

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A.No. 1306/90

New Delhi, dated 8th Jun, 95

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri Nagendra Singh,  
S/o Shri Bhupendra Singh,  
24, NTH Staff Quarters,  
Type 'C' Kamla Nehru Nagar,  
Ghaziabad (U.P.)  
(By Advocate: Shri G.D. Gupta) ... APPLICANT

VERSUS

1. Union of India through the  
Secretary, Deptt. of Supply,  
Govt. of India, Nirman Bhawan,  
New Delhi.
2. The Director,  
National Test House,  
Northern Region, Kamla Nehru Nagar,  
Ghaziabad, U.P.
3. The Director General,  
National Test House,  
11/1, Judges Court Road,  
Alipore, Calcutta-700027.
4. Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi.  
(By Advocate: Shri B. Lall) ..... RESPONDENTS

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application, Shri Nagendra Singh has impugned the order dt. 27.1.89 (Annexure-P1) transferring him to Madras on promotion and the order 27.12.89 (Annexure-P3) cancelling the promotion order consequent to his failing to join duties at Madras.

2. The applicant's case is that he was appointed as Scientific Asstt. on 17.1.85 and was posted at Bombay. After serving there for three years, he was transferred to Ghaziabad where he joined duties on 16.3.88. When he joined at Ghaziabad, one Shri Narendra Kumar was working as Scientific Asstt. at Ghaziabad who was also posted on 17.1.85. Although Shri Narendra Kumar had been posted at Madras in the first instance,

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but within two weeks from the date of his appointment he managed to secure his transfer at Ghaziabad. Thus the applicant as well as said Shri Narender Kumar were working as Scientific Asstts. at Ghaziabad and Shri Narender Kumar had admittedly longer stay since Feb.1985. The next higher post was Scientific Officer for which three years regular service as Scientific Asstt. was required for eligibility, and the criteria for promotion was seniority subject to rejection of unfit. In the consolidated seniority list Shri Narender Kumar was placed at Sl. No.3 while the applicant was at Sl. No.4. Earlier in January 1989 four vacancies of Scientific Officer arose; one at Calcutta, two at Madras and one at Ghaziabad. On 27.1.89 the impugned order was issued promoting the applicant to the post of Scientific Officer and transferring him to Madras. The applicant alleges that Shri Narender Kumar had been recommended for promotion but he was wilfully allowed to continue at Ghaziabad, while the applicant was transferred to Madras. The applicant alleges that his posting to Madras was arbitrary and discriminatory, and filed a representation in February 1989 alleging that this Transfer was in contravention of transfer policy laid down. Apart from the fact that Shri Narender Kumar, who had longer stay at Ghaziabad, was allowed to remain there, while the applicant himself was transferred to Madras. He alleges that without giving any reply to his representation by another

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communication dt. 27.12.89 which has also been impugned, the respondents arbitrarily, whimsically, capriciously cancelled the said promotion order, *and made him eligible for a future promotions only after 1 year w.e.f 17.7.89*

3. The Respondents in their reply contested the O.A. and state that the transfer of the Govt. employee is an incident of service in which the public interest is of utmost concern. They state that Shri Narender Kumar was offered the post of Scientific Asstt. in Madras initially but prior to joining there he requested the authorities to post him at Ghaziabad which was allowed, but as he did not receive the letter due to postal delay he joined at Madras, subsequently he was transferred to Ghaziabad where he is working since February, 1985. The respondents deny that there is any transfer policy as such, and contend that the applicant's posting to Madras was not at all malafide, arbitrary or discriminatory. They state that Shri Narender Kumar was retained at Ghaziabad only after the authorities were convinced that his posting at Ghaziabad was in the overall interest of RPT Laboratory. Shri Narendra Kumar was associated with the setting up of RPT, Laboratory in NTH(NR) and had also undergone training of a more specialised nature on the work with which he was associated in the RPT Laboratory and there being no other Officer in the RPT Laboratory, the experience of Shri Narendra Kumar was considered to be an asset in the smooth functioning of the laboratory.

4. In his rejoinder, the applicant has broadly reiterated the contents of the O.A.

5. I have heard Shri G.D.Gupta for the applicant and Shri B.Lall for the respondents.

6. In UOI Vs. H.N.Kirtania -JT 1989(3) SC 131, it has been held that the transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides. Manifestly, it is not the applicant's case that there is any violation of statutory rules. It remains to be determined whether the transfer has been made on the ground of malafide. Shri Gupta has contended that malafide amounts to malice in law, and as the transfer according to him, is arbitrary and discriminatory in character, this itself amounts to malice in law and is therefore malafide.

