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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 313/86
T.A. No.

198

DATE OF DECISION

1.2.87
30.12.87

Shri G.L. Bhandari

Petitioner

Shri (P.B. Rawat)

B.B. Rawat

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

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*


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

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For Petitioner: Shri P.B. Rawat, Advocate.

For Respondents: Mrs. Raj Kumari Chopra, Advocate

CORAM:

THE HON'BLE MR. S.P.MUKERJI, ADMINISTRATIVE MEMBER

THE HON'BLE MR. H.P.BAGCHI, JUDICIAL MEMBER

JUDGMENT:

The petitioner, Shri G.L. Bhandari, who is an Assistant in the Intelligence Bureau, has moved this application dated 30.4.86 praying that three transfer orders dated 21.1.85 (Annexure 'H' to the petition) transferring him from New Delhi to Tejpur, transfer Order dated 22.2.85 transferring him from New Delhi to Lucknow and the Transfer Order dated 30.4.85 posting him to Aligarh may be quashed and that the excess deposits made by him to the General Provident Fund be refunded and the respondents be directed to pay the salary to the petitioner regularly as also to allow him to join IB Headquarters at Delhi.

2. The material facts of the case can be summarised as follows. The petitioner started his career as L.D.C. in the Intelligence Bureau at Headquarters on 30.6.59. Since then he has remained in Delhi. He was a member

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of the Headquarters Staff Council All India Apex Body of Intelligence Bureau, and also a member of the IB Employees Association. According to him, as a member of Staff Council, he exposed certain irregularities of respondent No.4 and incurred his displeasure. The petitioner lost his younger brother at Jodhpur and got involved in certain properties disputes after his death. According to him, certain IB officers including respondent No.4 got involved him in those disputes. His salary for the month of July, August and September was withheld to harass him and his leave was also cancelled. On 21.1.85 the impugned order transferring him to Tejpur with immediate effect while he was working as an Assistant in the Welfare Branch was passed and he was released from the branch on 31.1.85. On his representation, the transfer order was modified by the impugned order dated 22.2.85 transferring him to ^{Lucknow} ~~Tejpur~~. On his further representation against the transfer to Lucknow ^{and} ~~to~~ also allow him to stay in Delhi, he was informed by the third impugned order that his transfer to Lucknow was cancelled and he was to proceed to Aligarh within 10 days. Instead of joining at any one of these places, he has since been representing and finally sought conditional voluntary retirement under protest. His applications for sanction of leave and drawing advance from the GPF were also not allowed. He was asked if he was interested in unconditional voluntary retirement and to specify the date. The petitioner's contention is that his transfers were ordered ^{as a revenge} ~~to revenge~~ on him and that he has been discriminated in the transfer order which was passed in contravention of the guidelines. He has also alleged that the IB officials in collusion

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with his landlord against whom there is a criminal case launched by him has^{se} transferred him from Delhi so that the case cannot be pursued~~ed~~ in Delhi. He has also averred that 52 senior colleagues of the petitioner and many of his juniors who have been in Delhi longer than him^{or stay} have not been transferred.

3. In accordance with the respondents, the petitioner has been on unauthorised absence from duty ever^{since} 23.5.85. The posting of the petitioner has been made in the interests of the Department and is not a punishment. The IB being a sensitive department with delicate administrative commitment the petitioner should not be allowed to flout the posting order. On appointment, he was liable to be transferred anywhere in the country as a condition of his service and there has been no discrimination and mala fide in his transfer order. The allegations against the senior officials of the IB have been denied. It has also been stated that in ^{view} condition of his representations his posting to Tejpur^r was modified to Lucknow and then to Aligarh which is one of the nearest postings out of Delhi. His pay for the months of July and August was never withheld and his pay for the month of September was withheld as he had been on unauthorised extended leave between 10.8.84 and 30.9.84. He was asked to give certain information about his immovable property as a complaint had been received about the property inherited by him. His application for voluntary retirement could not be accepted as he had made it conditional. His salary since March, 1985 could not be ^{paid} made as after handing over the charge in Delhi he has not reported to his

