

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-2006/88

Date:

Capt. Mehar Singh Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Applicant in person

For the Respondents Shri A. K. Sikri, Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Vice-Chairman(Admn.).

(Judgement of the Bench delivered by Hon'ble
Shri S.P. Mukerji, Vice-Chairman)

In this application, dated 14th October 1988, the applicant, who has been working as Senior Administrative Officer in the Office of the Central Soil Salinity Research Institute (CSSRI), Karnal, has requested that the impugned order dated 30th September, 1988 passed by the Indian Council of Agricultural Research (Annexure A-2) transferring him in public interest from CSSRI to the Grass Land and Fodder Institute, Jhansi, should be set aside and also the appointment and selection of Shri Raj Bir Singh, who has been working as Under Secretary in the Ministry of Defence, to the post of S.A.O. at CSSRI should be quashed as mala fide and in contravention of the recruitment rules. The brief facts of the case are that the applicant has been transferred between November 1984 and September 1988 five times to different institutes under the I.C.A.R. He has challenged his last transfer from CSSRI, Karnal, to Jhansi as being violative of the tenure rule of 4 years per institute of posting, ^{and} also alleging that the transfer is for the collateral reason of accommodating

2

one, Shri Raj Bir Singh of the Ministry of Defence. He has also argued that his wife has been working as a ^{under} Science Teacher ~~in~~ the Government of Haryana since December, 1986 and the impugned transfer would force him to live separately from her and would be against the declared policy of the Government to keep the husband and the wife posted at the same place. The education of his children also has been suffering by such unscheduled and mid-term transfers. He has referred to a number of rulings to support his claim that any transfer which is discriminatory, arbitrary and for collateral reason and against the transfer policy, is illegal. He has also challenged the appointment of Shri Raj Bir Singh as Senior Administrative Officer in his place by stating that the post was never circulated and his appointment on deputation is against the recruitment rules which provide for hundred per cent promotion. According to the respondents, transfer is an incident of service and since there have been a number of complaints against him at different places of posting, he had to be transferred in the public interest and in the exigency of service, short of taking disciplinary action against him.

2. We have heard the arguments advanced by the applicant in person and the learned counsel for the respondents and gone through the documents carefully. The respondents admit that the applicant was transferred in November, 1984 from Cochin to New Delhi and within two months of this transfer, he was again transferred from New Delhi to Dehra Dun in January, 1985. Within

eight months of this transfer, he was again transferred from Dehra Dun to ^{the} National Dairy Research Institute at Karnal, and again from the Dairy Institute to CSSRI, Karnal in February, 1987. Thereafter, the impugned order transferring him again from Karnal to Jhansi was passed. They have, however, justified such transfers by stating that the transfer from Cochin to New Delhi was because he completed deputation at Cochin, that his transfer from New Delhi to Dehra Dun was on promotion but his subsequent transfers in September, 1985 and February, 1987 and the impugned transfers were on complaints about his behaviour, general insubordination, etc. It goes without saying that such frequent transfers and the impugned transfer which was effected in September, 1988 in the middle of the academic session, has been quite harsh on the applicant and his family, including his wife who is working at Karnal and his children who are students. In B. Varada Rao Vs. State of Tamil Nadu & Ors., A.T.R. 1983 S.C. 396, frequent unscheduled and unreasonable transfers which uproot a family, cause irreparable harm to a Government servant and drive him ^{deprived} to desperation, have been ~~accepted~~. Such transfers disrupt the education of children and lead to numerous other complications and demoralisation. The Supreme Court observed that the policy of transfer should be reasonable and fair. In E.P. Royappa Vs. State of Tamil Nadu and Others, 1964 (2) SCR 348, the Supreme Court observed that frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as mala fide. The court observed that it is the basic principle of rule of law and good administration that even administrative actions should be just and fair.

3. The Madhya Pradesh High Court in Prakash Chand Saxena Vs. State of M.P. & Others, SLR 1980(1) 788, observed that transferring an employee merely to accommodate some particular official, was mala fide. The respondents have justified the applicant's transfer on the ground of certain complaints. One such complaint is in the letter dated 27/29.1.1986 from the Director, National Dairy Research Institute, Karnal, to the ICAR (Annexure R-1). In this letter, the Director stated as follows:-

"I am constrained to bring to your kind notice the repeated acts of in-subordination by Shri Mehar Singh, Sr. Administrative Officer, who has joined this Institute only few months back. He has been adopting the course of confrontation and repeatedly disobeying the orders of the undersigned as will be seen from the copies of enclosed correspondence. I have given him ample opportunities to correct himself and personally tried to bring home the norms of discipline for all these months but there appears to be little effect on him. He is not only disobeying but instigating other members' of staff to engage in undesirable and anti-institutional activities. I understand that his record at previous places of posting had also not been satisfactory. You will appreciate that such an administrative officer is undesirable who hinders smooth running of the Institute causing resentment amongst scientists and other employees.

