western Command, Chandigarh and relieving him on the same date.

2. The learned counsel for the applicant Shri G.D. Gupta contended that the transfer order is punitive and cast a stigma on the applicant inasmuch as it was based on the preliminary investigation report on certain allegations made in an anonymous complaint against the applicant and the report had prima-facie confirmed that there was some truth in the allegations. In this connection, the learned counsel referred to the rulings given by a Bench of this Tribunal in K.K. Jindal v. General Manager, Northern Railway & Ors. (A.T.R. 1986 C.A.T. 304) and the judgment of the Full Bench of this Tribunal in Kamlesh Trivedi v. Indian Council

M. Mehta

of Agricultural Research & Another (A.T.R. 1988(2) C.A.T. 116). I was a party to the judgments in both the cases.

3. The facts of the case may be briefly noticed as follows:

The applicant remained posted in Meerut since December, 1974 for nearly 13 years. The foundation of the transfer order has been explained in the counter-affidavit as follows: -

" The applicant, Shri B.R. DHAMIJA, was serving as an Auditor in Main Office of C.D.A., C.C., Meerut, when an anonymous complaint levelling some serious allegations against him was received by the Financial Adviser (Defence Services), Ministry of Defence, with a copy to Director, CBI, New Delhi. The matter was got investigated by the Controller General of Defence Accounts, New Delhi through Controller of Defence Accounts, Central Command, Meerut. The preliminary investigation report *prima facie* confirmed that there is some truth in the allegations and as such the matter is to be entrusted to CBI for their investigation. As continuance of the applicant at Meerut is not conducive and may subvert the investigation, it was decided by the Controller General of Defence Accounts, New Delhi to transfer him to the office of the C.D.A., Western Command, Chandigarh on administrative grounds with effect from 11.2.87...."

The learned counsel for the applicant, at the time of final hearing furnished certain documents with his application dated 21.12.1988, a copy of which was furnished to the counsel for respondents Shri P.H. Ramchandani. Annexure P-1 to the said Misc. Petition furnishes the names of certain Auditors whose stay at Meerut has been much longer than that of the applicant. Annexure P-2 to the said Misc. Petition gives extracts from the Office Manual issued by the office of C.G.D.A. Para 286 of the Office Manual runs as follows: -

"286. Members of the establishment are warned against the practice of making known their grievances by means of anonymous or pseudonymous letters. No attention will be paid to any such communications."

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Learned counsel Shri G.D. Gupta argued that the respondents were bound by these instructions and were not supposed to take any action on an anonymous complaint. Para 337 of the Manual envisages that "the general principle to be observed, subject to administrative requirements, is that unless there is a volunteer the accountant or clerk who has rendered the longest continuous service in the audit area of the office and the one who has been in the same station under a particular Controller's organisation continuously for a period of more than four years should be selected for transfer in preference to the accountants or clerks who have rendered such less continuous service."

4. Since this was not a routine transfer as conceded by the respondents themselves, para 337 of the Office Manual, referred to above, will not be applicable in the present case.

5. As regards the contention that the respondents were bound by the administrative instructions issued by them to the effect that no attention will be paid to any anonymous or pseudonymous letters, and that all anonymous or pseudonymous letters have necessarily to be filed without any action thereon, the same cannot be sustained. This might be taken as a healthy and sound principle to discourage the practice of making anonymous or pseudonymous complaints, but in exceptional cases when some serious allegations are made through an anonymous or pseudonymous complaint, the respondents would not be precluded from looking into the same. In the present case, at the time of hearing, the learned counsel for the respondents produced the complaint which was addressed to F.A., Ministry of Finance Defence along with an Invitation Card annexed to the complaint. These documents were shown to the learned counsel for the applicant Shri G.D. Gupta at the time of hearing and there can be no doubt whatsoever that the said anonymous complaint does contain serious allegations against the applicant which are sought to be supported by the Invitation Card attached with the complaint.

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Learned counsel for the respondents Shri Ramchandani contended that the transfer was made purely on administrative grounds so that there was no stifling of the investigation being made into the allegations. He further argued that no mala-fides had been alleged in this case and what had to be seen was whether there was a strong and bona-fide administrative ground warranting the transfer. He also contended that the transfer did not attach any stigma to the applicant.

6. Learned counsel for the applicant Shri G.D. Gupta argued that the explanation of the applicant had not been called for and he had not been afforded any opportunity to explain his position with reference to the complaint and the supporting document. The learned counsel further argued that there was already a finding of guilt by the respondents against the applicant and that being the case, it cast a stigma and, therefore, the transfer order was punitive. Shri Gupta further argued that although the conclusion reached by the respondents might be a tentative conclusion, the said conclusion formed the foundation of the order and ^{therefore} the said order had to be quashed.

7. In the case of K.K. Jindal v. General Manager, Northern Railway & Ors. (supra), the Tribunal had observed as follows: -

"16. So far as this case is concerned, though the order of transfer is innocuous, the respondents have relieved the Tribunal of the task of tearing the veil to find out what the "operative reason" for the transfer was. They have themselves stated in the counter affidavit that the transfer is ordered because the petitioner was indulging in "undesirable activities" and because "there is a cloud on his integrity". It is a transfer for the specific reasons mentioned in the counter affidavit referred to above. The transfer is not merely on complaints but on certain conclusions arrived at by the respondents with regard to the conduct of the petitioner, that he was indulging in undesirable activities. These conclusions drawn behind the back of the petitioner upon the complaints made,

M. M. Patel

cast a stigma on the petitioner and positively mar his future prospects. Since the petitioner was occupying a sensitive post with public dealings, the respondents could perhaps have legitimately transferred him on administrative grounds on receipt of complaints. But the transfer made upon reaching a conclusion that he is indulging in undesirable activities goes a step further inasmuch as it finds him guilty of a conduct not expected of a public servant. Any action taken on that basis apart from attaching a stigma to the petitioner certainly impairs his future career as a public servant. The transfer is punitive. A routine transfer ordered merely on administrative expediency cannot have such penal consequences."

However, the said case was examined by a Full Bench of this Tribunal in the case of Kamlesh Trivedi v. Indian Council of Agricultural Research (supra). The Full Bench of this Tribunal observed as follows: -

".....we hold that any order of transfer must be in public interest and in the exigency of service on administrative grounds. It must not be in colourable or mala fide exercise of power. It should not be arbitrary. It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy. The transfer itself must be ordered by a competent authority in bonafide exercise of the power. It should not be a "fixed" transfer or for settling scores. However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary proceedings. It does not amount to a double jeopardy."

The Full Bench further observed as follows: -

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be

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on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a chargesheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed".

8. In the present case what is stated in the counter affidavit is that "The preliminary investigation report prima facie confirmed that there is some truth in the allegations and as such the matter is to be entrusted to CBI for their investigation." This does not show that the respondents had arrived at a definite conclusion in regard to the veracity of the allegations. As held by the Full Bench in Kamlesh Trivedi v. Indian Council of Agricultural Research (supra), merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. It further lays down that "Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated."

9. The counter-affidavit of the respondents does not show that the respondents had arrived at any findings on the

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allegations. A *prima-facie* confirmation of there being some truth in the allegations does not tantamount to a definite finding of guilt. If mere allegations or complaints without any investigation having been made can constitute a sound and legal basis for a transfer, merely because the respondents have made some preliminary investigation without reaching any definite or conclusive finding of guilt, the same cannot vitiate the transfer or render it as illegal as held by the Full Bench. The transfer has been made on administrative ground and cannot be considered to be *mala-fide* or arbitrary or discriminatory. It is within the parameters of the dicta laid down by the Full Bench of this Tribunal in the case of Kamlesh Trivedi v. Indian Council of Agricultural Research, referred to above.

10. In view of the above discussion, the application fails and is dismissed without any order as to costs.


(KAUSHAL KUMAR)
MEMBER
23.12.88.