

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 367/87
T.A. No.

198 7

DATE OF DECISION 7.5.1987

Shri Harbans Singh

Petitioner

Dr. D.C. Vohra

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.H. Ramchandani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, 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 ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P.M.
T.S. 87
(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. DA-367/87

Date: 7.5.1987

Shri Harbans Singh

.... Petitioner

Versus

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.... Respondents

For Petitioner

.... Dr. D.C. Vohra,
Advocate.

For Respondents

.... Shri P.H. Ramchandani,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.

Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

JUDGEMENT

(Delivered by Shri Ch. Ramakrishna Rao)

The prayer of the applicant in this application is that the order, dated 24.3.1987 passed by the Ministry of External Affairs (MEA), respondents herein, transferring him from the Embassy of India, Mexico City (Embassy for short) to the headquarters in India, be set aside; that he be allowed 6-8 weeks' time normally allowed for winding up his establishment in the Embassy before his passage for travel to India is finalised and to call for the records relating to the decision ^{to transfer him} taken by the respondents. The facts giving rise to this application are briefly as follows.

2. The applicant joined service under the Central Government in the Ministry of Defence in December, 1954 wherefrom he was transferred to M.E.A. in January, 1956 for joining the Indian Foreign Service, Branch 'B'. He served during the period from 1956 to 1984 not only at headquarters in New Delhi but also at several embassies outside India. He was last posted in May, 1984 at the

Embassy as Cypher Assistant for a term of three years. The order transferring the applicant from the Embassy to headquarters was issued on 24.3.1987, a few months before the expiry of the period of three years. Aggrieved by this order, the applicant has filed this application. When the application was listed for admission, this Tribunal considered it desirable to issue notice to Shri P.H. Ramchandani, Senior Standing Counsel for the Central Government, ~~to the respondents~~ before taking a decision on the admission or otherwise of the application. Accordingly, Shri Ramchandani took notice on behalf of the respondents. He has also filed a reply on behalf of the respondents, clarifying the factual position to which the applicant filed a rejoinder. In the light of the applicant's application, the reply filed on behalf of the respondents and the rejoinder filed by the applicant as also the oral arguments addressed by the learned counsel on both the sides, we proceed to dispose of this application.

3. The first ground on which Dr. D.C. Vohra, learned counsel for the applicant, has challenged the order transferring the applicant prematurely from the Embassy to Headquarters is that the order of transfer passed by the respondents was actuated by malafide. He developed his arguments thus. The order was passed on extraneous considerations and was a colourable exercise of the power to transfer. On November 25, 1985, the Respondent circulated a Select List for officiating promotion to Integrated Grades II & III of the General Cadre of IFS(B), containing 34 names of the general assistants and cypher

assistants (marked as CA) adopting a ratio of 4:1 i.e. after every four General Assistants, the name of one Cypher Assistants was included. The said Select List did not include the name of the applicant, in spite of the fact that he was amongst the senior-most persons for promotion; he was superseded by his juniors. After making a few representations, which remained unacknowledged and unrepiled, the applicant filed application before this Tribunal & OA-501/86 which is still pending. ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ The Respondent continues to harass the applicant and has intensified the victimisation process which began towards mid-1985. The Respondent has taken steps to transfer the applicant before the completion of his term in the Embassy, thus causing dislocation to his children's education and casting a serious aspersion on his honesty and integrity. Repeated requests by the applicant to allow him to remain in the Embassy till the completion of the education of his children, i.e., upto the end of May/June, 1987 was not acceded to by the respondents and as a result thereof, the applicant and his wife left Mexico and arrived at Headquarters on 16.4.1987 in compliance of the Office order and took charge of his post on 20.4.1987. The premature transfer of the applicant in the circumstances was malafide.

4. Shri P.H. Ramchandani, learned counsel for the Respondent, urges that the application has become infructuous because the applicant had complied with the order of transfer which is being challenged in this application; that this is not a case where the

applicant had been 'recalled' from Mexico but a case of transfer simpliciter from Mexico to Headquarters which has been done in the normal manner to suit the exigencies of service; that the circumstances relied upon by the applicant do not in any way substantiate the plea of malafides and the application, therefore, has no merits.

5. We have considered the rival contentions very carefully. Except relying on circumstances such as belated promotions granted to the applicant by the respondent and a vague assertion that the order transferring him from Mexico by the M.E.A. 'is the result of malafide, malice and caprice on the part of certain officers in the office of the respondent', no particulars regarding the names of the officers who had a hand in the order of transfer having ~~not~~ been spelt out in the rejoinder to the reply filed by the respondent. An allegation of malafides is a very serious allegation which has to be demonstrated by citing names of persons and the reasons for the inimical attitude which they had towards the applicant. In the absence of any such material, we have necessarily to conclude that the order of transfer has been passed in public interest. We, therefore, reject the plea of malafides.

6. Shri Vohra next contends that the transfer of his client abruptly has dislocated the education of his children and the respondent acted arbitrarily in negativing his request for continuing in the Embassy till the completion of the education of his children.

Shri Vohra relies on the decisions in Shri K.K. Jindal Vs. G.M., Northern Railways, A.T.R. 1986(1) 304, CAT, Delhi Bench and Charanjit Lal Vs. Union of India and Others ATR 1987(1) 393 Delhi Bench.

7. Shri Ramchandani invites our attention to para.14 of the rejoinder filed by the applicant wherein the time-table for the B.A.(Pt.II) of Punjab University (Correspondence Course) and Hotel Management Course has been set out and submits that the examination to be taken by the children of the applicant was not in respect of an examination held by the an educational institution in Mexico but an examination to be held by the Punjab University (Correspondence) which it would have been possible for the children of the applicant to take even after going over to India. According to Shri Ramchandani, no averment has been made by the applicant either in the application initially filed or in the supplementary application or in the rejoinder regarding the attempts made by him in that direction and if so, with what result.

8. We have given careful thought to the contentions urged by the learned counsel on both sides. In our view, the decisions relied upon by Shri Vohra will not avail his client in the present case since the applicant was given timely intimation of the impending transfer and he could have bestirred himself in time to change the venue of the examination by corresponding with the Punjab University. True, every transfer would involve ~~domestic problems~~ but such problems cannot come in the way of

transfers being effected in public interest. If such be the case, the Administration would be paralysed and it would have a deleterious effect of private interest prevailing over public interest which certainly is not and efficient to be desired for smooth running of the Administration.

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

SLR 508 (Kerala), V. Khalid J. observed, "An order of transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts.

That is the human aspect of the matter." (Emphasis added).

These observations have been cited with approval in the decisions of this Tribunal referred to in para 6 supra.

7. The position in the present case is, however, different. As already noticed, the transfer has been effected in public interest and was done in the normal course of administration. We are not, therefore, impressed by the argument of Shri Vohra that the transfer has any punitive facet about it.

8. Turning to the human aspect adverted to by Khalid J. in the decision cited supra, we cannot help taking note of the fact that the applicant had to leave behind at Mexico his two children to enable them to appear for the examination which is to last upto the end of May/June, 1987. On account of this, the applicant might have incurred expenditure over the maintenance of his children from mid-April, 1987, when he left Mexico, till the end of June, 1987. We consider it just and equitable to direct the respondent to pay to the applicant such amount as it

may consider reasonable on proof of the expenditure incurred by him for the purpose of maintaining his children abroad during the aforesaid period.

9. In the result, the application is dismissed subject to the direction given above.

Ch. Ramakrishna Rao

(Ch. Ramakrishna Rao)
Judicial Member

S. P. Mukerji
(S. P. Mukerji)
Administrative Member

7.5.87