

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

R.A. 21/87

O.A. No. 423/86

198

T.A. No.

DATE OF DECISION 3.4.1987

Shri K.S.Minhas Petitioner

Shri G.D. Gupta Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri K.C.Mittal 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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(H. P. BAGCHI)
JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER

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DATE OF DECISION : 3.4.1987

Shri K.S. Minhas . . Applicant

Vs

Union of India & Others . . Respondents

Shri G.D. Gupta . . Counsel for Applicant

Shri K.C. Mittal . . Counsel for Respondents

CORAM

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

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

ORDER

This is a Review Application filed by the applicant in relation to the judgment delivered by us on 27.2.87 in OA 423/86. The main contention in the review application is that after the judgment was delivered the applicant has come to know that a list of Income-tax Officers who were to be transferred on administrative grounds had been prepared on the 27/28th May, 1986 and therefore, it can be presumed that the applicant's transfer was not made on administrative ground but on the ground of his promotion from Group 'B' to Group 'A' and therefore, the order of transfer dated 15.5.86 being not in administrative ground should not have been implemented against him.

2. We have heard the arguments of the learned counsel for both the parties and gone through our judgment carefully. We had made it very clear in para 8 of our judgment dated 27.2.87 that para 7 of the transfer guidelines gives unrestricted power to the Government to transfer an officer at any time at short notice on administrative grounds and that no officer can claim a right to be retained at a particular place of posting merely because of the operation of the other (that is other than para 7 of the guidelines) Provisions of the transfer guidelines. We further stated that these guidelines are not statutory in nature and no vested right can be derived from them. We observed that unless the applicant is able to establish gross discrimination or malafide, or vindictiveness, his transfer cannot be declared to be void. In this particular case, we came to the conclusion that the charge of malafides or vindictiveness alleged to have been exercised by the Government as such against a particular category (promotees) of Income tax Officers cannot be held to be valid. The applicant's argument was that being a promotee I.T.O. the directly recruited ITOs had engineered his transfer. We had stated that the transfer guidelines are approved by the Government and since transfer orders are issued by the Government it cannot be accepted that in a responsible and democratic Government orders of transfer which may adversely affect a particular category of ITOs can be issued by the Government and that too with malafide intention. We had also quoted the rulings of the Principal Bench in a similar case where it was held that an order of transfer cannot be held to be discriminatory merely

because some other officer who had completed the same period had not been transferred. The thrust of our judgment was that an Income Tax Officer is liable to be transferred to any part of the country on administrative grounds in accordance with para 7 of the guidelines and we had no reason to suspect the assertion made by the respondents in their counter affidavit that the "transfer of the petitioner had been made in the interest of administration and in the public interest". We are not convinced that the information that the applicant has now obtained subsequent to the pronouncement of the judgment could not have been available to him with due diligence before the judgment was passed.

3. It is also indicated by the learned counsel for the respondents that the applicant had already been relieved of his duties but since he had refused to take the order of transfer the same has been affixed at his residence. Thus the question of staying the operation of our judgment does not arise.

4. In AIR 1975 SC 1500 the Supreme Court has ruled that review being a serious step it should be resorted to only when there is a glaring omission or mistake of fact. We are not persuaded to believe that the judgment has been pronounced with omission of any material facts or there has been any miscarriage of justice. We are convinced that the Government has the right to transfer an officer in accordance with their judgment and wisdom to any part of the country as per the terms of appointment. Accordingly, we do not find any valid ground to review our

judgment on the basis of the assertion now made by the applicant in the review application. The review application is accordingly dismissed. The learned counsel for the applicant had prayed for the summoning of the file in order to establish whether there were separate lists of officers who were to be transferred on administrative grounds. We feel that in the light of what has been stated above, in an administrative matter like transfer, this Tribunal should not launch a sort of 'fishing' expedition and delve into departmental files just for the asking, unless there is a prima facie proven case of vindictiveness or malafides. Since this is not the case in this review application, we do not wish to call for any file for examination. In view of the above facts and circumstances we reject the review application as also the applications for interim stay and for production of certain files and documents.

(H. P. BAGCHI)
JUDICIAL MEMBER

SP 2/3.4.87
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER

The aforesaid order was dictated by the undersigned in consultation with Shri H.P. Bagchi, Hon'ble Judicial Member, in the open court in presence of the parties after the arguments of both the parties were heard and the records gone through jointly by the undersigned and Shri H.P. Bagchi. The dictated judgment was typed and signed by me on the date of pronouncement of

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judgment, i.e., 3.4.1987 and sent to the residence of Shri H.P. Bagchi, the Judicial Member, for his signature on 6.4.1987, the 4th and 5th of April 1987 being holidays. Unfortunately, Shri H.P. Bagchi passed away on the evening of 29th April, 1987 after prolonged hospitalisation and could not affix his signature to the aforesaid order before his sad demise.

S.P. Mukerji
29.4.87.
(S. P. MUKERJI)
MEMBER