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place of posting at Aligarh where the last pay certificate has been sent. The GPF advance could not be given as his application for withdrawal "for survival" did not fall within the four corners of the relevant rules governing such withdrawal.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As an employee of the Intelligence Bureau by the terms of his appointment ^{petitioner} the ^{is} is liable to be transferred to any of the Units outside the Headquarters. The petitioner had never been posted out of Delhi ever since his appointment in 1959 and it was well within the competence of the respondents to post him outside Delhi. The petitioner has argued that in according with the broad guidelines, persons who are over 50 to 52 years of age are not posted to difficult stations and in the Ministerial staff only the Section Officer at the Headquarters have to put in one tenure at outstation posting. These guidelines ~~have~~ ^{has} been given in the note for a supplemental ^{cases} for a Rajya Sabha ^{admitted} Question ^{displayed} for answer on 4.12.80 have not been denied by the respondents. However, it is accepted that there are no statutory rules or formal orders regarding the circumstances in which transfers could be made. When the petitioner was transferred to Tejpur, he had not crossed the age limit of 52 years. In any case, that transfer order was substituted and he was ultimately posted at Aligarh which is the nearest station from Delhi. As regards the ministerial staff of the level below Section Officer, the learned counsel for the respondents has averred that hundreds of such transfers ^{have been} made and in the petitioner's case,

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considering that he had been posted at all the branches at the Headquarters, he had to be posted out of Delhi for administrative reasons. We agree with the contention of the learned counsel for the respondents that the Intelligence Bureau being a sensitive department, the subjective opinion of exigencies of service formed by the senior authorities of the IB in regard to the posting of the petitioner need not be subjected to judicial review. In K.B. Shukla and others Vs. Union of India & Others : 1979(2) SLR 58, the Supreme Court observed that existence of exigencies of service is a matter of subjective judgment of the Government and the Government is best suited to make the judgment. The responsibility for good administration is that of the Government. The maintenance of an efficient and honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government is the best judge as to the existence of exigencies of service. The term "exigency" being understood in its widest pragmatic sense as a rule the court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective process of forming it is vitiated by malafides, dishonesty, extraneous purpose or transgression of limits circumscribed by the legislation. In the instant case, the petitioner has alleged some malafides against some senior officers of the IB ^{like respondents 4 and 5,} but since he has not been able to prove that the transfer orders had been ^{passed} made by respondents 4 and 5 who are Deputy Director and Assistant Director and the transfer orders have not been seen by officers senior to them, it cannot be inferred that the orders of transfer ^{were} ~~was~~ actuated by

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vindictive motives. It is unthinkable that the senior officers of the IB ^{should} ~~who~~ get so much involved with the landlords and in-laws of an Assistant that they would play in their hands to get him out of Delhi. The petitioner's averment that he is victimized for being a member of the IB employees Association or the Staff Council an appex body of IB employees does not impress us as the ^hEmployees Association and the Appex Body of the IB Employees functioned for a short ~~while~~ ^hin 1980 whereas the transfer orders were passed in 1985. If there were any element of animus or vindictiveness on the part of the respondents, they would not have modified his transfer to Tejpur to that ~~of by transferring him~~ ^hto Aligarh after considering his representations. Considering that his representations were addressed to the Director of Intelligence Bureau it can be safely presumed that the transfer orders had his approval and therefore, the question of respondents 4 and 5 being instrumental in the orders of transfer does not arise.

5. The allegations of mala fides or collateral reasons not being proved, we feel that the petitioner has no case for invoking ^{our} ~~any~~ intervention in the transfer order. It has been held by the Principal Bench of the Tribunal in Sudhir Prasad Jain Vs. Union of India: ATR 1986(2) 304, that the transfer order made in the exigencies of service and being an administrative order can hardly be interfered with.

6. As regards the withdrawal from the GPF, the applicant has not produced any rule or orders under which the excess deposit made in the fund voluntarily

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can be refunded. He is however at liberty to seek withdrawal as permissible under the rules and the respondents are directed to consider such ^{an} application ~~sympathetically~~ ^{sympathetically} and dispose it of within a month of the receipt of such application. The petitioner should in compliance with the posting order join his duty at Aligarh immediately and the respondents are directed to arrange payment of arrears of pay as due to him and grant leave salary within 15 days of his joining at Aligarh. The respondents are also directed to regularise the period of unauthorised absence from duty with such leave with or without pay as is admissible to him and make payment of leave salary within a month of his joining at Aligarh. The petition is partially allowed on the above lines. There will be no orders as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER 2/2/87


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER