

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1750/91
TxXXXNo.

199

DATE OF DECISION

10/10/91
4.10.91
J

Shri G.D. Chopra Petitioner

In person Advocate for the Petitioner(s)

Versus
Union of India & Ors. Respondent

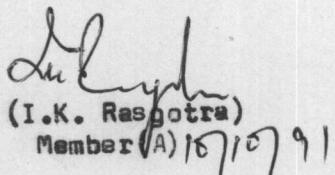
Sh. N.S. Mehta, Sh. M. Chandrasekharan, Sr. Advocate for the Respondent(s)

CORAM

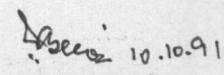
The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(I.K. Rasgotra)
Member (A) 10/10/91

10.10.91.


10.10.91
(T.S. Oberoi)
Member (J)

N THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1750/91
MPs. No.2515, 2516, 2517/91
SHRI G.D. CHOPRA

DATE OF DECISION: 4.10.1991.
. .APPLICANT

VERSUS

UNION OF INDIA & OTHERS . .RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

IN PERSON

FOR THE RESPONDENTS

SHRI ALTAF AHMED, ADDITIONAL
SOLICITOR GENERAL WITH SHRI N.S.

MEHTA, SENIOR STANDING COUNSEL

FOR RESPONDENT NO.1.

SHRI M. CHANDRASEKHARAN, SENIOR
COUNSEL WITH SHRI MADHAV PANIKAR,
COUNSEL FOR RESPONDENT NO.2.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri G.D. Chopra, Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law & Justice has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 challenging order No.81 dated 30th July, 1991 transferring him from New Delhi to the Branch Secretariat of Department of Legal Affairs, Calcutta. The main ground taken by the applicant in challenging the order of transfer is that the Secretary of the Department of Legal Affairs, Dr. P.C. Rao is personally annoyed with him as he has incurred his displeasure with

regard to the matters relating to Group Housing Cooperative Society.

2. Briefly the facts projected in the application are that Dr. P.C. Rao, respondent No.2 and the applicant are members of the Central Government Servants Group Housing Society Ltd. The Society consists of the members of Department of Legal Affairs, Legislative Department and other wings of the Ministry of Law etc. The society is said to have built flats in two blocks a Multi-storey block and a four-storey block. Four-storey block has been built on stilts to provide parking space on the ground floor. The contention of the applicant is that Respondent No.2 got parking space allotted to him in the four-storey block although the residential flat allotted to him is in the multi-storey block. According to the applicant the parking space in the four-storey block is exclusively meant for the members who have flats in that block. Since this allocation to respondent No.2 was irregular, the applicant took up the matter in the meeting of the housing society and is stated to have got the allotment of parking area to respondent No.2 reversed. This action of his in turn provoked respondent No.2 to get the applicant transferred to Calcutta. The applicant represented against his transfer to the Minister of Law and Justice on 30.7.1991 alleging malafides against respondent No.2 and requested that his transfer order to Calcutta be cancelled. He also submitted to the Minister that if the Hon'ble Minister wanted to make full enquiry into the matter relating to the Housing Society his order of transfer may be kept under suspension, giving him reasonable time to reveal the truth.

3. The stand of the respondents in their counter-affidavit is that the applicant was transferred w.e.f. 31.7.1991 (AN) to the Branch Secretariat of the Department

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of Legal Affairs at Calcutta on administrative grounds and in public interest. The applicant holds a transferable post and has no legal right to insist on his posting at Delhi or at any other place of his choice. They further submit that the applicant is trying to avoid his transfer on grounds which do not have even remote connection with his transfer. They next contend that allegation regarding the affairs of the Central Government Servants Cooperative Group Housing Society Limited is irreleavant and have no bearing on the decision regarding his transfer to Calcutta and aver that the order was issued on 30.7.1991 but was received by the applicant on 11.8.1991. The respondents have brought out that the Additional Secretary incharge of Administration had called the applicant to her room towards the end of May, 1991 and had indicated to him that his transfer to Calcutta was being considered. The applicant made representations on 13th July, 1991 and 7th August, 1991 and while his representations were under consideration, he had rushed to file this OA on 2.8.1991, without exhausting the departmental remedies. Nevertheless his representations have been considered by the Minister of Law and Justice and Company Affairs and rejected. The applicant has also been informed about the rejection of his representation vide OM dated 9.8.1991. It is further averred that the vacancy in Calcutta arose on 31.5.1991 and after duly considering the names of the Joint Secretaries including that of Shri Chopra, he was transferred as he had not served outside Delhi during his tenure of almost 14 years in the Ministry of Law and Justice.

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An affidavit has also been filed by respondent No.2 Dr. P.C. Rao wherein he has refuted the allegations made by the applicant against him as totally baseless. The respondent No.2 has also submitted that he did not hold any official position in the Society, nor did he ever attend the meeting of the Managing Committee of the Society. He has also pointed out that the applicant has made certain allegation against Smt. Rama Devi but he has not impleaded her in these proceedings.

The applicant filed another application under Section 151 CPC alleging that he has been picked up from 10 Joint Secretaries without any rational application of mind. He filed MPs.2515, 2516, 2517/91 on 4.9.1991 seeking a large number of amendments to the OA. The amendment sought relate to the matters regarding the affairs of Housing Society. Besides the allegation that the vacancy in Calcutta has been created by manipulative skill of Respondent No.2, the issue of lack of policy in transferring personnel from Delhi is also sought to be highlighted.

