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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench
New Delhi.
...

REGN. No. O.A. 312/86.

Date of Decision: 15.1.1986

Shri P.K. Pawar

... Applicant

Vs.

Union of India & Ors.

... Respondents.

CORAM:

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

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Shri B.B. Rawal, counsel.

For the respondents:

Smt. Raj Kumari Chopra, counsel.

J U D G M E N T
(delivered by Hon'ble Mr. Birbal Nath, AM).

Shri P.K. Pawar, Assistant, Intelligence Bureau,
Ministry of Home Affairs, per this application under Section
19 of the Administrative Tribunals Act, 1985, has challenged
his transfer from Delhi to Bhopal ordered on 21.1.1985 and
relieved from the office on 22nd January, 1985. This order
of transfer was modified subsequently to enable the applicant to
avail medical leave at Delhi from time to time. The relevant
orders are reproduced below because the applicant has made
allegations of malafides and arbitrariness on the basis of these
orders. The order of transfer for the first time was issued on 21.1.1985
(Annexure 'B' to the counter affidavit) which reads as under:-

"ORDER

Shri P.K. Pawar, Assistant is transferred from IB Hqrs.
to SIB Bhopal with immediate effect.

Sd/- Assistant Director.

No. 7/Est/CI/76(124) 225
Intelligence Bureau,
(Ministry of Home Affairs)

New Delhi, the 21.1.1986

About his being relieved, the order (Annex. 'C' to the counter) reads as under:-

"OFFICE ORDER NO.49/M/85 dated 21.1.1985.

Consequent to his transfer from IB Hqrs., New Delhi to SIB Bhopal, Shri P.K. Pawar, Assistant, stands relieved of his duties at IB Hqrs., New Delhi with effect from 22.1.1985 (AN) with instructions to report for duty to the Deputy Director SIB Bhopal, after availing of the usual joining time admissible under the Rules.

Sd/- Assistant Director.

No. 7/EST(CI)/76 (124)
Intelligence Bureau
(Ministry of Home Affairs)
Government of India,

New Delhi, the 22.1.1985."

2. Before we examine the contentions raised on behalf of the applicant, it will be interesting to note how the medical leave was applied for and extended from time to time.

The impugned transfer order was issued on 21st January, 1985. It is the case of the applicant that he applied for medical leave due to gout on the same day and on 24th January, 1985, he suffered from Ischaemic Heart disease and he remained hospitalised upto February 5, 1985. The applicant was said to be suffering from hypertension, gout and the aforesaid heart ailment. He applied for cancellation of his transfer order on 29.1.1985 on the ground that he had suffered heart attack due to strain, worries and he was admitted in the Safdarjung Hospital, New Delhi. He pleaded illness and old age to seek cancellation of his transfer. Earlier, he had applied for seven days leave with effect from 21.1.1985.

Vide Memorandum dated 16th February, 1985, the Intelligence Bureau rejected the request of the applicant for cancellation of his transfer to Bhopal. Thereafter, the applicant made several requests for cancellation of his transfer. In view of the illness of the applicant and medical certificates submitted by him, he was granted earned leave for the period 21.1.1985 to 7.3.1985 per Memorandum dated 13th March, 1985 (Annexure D-IV) which reads as under:-

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"OFFICE ORDER No. 149/M/85 dated 11.3.1985.

REFERENCE: OUR OFFICE ORDER No. 49/M/85 dated 21.1.1985.

In partial modification of our orders quoted above Shri P.K. Pawar, Assistant, is granted earned leave for the period 21.1.1985 to 7.3.1985 (47 days). Consequently, he now stands relieved of his duties at IB Hqrs. New Delhi w.e. from 8.3.1985 (FN) with instructions to report to his new place of posting viz. SIB, Bhopal after availing of the usual joining time admissible under the rules.

Sd/- Assistant Director.

No: 7/EST(CI)/76(124)1229
Intelligence Bureau,
(Ministry of Home Affairs)
Government of India

New Delhi, the 13.3.1985."

