

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 861 1988
T.A. No.

DATE OF DECISION 29.7.1988

S.P. Singh Petitioner

Sh. J.S. Bali, Sr. Advocate with Advocate for the Petitioner(s)
Sh. S.S. Tiwari, Advocate.
Versus

Union of India Respondent

Sh. P.H. Ram Chandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

J. D. Jain
(J.D. Jain)
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

D.A. NO. 861 OF 1988

S.P.Singh, A.F.O.(G),
Directorate General of Security,
Office of the Director, S.S.B., New Delhi.

.. .. Applicant

Versus

The Union of India, through:
the Director, S.S.B.,
Directorate General of Security,
New Delhi and Others.

.. .. Respondents

CORAM: Hon'ble Mr. Justice J.D.Jain, Vice-Chairman.

Present: Sh. J.S.Bali, Senior Advocate with Shri S.S.Tiwari,
Advocate for the Applicant.

Sh. P.H.Ram Chandani, Advocate for the Respondents.

J U D G E M E N T :

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The Applicant is at present employed in the Directorate General of Security, office of the Director, Special Service Bureau, New Delhi as Assistant Field Officer (General) (For short AFO(G)). Vide order dated 26.4.1988 passed by the Assistant Director(EA), Respondent No. 3, he has been transferred from Directorate Headquarters, New Delhi to the Frontier Academy, Gwaldam in the same capacity. The order of transfer was to take effect on 16.5.1988 (forenoon). However, feeling aggrieved by the said order, the Applicant filed this Application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') on 10.5.1988 challenging its legality and validity on the grounds of arbitrariness and malafide, and he has prayed for setting aside/quashing the impugned order of transfer dated 26.4.1988.

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2. The undisputed facts of the case are that the Applicant has been working at the Special Service Bureau (for short 'SSB') Directorate, New Delhi with effect from 21.6.1965. He was made permanent in the grade of Head Security Guard (Senior Field Assistant) with effect from 9.4.1976 in accordance with the Special Service Bureau (Field Officers) Service Rules, 1976 (hereinafter referred to as the Service Rules). The grievance of the Applicant precisely is that Shri J.P. Verma, Deputy Director (E), SSB, Respondent No. 2 is prejudiced against him and wants to harm and harass him because the Applicant had at times refused to do personal errands of Respondent No. 2. As it was, the Applicant was allotted a residential quarter bearing No. 362, Sector V, R.K.Puram from the Special Pool. Later on, on 11.9.1986, he was allotted Quarter No. 6/11, Sector 1, MB Road, Saket by the Director of Estate from the General Pool quota. Thereupon, the allotment of Special Pool quarter, adverted to above, was cancelled vide SSB Directorate order dated 23.9.1987 and he was asked to vacate and surrender possession of the Special Pool quarter within three days. However, the Applicant did not hand over the possession of the quarter in spite of repeated orders and he went on representing that due to certain personal difficulties, he was unable to do so. Eventually, disciplinary proceedings were initiated against him vide Office Memo. dated 24.11.1987, Article of Charge against him being that he had committed disobedience of lawful orders of the superior authority in that he had failed to vacate the Special Pool quarter despite cancellation of the allotment of the said quarter and repeated orders asking him to vacate the same. Thus, he continued to unauthorisedly retain the Special Pool

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quarter. This conduct, according to the disciplinary authority, was unbecoming of a Government servant and violated Rule 3 of the CCS(Conduct) Rules, 1965.

The said enquiry is still pending against the Applicant although he surrendered the vacant possession of the Special Pool quarter soon after the initiation of

disciplinary proceedings against him. So, the contention of the Applicant is that the impugned order of transfer is not only malafide but also of punitive nature having been passed on account of his intransigence in not vacating the Special Pool quarter. The Applicant has further contended that the impugned order is otherwise harsh and oppressive to him for the following reasons:-

- (a) He is unwell and is undergoing treatment for chest injury at Safdarjung Hospital, New Delhi;
- (b) His wife is suffering from heart trouble and is undergoing treatment at Nehru Homeopathic Medical College;
- (c) His son is studying at Delhi in 10th Class and the academic session has already started. So the transfer will disrupt the studies of his son;
- (d) He, being a low paid employee (Grade 'C'), will be hard hit even financially as he may have to maintain two establishments, one at Delhi and the other at Gwaldam which he can ill afford;
- (e) He is not physically fit because of chest injury to go to a hilly area.

