

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

MP No. 1602/90

O.A. No. 1062/90

Ex No.

199

DATE OF DECISION 01.08.1990Shri K.C. Verma PetitionerShri B.B. Raval Advocate for the Petitioner(s)

Versus

Union of India & Another RespondentShri K.C. Mittal Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. P. SRINIVASAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

JUDGMENT(of the Bench delivered by Hon'ble Mr. P. Srinivasan,  
Administrative Member)

This application has been listed before us today for direction and also to consider MP 1602/90. However, Shri B.B. Raval, the learned counsel for the applicant and Shri K.C. Mittal, the learned counsel for the respondents submitted that the application itself can be heard on merits along with the MP. We have accordingly heard both of them and we proceed to deal with OA as well as the MP finally.

2. So far as the OA is concerned, the applicant who is working as an ACIO-II in the Intelligence Bureau (IB) at New Delhi is aggrieved ~~by~~ this application with an order dated 6.4.1990



by which he has been transferred to Jammu & Kashmir from Delhi.

3. Shri B.B. Raval, the learned counsel for the applicant submits that the applicant's transfer to Jammu & Kashmir was out of ~~vendetta~~ because the applicant had approached this Tribunal challenging his reversion from the post of ACIO-II to that of JIO-I. The applicant has filed application No. OA 995/88 challenging his reversion. Though, the applicant has been restored to his original position now, the respondents have not been reconciled to the fact that the applicant had a right to challenge his reversion before this Tribunal. Therefore, during the pendency of that application, the applicant was transferred to Jammu & Kashmir. The order dated 6.4.1990 covered 50 persons, of whom only the applicant was transferred to Jammu & Kashmir while others have been transferred to other places. In fact, the applicant had worked in Aizawl upto 1986 and was transferred to Delhi by an order dated 25.9.1986. There were others, who had been in Delhi much longer, but who were not transferred. This was by way of special favour to them and ~~as~~ a punishment to the applicant. There were 5 officers who had actually volunteered to be posted to Jammu & Kashmir, but instead of transferring them, the applicant has been picked up and transferred. As an annual exercise, the names of 84 officials had been circulated in December, 1989 indicating their present place of posting and the duration of their posting at that place,

*P. S. B.*

with a view to ascertaining their wishes for the next posting. The applicant did not opt for posting to Jammu & Kashmir, but still he has been transferred. The applicant was not in the best of health and if he has to work in Jammu & Kashmir, he may not be able to perform at his best. A list of 34 persons has been appended as Annexure A-4 to the application, all of whom had remained in Delhi longer than the applicant; surely some of them could have been transferred to J&K instead of the applicant. Shri Raval, therefore, contended that the applicant's transfer which was a mala fide action, should be quashed by this Tribunal.

4. During the pendency of the OA, the applicant sought for an interim order staying his transfer. On 30.5.1990, this Tribunal passed the following operative order:-

" While not acceding to the request of granting the interim stay, as prayed for, we direct the respondents to consider and decide the representation dated 20.4.1990 submitted by the applicant with regard to his transfer, referred to above, before relieving him of the present place of posting".

In pursuance of this order, the respondents rejected the applicant's request by their order dated 8.6.1990. MP 1602/90 challenges this order and prays that it should be quashed. Shri Raval submits that this order dated 8.6.1990 being purely consequential to proceedings initiated in the OA, he had a right to challenge it by way of an MP.

*P. J. Raval*

5. Shri K.C. Mittal, the learned counsel for the respondents sought to refute the contention of Shri Raval. Even though in the order dated 6.4.1990, the applicant was the only person to be transferred to J&K, it was as if no other person was transferred to J&K. By an order dated 18.5.1990, four officials, namely, S/Shri P.S. Bist, M.P. Sharma, B.S. Hooda and Sahab Singh had been transferred to Srinagar. Subsequently on 31.5.1990, four more officials had also been transferred to Srinagar. Finally on 13.6.1990, 5 other officials had also been transferred to ~~other~~ <sup>not</sup> different places in J&K. Thus, it was as if the applicant was singled out for such transfer. The respondents had no reason to feel annoyed merely because the applicant had approached this Tribunal challenging his reversions. That was his right and they should have no grievance against him for doing so. Shri Mittal drew our attention to a list of 35 officials attached as Annexure R-5 to the counter-affidavit of the respondents out of which, except 5, all others had worked for longer periods <sup>areas</sup> in ~~the~~ border <sup>than</sup> than the applicant. Two of the officials, one of whom <sup>had</sup> worked for <sup>a</sup> shorter period and the other or for no period at all in the border, were exempted on medical grounds. Two other officials, who had worked for 26 months and 48 months respectively in the border area, were working in a sensitive unit from which they could not be disturbed and the 5th official, who had rendered 102 months of service in the border as against 111 months by the

*P.S. Mittal*

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applicant, was working in a Training Faculty. Thus, it cannot be said that the applicant had been singled out for awarding a punishment transfer. On the other hand, the respondents wanted the services of the applicant in J&K and that was why he was transferred. Shri Mittal pointed out that transfer is an incident of Government service and this Tribunal should not interfere in such routine matters.

6. Shri Raval at this stage pointed out that all the transfer orders posting other persons to J&K were passed after the applicant filed the present application merely to frustrate the applicant. The applicant was also not keeping good health and he could have been exempted from duty in J&K now. He could have been assigned to Training duty or to sensitive work. Shri Raval submitted that his allegation that the transfer was mala fide had not been effectively refuted by the respondents.

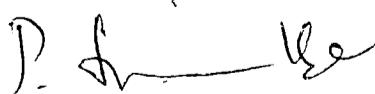
7. We have considered the matter carefully. It is true that transfer is an incident of Government service and once a person enters Government service, he has to accept transfer to different offices of the department in which he is working. A transfer order can be challenged only on the ground of mala fides. The applicant alleges that he was transferred because he approached this Tribunal challenging his reversal. Shri Raval very fairly admitted that the applicant has since been restored to his old position. If the respondents had really been annoyed that the applicant had filed a case, we doubt whether they

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would have restored him to his original position. Even though other persons were transferred to J&K by orders on subsequent date, the fact remains that a large number of persons have been so transferred. Ultimately, whether a person should be exempted from transfer on medical grounds or for the reason that he holds a sensitive or faculty post are matters ~~to~~ exclusively with the domain of the executive. <sup>of authorities</sup> This Tribunal will interfere only where there is a fatal legal flaw. It could happen that some people remain in one place for long periods and others are transferred earlier, but this could be for reasons of administrative convenience. After hearing both sides, we are not persuaded that the transfer order in this case is a case of mala fides or of animus towards the applicant. We are, therefore, not inclined to interfere with the impugned order of transfer. <sup>of</sup> In the view we have taken about the impugned order of transfer, it is no longer necessary to consider the MP challenging the order rejecting the applicant's representation against his transfer.

8. In the result, application No.1062/90 is rejected at the admission stage itself and MP 1602/90 is disposed of as having become unnecessary.

Parties to bear their own costs.

  
(P. SRINIVASAN)

MEMBER (A)

  
(P.K. KARTHA)

VICE CHAIRMAN (J)