In view of the circumstances explained, two courses are available, one is to proceed against him for constant acts of insubordination and disobedience of the orders of the undersigned based on the basis of documents enclosed under rule 14 of CSS(CCA) Rules. The other course is to transfer him to some other Institute where Sr. Adm. Officer's post has been lying vacant and Council badly need a man to be posted there. In case you choose the second alternative, I am prepared to surrender him in exchange of even an Administrative Officer if it is not possible for you to post a Sr. Adm. Officer immediately. You may like to decide on the issue expeditiously."

The next complaint is in the letter dated July 1, 1987 from the Director, CSSRI to the ICAR again:-

"I am sorry to say that since the date Shri Mehar Singh joined this Institute there have been complaints both from the Scientific and other staff at the Instt. I have been trying to adjust the things and advise him to work properly. But now I find that it is difficult to pull on with him. Considering all the aspects as it stand today, the work being carried out by Shri Mehar Singh had to be withdrawn from him and the Asstt. Admn. Officer of the Instt. has been asked to look after his work in addition to his own duties. A copy of the Office order No.F.3(2)/86-87/Admn. dated 1.7.1987 issued in this regard is enclosed for your ready reference.

This may kindly be seen for your information and necessary action at your earliest."

4. I feel the above two complaints by responsible Directors of National Research Institutes amply prove that the applicant is in the habit of insubordination, disobedience and confrontation. In his last posting at CSSRI, he had been divested of his normal duties because of his behaviour and conduct. In the circumstances, it cannot be stated that the impugned order of transfer is arbitrary or for collateral purposes. The Directors seem to be totally fed up with him and wanted to get rid of him somehow. The impugned order of transfer was served on the applicant on 4.10.1988 and he was asked to hand over on the 20th of October. The posting order of his substitute, Shri Raj Bir Singh, was passed on 12.10.1988 and Shri Raj Bir Singh reported on 15.10.88. The applicant was asked to hand over ~~over~~ immediately. The order of transfer was stayed by this Tribunal on 17.10.1988, which was vacated on 1.11.1988 when it was found that the substitute had already taken over from him. It is true that the transfer is not the correct order.

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solution of dealing with recalcitrant erring elements in administration. Such transfer gives a reprieve to the organisation from where one is transferred but creates a problem for the organisation where such an element is inducted. The respondents have been taking a lenient view in the matter and giving the applicant chance after chance to correct himself. There is no element of 'mala fides' involved in the transfer which has been made by the I.C.A.R. which is responsible to run its research institutes properly. The applicant seems to be behaving like a 'bull in a China shop' and the action taken by the administration cannot be dismissed as harsh or retributive. In K.K. Jindal Vs. G.M., Northern Railways & Others, A.T.R. 1986(1) 304, it has been indicated by this Tribunal that exigencies of service must take precedence over individual convenience. In K.B. Shukla Vs. Union of India, 1979(2) SLR 58, the Supreme Court held that the exigencies of service must be judged by the subjective satisfaction of the Government which is responsible for good administration and that the courts cannot judge the propriety or sufficiency of such an opinion by objective standards, save where the process for forming subjective judgement is vitiated by mala fides, dishonesty and extraneous purpose. In the instant case, the only extraneous purpose alleged by the applicant is that the respondents were keen somehow to induct Shri Raj Bir Singh from the Ministry of Defence to Karnal near his native place. The applicant has challenged the selection of Shri Raj Bir Singh on deputation for the post, stating that this is against the recruitment rules. Apart from the fact that Shri Raj Bir Singh has not been

imploded as a respondent, the applicant has no locus standi to challenge his selection as he was not a competitor for such a selection. The applicant has got no vested right to be retained in the post when his Director had to divest him of the normal duties attached to the post because of his failings. If the respondents had the collateral reason to accommodate Shri Rajbir Singh at Karnal they could have easily accommodated him at the National Dairy Institute there as a vacancy of Senior Administrative Officer in that Institute had been circulated by the ICAR's Office Memorandum No. 3(8)/86 Par III dated 18.3.1987 (Annexure R.7) The applicant has not yet joined his new post even at Jhansi even though while vacating the stay order, it was directed by the Tribunal on 1.11.1988 that the family of the officer will not be asked to vacate the accommodation till the hearing of the case.

5. In the facts and circumstances of the case, I see no merit in the application and dismiss the same with the direction that the family of the officer will not be asked to vacate the allotted accommodation at Karnal till 30th June, 1989 by when the academic session will be over and the family will have sufficient time to pack up. This will however, be without prejudice to the applicant's liability and obligation to take over his new posting at Jhansi. In the circumstances, there will be no order as to costs.

S. P. Mukerji
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(S.P. Mukerji)
Vice Chairman