The applicant was again granted commuted leave upto
Annexure 'F')
23.3.1985 vide D. Order dated 1st April, 1985/which reads as under:-

OFFICE ORDER No. 180/M/85 dated 30.3.1985.

REFERENCES: 1. Our office order No.49/M/85 dt. 21.1.85.
2. Our office order No.149/M/85 dt. 11.3.85

In partial modification of our orders quoted above Shri P.K. Pawar, assistant, is now granted commuted leave for a total period of 62 days from 21.1.1985 to 23.3.1985. Consequently he now stands relieved of his duties at IB Hqrs. New Delhi w.e. from 23.3.1985 (AN) on transfer to SIB Bhopal.

Sd/- Assistant Director

No.7/EST(CI)/76(124)
Intelligence Bureau
(Ministry of Home Affairs)
Government of India.

New Delhi, the 1.4.1986."

The applicant was again granted commuted leave upto 13.4.1985 and was declared to have been relieved from 13.4.1985. He was further granted commuted leave upto 16.5.1985 vide Office Order dated May 31/June 3,85(An.H.). The applicant made a request vide his application dated 4.6.1985 that he may be medically examined at his residence since he was not in receipt of his salary. The Department accordingly wrote to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi, to examine the applicant at his residence. The applicant was examined at his residence on

21.6.1985. The letter dated 26.6.1985 from the Medical Officer,
Dr. Ram Manohar Lohia Hospital, New Delhi, ^{on office file} reads as under:-

"No. 13/9/85-RMLH/MII/18967 dated 26.6.1985.

With reference to your letter No. 7/Estt (CI)/76(1124) dated the 27th May, 1985 on the subject cited above, I am to inform you that Shri P.K. Pawar has been medically examined by the specialist of this hospital at his residence on 21.6.1985. He was found to be a case of Severe Hypertension with past history of Ischaemic Heart Disease. He is capable of attending the hospital and has been advised admission in the hospital for control of his Blood Pressure. He has perhaps not been taking medicines regularly. Final report will be sent after assessment in the hospital. Suitable instructions may please be given to the candidate."

However, on 15.7.1985, the medical specialist of the Hospital declared him to be fit to resume duties, though it was also advised by Dr. K.L. Shukla, Senior Physician, that he should stay at a place where good medical facilities were available, (Ann.'J'). He was again sanctioned earned leave from 12.6.1985 to 25.6.1985 (Ann.'K'). He was granted further leave upto 15.7.1985 vide Office Order 26.8.85/2.9.85 (Annexure (K.II)). He was granted further leave for 110 days for the period 16.7.1985 to 2.11.1985 vide Memorandum dated 7th November, 1985 (Annex. K-X), which reads as under:-

"No.7/Est(CI)/76(124)-6475
Intelligence Bureau
(Ministry of Home Affairs)
Government of India.

New Delhi, the 7.Nov.1985.

MEMORANDUM.

Shri P.K. Pawar, Assistant, may please refer to his representation dated 28.10.1985 regarding grant of leave etc. It has since been decided to grant him leave of the kind due for 110 days for the period 16.7.1985 to 2.11.1985. He is, however, directed to immediately submit the original copy of the medical advice dated 10.10.1985 of the Senior Medical Officer, Dr. Ram Manohar Lohia Hospital, a photostat copy of which was enclosed by Shri Pagar with his representation under reference."

Though the leave was sanctioned upto 2.11.1985, whereafter there has been no sanction of leave, nor cancellation of the transfer order nor has the applicant joined at Bhopal and, in the meanwhile, he had filed this application under Section 19 of the Administrative Tribunals Act on 30.4.1986.

3. The applicant has challenged the impugned order of transfer on the ground that he has suffered from heart ailment and other health problems and if he moves out of Delhi, his life will be jeopardised.

