

Central Administrative Tribunal  
Principal Bench, Delhi.

REGN. NO. OA1313 of 1987 .... Date of decision 16.12.87

Shri R.K. Yadav .... Applicant

Vs.

1. Union of India through  
Cabinet Secretary,  
Rashtrapati Bhavan, New Delhi.
2. Secretary (RAW),  
Cabinet Secretariat,  
Room No. 8-B, South Block,  
New Delhi. Respondents
3. Joint Secretary (Pers),  
Cabinet Secretariat.
4. Shri R. Balakrishnan,  
Addl. Secretary (Pers.),  
Cabinet Secretariat.

Shri Madan Lokur and Shri BB Rawal .... Advocates for the  
applicant.

Shri P.P. Khurana .... Advocate for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the transfer orders of the applicant from New Delhi to Amritsar.

2. The applicant is employed as an Assistant in the Research and Analysis Wing of the Cabinet Secretariat. According to the applicant, he was the General Secretary of the Cabinet Secretariat (RAW) Employees Association and in pursuance of his activities as General Secretary, he was placed under suspension in 1980. A criminal case was also lodged against the applicant and 32 of his colleagues. The case was withdrawn by the respondents in 1987. This was done in order to maintain cordial relations between the Government employees and the Government. Pursuant to the withdrawal of the case on 28.2.87, the suspension of the applicant was revoked on 2.3.1987, according to letter at Annexure P-2. This letter, however, contemplated to hold proceedings against the applicant for the imposition of a minor penalty. Immediately after

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the suspension was revoked by the impugned order dated 5.3.87, the applicant was sought to be transferred from Headquarters at New Delhi to Special Bureau at Amritsar. The applicant sought an appointment with the Secretary (RAW), but he was denied a personal interview. The applicant requested for stay of his transfer till he was granted an interview by the Secretary (RAW). The applicant has stated that he was called by Respondent No. 4, Shri R. Balakrishnan, Additional Secretary (Pers.), on 27.3.87 and was threatened by him saying that he has to go to Amritsar. The applicant represented that there were at least 100 Assistants who have not yet undergone any out station postings whereas the applicant had already done two outstation postings. In his application to the Secretary, the applicant stated that one Shri Harjinder Kumar who was transferred to Calcutta by the same impugned order had represented for transfer to Amritsar and another Assistant Shri K.C. Dass, working at Headquarters, had been requesting for a transfer to Calcutta. As such it was a mere question of adjusting <sup>the applicant,</sup> Harjinder Kumar and K.C. Dass in their respective choice of places which would not only satisfy all three of them but also not create any problems for the department. The applicant, according to policy, agreed to be posted in any other office or Unit in Delhi. He mentioned about his domestic problems as well like the treatment of his mother and the study of his daughter. His representations, including the petition to meet the Secretary (RAW), were rejected, but while he was on leave, pending consideration of his petition, he received an office order dated 1.4.87 on 23.87 informing him that he has been relieved of his duties as an Assistant in the Headquarters on 1.4.87 with the direction to report to Special Bureau, Amritsar, after availing of joining time. His request for leave dated 17.4.87 was returned to him on 29.4.87 with the direction to communicate with the Assistant Commissioner, Special Bureau, Amritsar. By another memorandum dated 7.5.1987, he was asked to show cause by the Assistant Commissioner, Special Bureau, Amritsar, why disciplinary action should not be initiated against him for unauthorisedly absenting himself from duty and failing to attend duty at Amritsar.

The applicant sent a final representation on 17.7.87 to the Secretary, but this was rejected without any reason. His representation was not even shown to the Secretary to whom it was addressed.

3. The main contention of the applicant is that the transfer order is arbitrary and discriminatory and against all norms in as much as while he has already done two outstation postings, about 100 Assistants junior to him have never been sent out of Delhi and his transfer is, <sup>therefore</sup>, not in the exigency of service. The applicant had been warned by respondent No.4 telling him that all his requests against transfer will be rejected. He has also not been paid any salary during the last five months. He has come to the Tribunal for quashing the transfer order and for asking the respondents to pay his salary with effect from 1.4.1987.

