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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 484 of 1988

Date of decision: 4.1.1989

Dr. R.K. Gujral

Applicant

VS.

Union of India & Others

Respondents

PRESENT

Applicant in person.

Shri Mukul Talwar, counsel for the respondents.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Dr. R.K. Gujral, Veterinary Asstt. Surgeon (for short VAS), Incharge Veterinary Hospital, Karol Bagh, New Delhi; against impugned orders No. F.56(189)/DEV.HQR/Part-II dated the 2nd March, 1988 (Annexure A-1 to the application) passed by Shri S.S. Hareet, Deputy Development Commissioner with the approval of Development Commissioner, Shri D.C. Misra, transferring the applicant from V.H. Karol Bagh to T.D. Shahdra. According to the applicant, these orders are in violation of F.R. 15(a)(1) and infringement of the protection guaranteed to the applicant under Articles 14 and 16 of the Constitution. The impugned transfer has been made malafidely and arbitrarily based on collateral purposes. The applicant has alleged that he has been transferred when he has not completed the normal period of five years at a place because of the personal malice of Respondent No. 4, Shri S.S. Hareet, Deputy Development Commissioner, whose appointment as Director of Animal Husbandry the applicant had opposed and also because he had not got the Hospital Building in Karol Bagh vacated in spite of Respondent No. 4's orders as the latter was interested to see the building vacated in favour of the landlord.

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2. The applicant has alleged that to fulfil the pre-condition required under F.R. 15(a)(1), Respondent No.4 had got written the following two facts:

i) The vigilance case is pending against Dr. Gujral (applicant) and

ii) that the applicant has completed a period of five year stay at Karol Bagh.

The vigilance against the applicant was started as he had written two letters in the capacity of General Secretary of the Delhi Veterinary Asstt. Surgeons Welfare Association to the then Prime Minister, Smt. Indira Gandhi, and the then Home Minister, disclosing corruption of the high officials.

The applicant states that he joined at Karol Bagh on 18.10.84 and had completed only three years and five months upto the date of filing of this application. The impugned order is a malafide one being passed on the personal hostility and malice on the part of Respondent NO.4.

3. Previously orders of transfer of Veterinary Doctors were issued by the Deputy Director, Animal Husbandry, being the Head of Office and the competent authority, but the same had been exercised now at the Hqrs. by Respondent No.4 and transfers are being made purely and solely on the "pick and choose and fire policy" and that Respondent No.3, Development Commissioner, had reduced himself to the status of a rubber-stamp in the hands of Respondent No.4.

4. In the grounds against the impugned transfer the applicant has stated that transfer is bad on account of violation of F.R. 15(a) (1) and (2) which envisage that a Govt. servant can only be transferred if he is found in-efficient or if on account of his misbehaviour at the place or he could be transferred on his own written request which conditions are not there in the case of the applicant. The transfer has been made on false, fabricated and non-existent facts that the applicant had completed five years stay at Karol Bagh. He will be retiring in January, 1991 i.e. in less than three years from now.

5. The respondents in their reply have denied para 6.1 of the application and have stated that the transfer was a routine transfer due to exigencies of service. In the normal course a person who has completed 3 years service on one post should be shifted from there. In any case, it is a transfer within Delhi. The applicant is not entitled to claim a posting of his choice. The posting orders are issued in public interest to meet functional requirements of the service. Being an administrative matter, no court should interfere with the order of transfer specially when it is within Delhi. The vigilance enquiry mentioned by the applicant is pending against him for the last 4-5 years and the transfer is not merely because of the vigilance enquiry. The respondents have denied the allegations of personal hostility as absolutely false and wrong. The applicant has already completed three years in Karol Bagh and has no legal rights to stick to the post available in Karol Bagh area. The applicant has no right to choose his place of posting and it is for the administration to decide where a person is to be posted. There is no victimisation in the transfer and the transfer was a routine transfer.

6. The respondents have stated that the submissions made by the applicant are baseless and without any basis. The averments of the applicant show that he has no other work except to make allegation against one or the other officer. Respondents No.3 and 4 have performed one of the administrative functions assigned to them. The applicant appears to have no work except to sneak into head office to collect information regarding one issue or the other and is not interested in doing the job assigned to him.

7. The respondents have stated that there is no written policy on transfer, much less of five years. The transfer of the applicant is a routine transfer, though other doctors who are transferred had also completed five years at one place.

8. The respondents have stated that the Development Commissioner is empowered to issue transfer orders and that transfers in all departments are always made by the Headquarter. They have prayed that as the applicant is not entitled to any relief, the application should be dismissed with costs.

9. On 21.7.88, when the applicant started arguing his own case, he took the plea that the impugned order of transfer passed on 2.3.88 was without competence and wanted to rely on the grounds taken in the rejoinder filed by him. This was objected to by the counsel for the respondents that the applicant could not raise fresh grounds to challenge his transfer and the court should apply estoppel against the applicant from taking fresh grounds not mentioned in the original application. The applicant was, however, permitted to file a Miscellaneous Petition for amendment of the Original Application. In the M.P. the applicant has claimed that the Development Commission^{er} who passed his transfer order was not the competent authority and that only Chief Secretary, Delhi Administration, who was the appointing authority in his case, could issue such a transfer order.