It is true that the applicant was hospitalised in January, 1985 as soon as the order of transfer was issued and there is plenty of medical evidence on the file to show that he has been suffering from heart ailment, blood pressure etc. The applicant was got medically examined by the respondents through Dr. Ram Manohar Lohia Hospital, at his residence on 21.6.1985, as per averment made in para. 9 of the counter as well as from Annexure 'D' to the counter. In the medical certificate (Annexure 'D'), it is stated that the applicant had ^{perhaps} not/been taking medicines regularly. At the same time, Senior Physician, Dr. Ram Manohar Lohia Hospital, New Delhi, per his report dated 10.7.1985 (Annexure 'E' to the counter) had recommended that the applicant should stay at a place where good medical facilities were available at least for one year. The Civil Surgeon of Dr. Ram Manohar Lohia Hospital, New Delhi, vide his report dated 3.12.1985 (Annexure 'G' to the counter) stated that there was no necessity for Shri Pawar to remain in New Delhi on medical grounds. The said certificate reads as under:-

"No.13-9/85-RMLH(MII)35980 dated 3.12.1985

Subject:- Shri P.K. Pawar - facilities for treatment of.

With reference to your letter No. 7/Est(CI)/76(124)-6485 dated 8.11.1985 on the above subject, I am to inform you that Shri P.K. Pawar is a case of Hypertension, Ischaemic Heart Disease and Gout. Treatment facilities for these problems are available in most of the urban and semi-urban areas of the country. Hence, there is no necessity for Shri Pawar to remain in New Delhi on medical grounds."

4. It is clear, from the foregoing, that the applicant had

been suffering from various ailments but once the Civil Surgeon of Dr. Ram Manohar Lohia Hospital had given the aforesaid certificate, it cannot be said that his transfer to Bhopal should have been stayed on medical grounds. Further, the learned counsel for the respondents has vehemently challenged the alleged incapacity of the applicant to move out of Delhi on medical grounds. She tried to counter this argument by saying that the applicant had visited various places such as Kanyakumari, Kotkhai, Trivandrum etc. by availing of Leave Travel Concession in 1979, 1982 etc. and, as such, he was not physically as incapable as it was sought to be made out. In view of the certificate of fitness issued by the Civil Surgeon on 3.12.1985, there remains no ground to impugn the transfer order on health grounds. Argument advanced by the learned counsel for the applicant that an Intelligence Bureau employee at Bhopal had died because of heart attack and so the applicant should not be transferred to Bhopal does not merit serious consideration because even at Delhi, where the applicant wants to stay and where the so-called medical facilities are said to be available, several people continue to die of heart ailments notwithstanding these facilities. All that has to be ensured is that an ailing person should not be posted to a place which would aggravate his health problem or where medical facilities are not available. In this regard, the certificate rendered by the Civil Surgeon is categorical and in view thereof, the challenge to transfer to Bhopal on medical grounds cannot be sustained.

5. The applicant has also challenged his transfer on the ground that he had been on outstations duty for a period of 12 years, whereas, 90 per cent of the Assistants had not been

transferred even once out of Delhi. The applicant has attached a list of 76 Assistants who have not been posted out of Delhi.

This argument itself cannot bind the authorities not to post the applicant or any other Assistant out of Delhi. It is clear from the admission of the applicant/^{himself}that he had been in Delhi from 1966 to 1985.

6. Another argument advanced on behalf of the applicant is that the applicant had worked for 12 years at hard stations before coming to Delhi and thus, he should not have been transferred out of Delhi. We are afraid, in all these matters, the employer is the best Judge at which place an employee has to work. It is to be noted that Bhopal is not a hard station. It is not only a city but also capital of one of the States of India where, normally, all medical facilities should be available.

7. The next contention of the applicant is that the transfer has been made in violation of the guidelines. In this connection, the applicant has filed the so-called guidelines as per Annexure 'E' which is said to be a reply filed on behalf of the Intelligence Bureau to a Starred Question made in the Rajya Sabha on 4.12.1980. The reply clearly states that service in the Intelligence Bureau carries with it the liability to serve anywhere in India. This reply refers to broad guidelines so that there is least cause for grievance among the employees. One of the guidelines is that from among Ministerial staff, only the Section Officers at the Headquarters at New Delhi are required to put in at least one tenure of outstation service.