4. The respondents in their reply have stated that there is no malafide in the transfer which is an implied condition of public service. The transfer has been made in the exigencies of service and it is their case that the appointing authority is the best judge to decide whether the continuance of a Government employee at a particular place is in the public interest. It has been stated that the applicant was suspended not because of his Union activities but after a criminal case was registered against <sup>him</sup> and some other employees. The Police case was withdrawn as it lingered on for about 6 years and it was thought that such a course would facilitate the maintenance of cordial relations between Government and its employees. Government took a lenient view against the applicant and imposed a minor penalty under the CCS(CCA) Rules, 1965. It was also decided as a policy matter to post all employees against whom Police case was withdrawn, on their reinstatement out of the Headquarters except those who were due to retire from Government service in a very short period and whose services could not have been utilised properly out of Headquarters. They have denied that the Additional Secretary tried to force him to resign or threaten him. Respondent No.4 has filed a separate affidavit against the allegations made by the applicant. He admits that he called the

applicant to advise him to go to his place of transfer as was done by everyone involved in the Police case. As regards the contention of the applicant that he received the relieving orders on 23.4.87 is not correct. It has been stated in his own letter dated 23.5.87 that "he learns that he is being relieved etc." indicates knowledge of the same. When he was given the relieving order on 1.4.87 by Director (Pers) himself, he refused to receive the same. although he had received another letter dated 1.4.87 at the same moment. The relieving order was then sent by registered post as well as by special messenger which he received on 23.4.87, but he was all along aware of the fact that he has been relieved to join his new place of posting at Amritsar. His representation dated 3.4.87 which is in response to office memo dated 2.4.87 whereby he was informed that his representation dated 1.4.87 had been seen by the Secretary who did not consider it necessary to give a personal interview. The petitioner was relieved from Headquarters on 1.4.87 with the direction to report for duty to the Assistant Commissioner, Special Bureau, Amritsar, and his L.P.C. was <sup>also</sup> sent to that office. Knowing fully well that he stood relieved from Headquarters, the applicant did not join at Amritsar and remained on unauthorised absence. As the LPC has already been sent to his new station of posting, he is to get his dues after joining there.

5. The learned counsel for the applicant has pointed out that there was no policy of transfer in RAW, but they followed the IB rules. According to the guidelines, only Section Officer level officers could have one posting outside Delhi for two years, but there were no guidelines for other ministerial staff. In any case, the applicant had done two postings <sup>outside</sup> as an Assistant. According to the memo issued in September, 1986, the authorities are to ask the persons if they want to go outside. He quoted the Tribunal's judgment in another case of Shri Das Munshi where I held that there was no mention of public interest in the transfer order and public interest was claimed only after the court case had been filed. In the present case, the transfer order does not speak of any public interest.

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**In Mohinder Singh Gill Vs. Chief Election Commissioner - 1978 (1)**

**S.C. Cases - 405** - the Supreme Court has held that the words 'exigency of service etc.' cannot be added later on if they were not in the original order. Besides, the representation had been rejected by the respondents summarily without any speaking order. The learned advocate for the applicant pointed out that while the applicant had still not been relieved, he had met with a road accident and his application for leave dated 16.87 was returned to him without any justification. He has claimed malafide and violation of Article 14 as there was no exigency of public <sup>service or interest</sup> in his transfer and the Joint Secretary (Pers.) had restarted the charges against him which were dropped by his predecessor. He has alleged that the transfer is punitive in nature and it is a well established principle of law that the court should examine the true nature of the transfer. The learned counsel for the applicant cited the following cases to support his arguments.

**In P. Pushpakaran Vs. Chairman, Coir Board, 1979 (1)**

**SLR p. 309**, it has been held that the court should examine the true nature of transfer.

**In K.K. Jindal Vs. General Manager, Northern Railway & Others - A.T.R. 1986(1) C.A.T.304** - the Principal Bench of the Tribunal has held that while a transfer order may look innocent, the real reason for the transfer should be seen.