7. I am not persuaded to accept this argument. It is well settled that grounds of malafides can succeed only when they are specifically pleaded, and are grounded on a sound basis of fact. Malafides have not been specifically stated against any officer who was instrumental in transferring the applicant from Ghaziabad to Madras, and no firm basis of fact has been established to support any such allegation either. Merely because the applicant, who was admittedly junior to Shri Narender Kumar, was transferred to Madras while Shri Narender Kumar himself was retained there, is wholly insufficient to form any basis for the charge of malafide. The respondents have stated that Shri Narender Kumar was retained in Ghaziabad because he had been associated with the setting up of RPT Laboratory

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in NTH( NR) and had also undergone training of more specialised nature on the ground with which he was associated with RPT, Laboratory. This fact has not been specifically denied by the applicant. Furthermore, it appears that the applicant himself in his representations sent from time to time had pleaded for extension of time to join at Madras and at the same time appears to have been dragging his feet to join there. Thus, he appears to have been blowing hot and cold in the same breath. The respondents had given the applicant repeated opportunities to proceed to Madras on promotion, but when the applicant failed to abide by the respondents' directions, they in accordance with the DPAR's O.M. dated 10.4.89 (Annexure-R IX) cancelled his promotion at Madras and by the impugned order dated 27.12.89 informed him that he would not be considered for promotion for a period of one year from 17.7.89. It cannot be said that the respondents by this order acted capriciously, or arbitrarily or malafidely or in violation of Articles 14 and 16 of the Constitution.

8. Before concluding, I would briefly advert to some of the rulings relied upon by applicant's counsel Shri G.D.Gupta<sup>1</sup> <sup>1</sup> The first ruling is K.K.Jindal Vs. General Manager, Northern Railway- ATR 1986 CAT 304. From this ruling, Shri Gupta has sought to argue that if <sup>AA</sup> ~~his~~ juniors <sup>13</sup> ~~were~~ retained, while a senior that is a person with longer duration has been transferred, it is violative of Articles 14 and 16 of the Constitution. No such general maxim can be read into the body of that judgment,

and even if it is held that normally a person with longer duration at<sup>a</sup> station should be transferred first, ~~an~~ administrative exigency~~s~~ may well necessitate departure from that principle, which in no circumstance can be said a violative of Articles 14 and 16 of the Constitution. In the present case, as stated above, Shri Nagendra Singh's presence was stated to be required in Ghaziabad in the administrative interest as he was associated with the RPT, Laboratory in NTH (NR), which fact has not been denied by the applicant in his rejoinder, and this can very well be construed to be sufficient reason to warrant a departure from any principle requiring a person with longer duration at<sup>a</sup> station, would move first.

9. <sup>h</sup> The Second ruling cited by Shri Gupta is H.S. Ajamani Vs. State of M.P. & others - 1989(9) ATC 122, wherein it has been held that in the absence of statutory rules, Govt. instructions regarding transfers <sup>are</sup> ~~were~~ binding, and hence the petition impugning the transfer was entertained. Govt. Instructions provide three years as normal tenure at<sup>a</sup> station, where<sup>in</sup> the petitioner was transferred five times within four years and <sup>had</sup> ~~impugned~~ the fifth transfer. There <sup>was</sup> ~~is~~ nothing on record to justify four of the said transfers and hence <sup>the</sup> ~~impugned~~ transfer <sup>was quashed</sup>. That ruling has no relevance to the facts of the present case; firstly because in the present case, <sup>the</sup> ~~transfer~~ of the applicant to Madras was on promotion, and secondly the applicant was certainly not transferred with the periodicity <sup>of his A/44</sup>. Hence that ruling also does not help the applicant.

10. The third ruling, cited by Shri Gupta is 1972 SIR 795 State of Mysore Vs. R.R. Kulkarni & others. In support of this contention, legal malafidies vitiate an administrative order. As discussed above, no malafides are discernable in the impugned order, and Under the circumstances, this ruling also does not help the applicant.

11. The applicant, it appears, has since been promoted, and now seeks his promotion from a retrospective date. However, as no good grounds have been made out to hold that the applicant's transfer to Madras was malafide, I am not inclined to interfere in this matter.

12. The O.A. fails and is dismissed. No costs.

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

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