Apart from the fact that we do not have the authenticated Rajya Sabha proceedings of the said date, it has to be noted that all these are

broad guidelines and cannot take away the right of the Department to make transfers according to administrative exigencies. Guidelines become effective when they are circulated among the staff through circulars and form part of the personnel policy enunciated through office orders. No such circular has been produced by the applicant on the subject.

8. Another contention of the applicant is that he was always transferred with retrospective effect and this was done out of malice. We are unable to accept this contention. It has to be seen that the date on which the transfer order was issued, the applicant had sought admission in the hospital and ever since, he submitted a number of medical certificates, as recounted above, and the transfer order had to be modified from time to time. In view of this position, the plea taken by the applicant cannot be accepted.

9. The next contention of the applicant is that his transfer has arisen out of malafide and in colourable exercise of powers and is punitive. This argument needs to be examined in detail. One part of this contention is that the applicant was office holder in the Intelligence Bureau Employees Association formed on 23.6.1979. It had been registered as a Society in November, 1979. Since there was an agitation in various police organisations in 1979, the organisation of police employees has attracted ire of the authorities. Since the applicant was an executive member of the Delhi Unit and President of the North Block Unit of the I.B. Employees Association, he had come to the adverse notice of the respondents who wanted to wreak vengeance. The Department unsuccessfully tried to ban the organisation in May, 1980 when the matter was taken to the Supreme Court. The learned counsel

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for the applicant brought to our notice that the Hon'ble Supreme Court had, in Writ Petitions No. 1117-1119 of 1980, Intelligence Bureau Employees Association & Ors. Vs. Union of India & Ors., directed on 21.7.1980 that no disciplinary action shall be taken against any member of the Association, for reasons mentioned in the circular. He also brought to our notice the order passed on 21.6.1981 by Hon'ble Justice A.D. Koshal in these petitions directing that status quo be maintained in regard to those employees of the petitioners' Association whose names were mentioned in para. 8 of CMP No. 13152-13153/82. However, this order was clarified on 24.7.1981 by the Hon'ble Supreme Court saying that the order passed will not cover the persons who, though members of the Association, had already handed over charge in pursuance of order of attachment. The learned counsel for the applicant further argued that the Government was so much incensed that they had passed the Central Intelligence Organisation (Restriction of Rights) Act, 1985. It has to be noted that all these orders were passed by the Hon'ble Supreme Court in 1980-81. The impugned transfer took place in 1985. The contention that these actions have been taken towards the end of 1985 in contravention of the Supreme Court orders is not sustainable. So far as the status of the applicant in the Intelligence Bureau Association is concerned, the respondents, vide their counter-affidavit, have averred as follows in para. 13:-

"The petitioner's contention that he being an active member of the Intelligence Bureau Employees Association, vindictive action is being taken against him by transferring

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him to Bhopal is far from truth and completely denied. His transfer to Bhopal is in no way connected to his being a member of Intelligence Bureau Employees Association as the Association activities pertained to the year 1979-80 and the petitioner was transferred to Bhopal as late as in January 1985. This contention of the petitioner is irrelevant, anachronistic and vexatious."

10. So far as the contention of the applicant that his transfer to Bhopal is prompted by malice is concerned, he relied on two files, NGO-I and NGO-III of the Intelligence Bureau. So far as NGO-I file is concerned, it was stated by the learned counsel for the respondents that this was a file kept by the Director, Intelligence Bureau to keep himself posted with all transfers and postings and it has since been destroyed as it is an ephemeral file. So far as NGO-III is concerned, we have seen this file. A perusal of this file shows that there was a pseudonymous complaint against the applicant regarding obtaining some gas connection in 1981 and later on, another regarding his personal habits like drinking and visit^{to} the house of not good repute etc. in 1984. It was decided on 31.12.1984 that the applicant be posted out of Delhi. There is nothing on the file to show that the applicant was transferred because of his Association activities as has been the allegation put forth by the learned counsel for the applicant. We have to determine if the mere existence of pseudonymous complaints, whether of 1981 or 1984, about personal conduct of the applicant, which conduct has nothing to do with his official conduct or performance, can be called into question while determining the issue of his transfer out of Delhi. The learned counsel for the applicant has relied