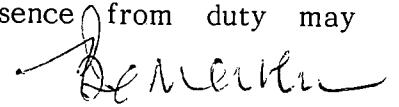
He also cited the case of the **Management of the Syndicate Bank Vs. The Workmen - AIR 1966 SC 1283** - where it was held that if a punishment is due to trade union activities, it is bad in law. The same principle is involved in another case reported in **AIR 1974 SC 597 - Municipality of Bhiwandi & Nizampur Vs. Kailash Sizing Works.**

6. The learned counsel for the respondents said that all the authorities cited above by the counsel for the applicant are against exercise of ~~an~~ arbitrary powers and not applicable to the present case. He stated that the criminal case was withdrawn as a settlement but a policy decision was taken that all the persons

involved in the Police case except those who were retiring shortly and whose services could not have been utilised properly out of Headquarters would be moved out. As the transfer orders of the persons concerned, including the applicant, were in accordance with this decision, the question of any malafide does not arise. Even others besides the applicant had been transferred. The reply of Respondent No. 4 is also straightforward. He has accepted calling the applicant in order to persuade him to go outside Delhi like others, but there was no question of threatening anyone. According to him, a transfer order is always in public interest unless shown otherwise. There is no legal requirement that each transfer order must say that it is in public interest. The case of M.S. Gill quoted by the learned advocate for the applicant concerns a very much serious matter. Shri <sup>u/v</sup> Kha<sup>n</sup>na, counsel for the respondents, cited the Tribunal's case **1987 (2) ATR 532 - SN Dash Vs. Union of India and Others** - where the Cuttack Bench held that where transfer orders have been done on administrative convenience, such transfer orders are not liable to be quashed. The learned counsel for the applicant stated that there was no policy decision that all persons involved in the Police case would be transferred out and if such a decision was taken, it was taken behind the back of the applicant and others. The Police case was withdrawn as an amicable settlement where the employees even accepted minor penalties.

7. I have examined the arguments on both sides carefully. While it is true that the applicant has done two postings outside Delhi and there are a large number of Assistants junior to him who have never gone out of Delhi and it would have been discriminatory to pick out the applicant for transfer outside Delhi, specially as he had been working as the General Secretary of the RAW Employees Association, <sup>and their</sup> it would have been convenient if Shri Harjinder Kumar whose wife works near Amritsar could be posted at that place and the applicant continued at Delhi so that guidelines would have been followed better. This case, however, has to be seen in a different light. RAW is a sensitive Department and although discipline is important in all organisations, in an intelligence organisation it is of even greater importance. The learned counsel for the applicant had mentioned that the officers of the RAW and

IB under the control of the officers of the Indian Police Service were a law to themselves and have discriminated against the direct recruits in those organisations, I do not see why very senior officers like the Additional Secretary would have any grudge against officials of the level of Assistants in that organisation. Had the applicant been singled out for a transfer outside Delhi, one could make an inference that it was arbitrary and punitive in nature and this could be so because of the trade union or association activities by the applicant who was the General Secretary of the RAW Employees Association, but <sup>seeing</sup> in the background of the fact that an administrative decision was taken to transfer out all persons involved in the Police case, which was withdrawn after a few years, the action of the respondents in transferring the applicant and others cannot be considered arbitrary even though it may be harsh. It is not considered necessary that the applicant and others should have been consulted when this decision was taken. It has been conceded by the applicant that except a few most of the persons involved in the Police case have been transferred out and two ~~or~~ thru resigned because they did not want to go out of Delhi. I accept the position that in an organisation like RAW the authorities should be allowed a discretion to transfer persons who are liable to be posted anywhere in India if it is in the interest of discipline in the organisation. Viewed in this light, the action of the respondents cannot be termed as malafide or arbitrary or violative of Article 14 of the Constitution. In the circumstances, the application is liable to be rejected. The application is accordingly rejected. There will be no order as to costs. The period of absence from duty may be treated as leave of whatever type is due.

  
(B.C. Mathur)  
Vice-Chairman