3. The Application is hotly contested by the Respondents who have vehemently refuted the allegations.

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of malafide. Shri J.P.Verma, Respondent No. 2 has, in the Counter Affidavit filed by him on behalf of all the Respondents including him-self, stated that Special Service Bureau, Directorate General of Security, Cabinet Secretariat, where the Applicant is at present employed, is a highly specialised and sensitive Security Organisation and all its employees are liable to be transferred anywhere in India. The Intelligence Organisations (Restriction of Rights) Act, 1985 is applicable to the said Department. As a consequence, some of the fundamental rights of the members of the Organisation have been curtailed and restricted due to special nature of duties of the members of the Organisation vide Government of India, Ministry of Home Affairs Notification dated 6.1.1987.

4. On merits, it is contended by the Respondents that the impugned transfer of the Applicant has been effected wholly in public interest and not out of any malice, ill-will or ulterior motive. They have explained that by virtue of the Applicant having been made permanent in the grade of Head Security Guard (Senior Field Assistant) with effect from 29.4.1976, he became a member of the aforesaid Service and he is liable to be transferred anywhere in the country. Since he had already worked at Delhi for nearly 22 years (since 21.6.1965), it was deemed fit to transfer him outside Delhi purely in the exigencies of service and nothing more. As for the personal difficulties, which the Applicant has enumerated above, they contend that the impugned order was made in April, 1988 when academic session just starts and there being a Government school at Gwaldam also, there should be no difficulty for

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admission of the son of the Applicant to that School. As for the ailment of the Applicant and his wife, it is stated that they are not of too serious a nature as to make him unfit to move out of Delhi on grounds of health. On the contrary, the nature of ailment is such which can certainly be treated at any Medical Hospital. Since there is a fulfledged 10-bed hospital with four Medical Officers in the Unit, viz. Frontier Academy, Gwaldam to which the Applicant has now been posted, he would certainly be getting adequate medical facilities and proper medical relief. They have stated that the very fact that the Applicant had continued to serve at the same station viz. New Delhi for more than two decades would justify his transfer to a Field Unit of the SSB so that he gains experience of the various facets of SSB activities and it will also enable others to have an opportunity to work at the SSB Directorate to gain experience thereof. Further, according to the Respondents, the Applicant is, under the Service Rules, entitled to rent free residential accommodation and family accommodation is available even at Gwaldam. So, the hue and cry being raised by the Applicant is without any rhyme or reason.

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5. As for the disciplinary proceedings being held against the Applicant, it is contended that a departmental enquiry was initiated against the Applicant because he did not comply with the orders of the concerned authority to vacate the Special Pool accommodation in contravention of the Rules and in spite of repeated instructions, on being allotted General Pool accommodation for his residence. The disciplinary enquiry is at the

fag end now and the enquiry report is expected any moment. However, initiating departmental action against the Applicant for retaining two quarters at a time in contravention of the Rules and in spite of repeated instructions is in no way connected with the posting of the Applicant at Gwaldam.

6. I have bestowed my careful thought and consideration on the points raised before me. I have also perused the medical certificates etc. filed by the Applicant along with the Application. Their perusal reveals that the Applicant suffered a chest injury due to fall at home on 5.3.1988. However, the injury is not of a grievous nature and there was no surgical emphysema and no chest compression either. So, he is being treated for chest pain etc. as an out-door patient. It does not appear to be an illness of severe nature so as to warrant continuous treatment by a Specialist at Delhi itself.

7. The wife of the Applicant is stated to be suffering from angina pectoris vide medical certificate issued by Nehru Homeopathic Medical College and Hospital. The certificate is dated 15.1.1988. ^{is} She/an out-door patient and is advised to attend OPD weekly. Nothing has come on record to suggest that her ailment is of so serious a nature as to warrant her continued presence at Delhi for medical treatment. This is more so because as pointed out by the Respondents, there are good medical facilities at Gwaldam also.

8. It is now well settled that a Government servant who is holding a transferable post is liable to be transferred in public interest due to exigencies of service and the Courts will be averse to interfere with

routine orders of transfer unless it can be shown that it has been made mala fide, by way of punishment or in colourable exercise of power by the competent authority. As observed by the Supreme Court in E.P. Royappa v/s State of Tamil Nadu and Another - A.I.R. 1974 SC 555:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive, it would amount to mala fide and colourable exercise of power. Frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide."