upon the judgment of the Tribunal in the case of K.K. Jindal Vs. General Manager, Northern Railway & Ors.¹, wherein it has been held that though a transfer may appear innocuous on face but if it is based on a conclusion drawn behind the back of an employee, the Tribunal was competent to find out the operative reason for such transfer. In the aforesaid case, it has been further held that the transfer was not merely on complaints but on certain conclusion arrived at by the respondents with regard to the conduct of the applicant, that he was indulging in undesirable activities. The Tribunal has observed as follows in paragraph 16 of the judgment delivered through the Hon'ble Chairman, Mr. Justice K. Madhava Reddy:

".. 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, 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...."

Thus, the ratio of the judgment is that it is not the presence or existence of a complaint which turns the transfer into a punitive one but the conclusion drawn through an enquiry at the back of the affected officer and where such a conclusion casts a stigma on the conduct of such official. We are satisfied that there was no

1. A.T.R. 1986 C.A.T. 304.

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proper enquiry into the pseudonymous complaint. However, it was considered that the applicant alongwith another of his colleague had been indulging in undesirable activities outside office hours. Undesirable conduct outside office hours cannot attract punishment under the Central Civil Services (Classification, Control & Appeal) Rules. In view of this fact, a transfer order issued on the basis of alleged undesirable activities outside office hours cannot be treated as punitive. Again, even if it is assumed that the transfer arose out of the pseudonymous complaint, at the worst, this could be the motive of the transfer and not the foundation of the same. The very fact that the pseudonymous complaint related to the drinking habits of the applicant and his visiting a certain house, cannot be called as an official misconduct. As such, the punitive dimension or character of the transfer cannot be said to have come into play. The argument of the learned counsel for the applicant that the applicant had been transferred for his activities as an office bearer in the Intelligence Bureau Employees Association remains confined to the domain of conjectures and surmises, and hence, fails in substantiating the allegations of malice. The allegations of malice remain without foundation and are grounded in fallacious assumption. Thus, the reliance sought by the learned counsel for the applicant on the judgment of the Kerala High Court in the case of P. Pushpakaran Vs. The Chairman, Coir Board, Cochin and another¹, will also not apply to the instant case because it cannot be said to be a case of victimisation. In this very judgment, Justice V. Khalid has observed that the court will normally lean in favour of the employer when a transfer order is challenged, for, for a proper administration of a Government or a Department, the

1. 1979(1) SLR 309.

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transfers will be necessary in the exigencies of service.

A transfer can be struck only when an employer acts malafide or tries to victimise

an employee. In the instant case, we not only find

the allegations of malice without foundation, but we also

find that the transfer does not stem from a desire to

victimise the applicant, though it follows the receipt of a

pseudonymous complaint about the conduct of the applicant

outside office. The learned counsel for the applicant

also relied upon the judgment delivered by the Single Member

Bench in the case of Dhruba Das Munshi Vs. Union of India & Ors.

(O.A. No. 1033/87 date of decision: 28.10.1987)- Principal

Bench, Delhi). However, the ratio of that judgment will

not apply in this case as the transfer in that case was

quashed because it was in violation of the guidelines issued

on the subject.

11. In view of the foregoing discussion of facts and

law, we find no merit in the application and reject the

same. However, in the interests of justice, the respondents

are directed to grant the applicant leave of the kind due

for the period that he has remained away from Bhopal.

There will be no order as to costs.

15/1/88
(BIRBAL NATH)
Member (A)

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