10. The applicant argued his own case and has also filed a long rejoinder in support of his case. He has also filed written arguments, even after arguing his case personally at great length. The main points raised by the applicant are that his case is covered under FR 15 and he cannot be transferred by the Dev. Commissioner who is not the competent authority. According to him, under Rule 17(a) of the FRs, the appointing authority is the competent authority and as such the Chief Secretary of Delhi Administration should transfer him and not any subordinate authority. He cited a number of cases to support his arguments. In AIR 1967 SC 1864 K Gopaul Vs. U.O.I, it has been held that it is open to Government but not to

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a subordinate authority to transfer an employee in exercise of powers under F.R. 15 or corresponding rules. The applicant has also argued that his transfer is arbitrary and based on pick and choose as there are no guidelines prescribed for transferring Veterinary Assistant Surgeons. Any transfer order without any guidelines should be considered as arbitrary. He has also alleged that the transfer is not on administrative exigency or in public interest. Here also, he cited the case SLR 1973(1) 1167 - N.N. Singh Vs. GM Chittaranjan Loco Works - where the court had held that the transfer was bad as no public interest had been established. The applicant being the General Secretary of the Association was very unpopular with the respondents as he was writing to the Prime Minister and others about the mal-practices existing in the Department at higher levels. The Respondent NO.4 had ordered vacation of the Karol Bagh Hospital in collusion with the owner alleging that the building was unsafe, but he did not vacate the premises as the building was perfectly all right, requiring minor repairs. Dr. Gujral argued that he has shown the building to the new Development Commissioner and he has already agreed for minor repairs to the building.

11. The learned counsel for the respondents, Shri Mukul Talwar, strongly denied that there has been any malafide in this case. In fact, he said that no malafide has been proved except that the applicant has only made statements to that effect. Six persons were transferred simultaneously in the main order and transfer from one place to another place within Delhi could not be considered as arbitrary as it does not dislocate the life of the applicant in any way. Shri Talwar also said that no policy had been violated. The allegations made by the applicant against Shri Harit, Respondent No.4, are without any justification as Shri Harit has not passed any orders about the transfer of the applicant. No malafide has been alleged against the Development

Commissioner who has passed the transfer order and it is absolutely wrong to say that the Development Commissioner worked 'as a rubber stamp' only. Shri Talwar also cited para 6 of Appendix 3 and the delegations made under FR 6(a) (p.307) of Swamy's F.R.S.R. Part I - General Rules - (Eighth Edition) where powers under F.R. 15 to transfer a Government servant have been delegated to all heads of Departments and the Development Commissioner being the Head of the Department was fully empowered to transfer the applicant.

12. I have ~~carefully considered~~ ^{also} gone through the arguments advanced by the applicant as well as various written statements filed by him as well as the arguments by the learned counsel for the respondents. No malafide has been alleged or proved against the Development Commissioner who has passed the transfer orders. There cannot be any violation of transfer policy as there is no transfer policy as such. It should be possible for the Delhi Administration to post Veterinary Surgeons according to needs at different places. It cannot be said that the applicant cannot be transferred from one place to another except on account of inefficiency or on his written request because the power of transfer in Government is inherent and it has been delegated to all Heads of Departments under the Central Government, which includes Delhi Administration. In any case, no hardship has been caused to the applicant by his transfer from Karol Bagh to Shahdra. Unless a malafide is established, courts are not to interfere in such matters. In case, there is any substance that an attempt had been made to vacate the Karol Bagh Hospital building in a malafide way, it is for the ~~new~~ Development Commissioner to examine the matter and take appropriate action. Nothing prevents the applicant to pursue cases as General Secretary of the Association even from Shahdra which is part of Delhi. In the circumstances, there

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appears to be no justification to interfere in the transfer order. In the case of Harish Chandra Srivastava Vs. Union of India and Others (No.T.A. 520 of 1986 decided by the Allahabad Bench of the Tribunal on 18.11.1986) it has been held that "the responsibility of good administration is that of the Government and the courts would not judge propriety or sufficiency of such opinion by objective standards except where subjective process is vitiated by mala fide etc. Transfers are the exigencies of service and outside the purview of examination by a court of law. Transfer being an implied condition of public service, the appointing authority is the best judge to decide how to distribute manpower. A variety of factors may weigh with the authorities in this connection, viz. reputation, period of stay, someone proceeding on leave and then filling in that post for the time being and a number of other grounds which may be clubbed under the head 'exigencies of service'. It is not for the Tribunal to adjudicate the feasibility or propriety of transfer but the power of transfer must be exercised honestly in a bona fide manner and reasonably. It must be used in the interest of public service and not for extraneous considerations or oblique motive or to accommodate another man or to do away with one who does not suit to the authorities, etc. Specific allegations regarding malice should be made and proved."

13. As discussed earlier, malafide has been alleged against Respondent No.4, but not proved. The orders have been passed by the Development Commissioner against whom no malafide has been alleged or proved. It has not been established that the transfer is not in exigencies of service. The argument of the applicant that the Development Commissioner ^{is not} ~~can not~~ even as the Head of the Department issue his transfer order and that the competent authority in his case will be the Chief Secretary, Delhi Administration, is not accepted. In any case, the applicant even after

transfer remains in Delhi. In the circumstances, the application is rejected. There will be no orders as to costs.

B. C. Mathur

(B.C. Mathur)
Vice-Chairman