Adverting to the said authority, the Supreme Court ruled in B. Vardha Rao v/s State of Karnataka & Others - A.T.R. 1987(I) SC 396 that:

".....transfer is always understood and construed as an incident of service. The words 'or other conditions of service' in juxtaposition to the preceding words 'denies or varies to his disadvantage his pay, allowances, pension' in r. 19(I)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of a transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred

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to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

However, their Lordships of the Supreme Court further observed that:-

" One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration.We wish to add that the position of Class III and Class IV employees stand on a different footing."

The question of unwarranted transfers also came up before a Full Bench of the Principal Bench of the Tribunal in Shri Kamlesh Trivedi v/s Indian Council of Agricultural Research and Another - OA 770 of 1987 to which I was a party along with the learned Chairman and Shri Kaushal Kumar, Administrative Member. After noticing all the relevant authorities on the subject we held that:-

"... any order of transfer must be in public interest and in the exigency of service on administrative grounds. It must not be in

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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.It should not be a 'fixed' transfer or for settling scores. However, merely because transfer is ordered on complaints or after an enquiry into the guilt of the employee, it cannot be said to be by way of punishment."

Applying the criteria stated above in the instant case, I do not find that anything has come on record which would vitiate the impugned order of transfer as being tainted by mala fides, arbitrariness or colourable exercise of power. No doubt, the Applicant and his family will be dislocated after having stayed at Delhi continuously for more than two decades. Even the education of the Applicant's son may suffer to some extent. All the same, that would be no ground for quashing the impugned order of transfer if it is found to be otherwise in public interest or exigencies of service.

9. In order to satisfy my judicial mind on this aspect of the matter, I have perused the office noting bearing on the transfer of the Applicant. As pointed out by the Respondents, it is not a case where the Applicant alone has been singled out for transfer. Four officers from different stations are involved/affected by the impugned order of transfer. The office noting does not reveal that there was any oblique motive or extraneous consideration for transferring the Applicant out of Delhi. Indeed, according to the directions given by the DIG(Est) on 7.4.1988, rotational

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transfers of A.F.Os.(G), particularly those like S/Shri Ram Chander and Sankta Prasad (perhaps the Applicant) who were continuously staying at Delhi since 1965 were worked out and it was pursuant to the said instructions that the Applicant was transferred from Delhi. It is pertinent to notice here that the question of effecting the said transfers arose in the background of a representation made by one Shri Sube Singh, A.F.O.(G), F.A. Gwaldam who sought transfer to SSB Directorate New Delhi on the ground that his wife was employed in DDA, Delhi since 1983. However, it was noticed that he had been posted at F.A. Gwaldam on promotion on 12.5.1987 and he would have completed only one year on 11.5.1988. It was perhaps in this background that the above direction was issued by the DIG(Est) inasmuch as Shri Sube Singh was not accommodated as desired by him. The DIG(Est.) specifically pointed out that Sube Singh's case did not merit any attention as he had joined F.A. Gwaldam only on 12.5.1987. So, by no stretch of reasoning can it be said that the impugned order was issued ^{due to} malice, ill-will or vendetta. It was purely the outcome of brain-wave of DIG(Est.) and I must say the rationale behind the direction is quite sound and intelligible. The mere fact that the disciplinary proceedings were pending against the Applicant when the impugned order was passed would be no ground to hold that his transfer from Delhi is of punitive nature. It is more so when he had already surrendered the possession of the Special Pool accommodation. So the question of victimisation on the part of the Respondents does not arise. As for the contention of the Applicant that his non-vacation of the Special Pool accommodation did not amount to misconduct under the CCS(Conduct) Rules as held by a Division Bench

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of Mysore High Court in B.R.Venkappayya v/s State of Mysore and Others - 1972 S.L.R. 59 and Mysore Bench of this Tribunal in Nawal Singh v/s Union of India and Others - A.T.R. 1988(I) C.A.T. 264, suffice it to say that the merits of the disciplinary proceedings are not in question before this Tribunal. Irrespective of whether the disciplinary proceedings against the Applicant are misconceived, motivated or untenable, the fact remains that the Applicant has surrendered the Special Pool accommodation and it does not stand to reason that even then the concerned authorities would be so vindictive as to punish him by transferring him out of Delhi.

10. To sum up, therefore, I find no merit in this Application. It is accordingly dismissed. However, in view of the order of status quo passed by Shri Kaushal Kumar, Administrative Member on 13.5.1988, I direct that the Applicant shall be allowed one month to report on duty at F.A. Gwaldam pursuant to the impugned order of transfer. Under the circumstances, no order is made as to costs.

July 29, 1988.

J. D. Jain
(J.D.Jain)
Vice-Chairman.