On 12.8.91 when the case came up for hearing the applicant prayed for adjournment as he would like to join his new place of posting and then pursue the matter after taking leave. The case was, therefore listed for final hearing on 9.9.1991 but was eventually heard on 11.9.91 and 12.9.91 when the applicant appeared in person; respondent No.1 was represented by Shri Altaf Ahmed, Additional Solicitor General with Shri N.S. Mehta, Senior Central Government Standing Counsel while Shri M.Chandrasekhran Senior Counsel with Shri Madhav Panikar, counsel re-presented the case of respondent No.2.

Shri Altaf Ahmed, the learned Additional Solicitor General at the outset stated that he would not like to file any reply to the MPs filed by the applicant and submitted

that the matter may be argued finally to dispose of at this stage. The applicant had no objection to final disposal of the case at the admission stage. The learned Additional Solicitor General submitted that the applicant has joined the new place of posting in accordance with the last order of the Tribunal dated 12.8.91. The applicant has also chosen not to file any rejoinder to the counter affidavit filed by respondents 1 and 2 but has filed MPs 2515, 2516 and 2517/91. In MP 2515/91 the applicant has prayed for amending the Original Application by supplementing his submissions regarding malafides based on the matter relating to the Group Cooperative Housing Society. Another point sought to be inducted in the OA by way of amendment is that the vacancy at Calcutta has been created artificially with a view to harass the applicant and lastly that there is a lack of policy in transferring personnel from New Delhi as he was neither the juniormost officer nor has he had the longest stay among the Joint Secretaries in Delhi. MP 2516/91 again exclusively relates to the matters pertaining to the Group Housing Society, while in MP 2517/91, the applicant is seeking to supplement his argument that malafides are involved in transferring him to Calcutta. The learned Additional Solicitor General submitted that the transfer order has been primarily challenged by the applicant on the ground of malafides and that edifice is sought to be built on the matters relating to the affairs of the Group Housing Society. The respondent No.2 neither is the President of the Society nor Secretary nor has he ever been an office bearer of that Society.

The learned Additional Solicitor General submitted that the affairs of the society do not have even remote link with the official functions of the respondents. Referring to the affidavit of respondent No.2, the learned Additional Solicitor General pointed out that Dr. Rao was

allotted a flat in multi-storey block and parking space in four-storey block on 23.2.90, i.e., $1\frac{1}{2}$ years ago before the event of transfer of the applicant took place. He further submitted that the vacancy in Calcutta arose on 31.5.91 and stated that an elaborate exercise was carried before transferring the applicant, notwithstanding the fact that the applicants holds a transferable post and has no legal right to insist on any specific place of posting. After reviewing the data with regard to all the Joint Secretaries finally two persons were identified for transfer to Calcutta. One of them was the applicant while the other happens to be the seniormost Joint Secretary who is likely to come up for consideration for promotion to the next higher grade of Additional Secretary. Obviously, therefore, it was considered in public interest to transfer the applicant rather than the seniormost Joint Secretary who is expected to be considered for promotion to the next higher grade of Additional Secretary in the near future.

The learned Additional Solicitor General submitted that the application is hopelessly inadequate and constitutes abuse of the process of law. The amendments now sought to be made in the OA through the MPs if allowed would only aggravate the abuse of the process of law.

Regarding the malafides the learned A.S.G. submitted that the malafides have to be tested on the touch stone laid down by the Hon'ble Supreme Court in **State of Bihar & Anr. v. P.P. Sharma & Anr. JT 1991 (2) SC 147/172**. Their Lordships in paragraph 51 at page 172 of the said judgement observed:-

"51. Mala fides mean want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in

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good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power."

The learned ASG submitted that the circumstances that led to the transfer of the applicant do not have even remote connection with the event of allotment of a house/parking space in the Group Housing Society.

Concluding the learned A.S.G. submitted that the allotment of the flat and the parking space which took place about a year and half before the event of transfer of the applicant does not meet the above tests laid down by the Hon'ble Supreme Court. There is, therefore, no question of malafide in the matter. He further submitted that the amendments now sought to be made in the OA are afterthoughts of the applicant which cannot be allowed to be incorporated. The applicant was given personal hearing by the Minister himself and he did not see any merit/his request for rescinding the transfer order. The representation filed by the applicant was also submitted to the Minister and on careful consideration of the case the same was rejected and the applicant was advised accordingly.

Shri M. Chandrasekharan, appearing for respondent No.2 submitted that the order of transfer has been challenged by the applicant on the basis of allotment of a flat and parking space in the Group Housing Society. Again the various amendments to the application for interrogatories prayed for only reveal the absession of the applicant with the affairs of the Housing Society, which have nothing to

do with his official functions.

With regard to the Miscellaneous Petition regarding issuance of interrogatories, it may be mentioned here that in a matter in which law is clear, we do not find any justification for the interrogatories to be served upon the respondents as that would amount to allowing roving enquiries in the respondents' record, which, to our mind, is not at all necessary in this case.

The learned counsel further submitted that the allotments are made in the presence of the Officers of the D.D.A. and the question of any influence or favouritism does not come in. There are no malafides involved in the allocation of flat/parking space to respondent No.2. If respondent No.2 helped the drafting of certain affidavit for filing them before the arbitrators to assist the office bearer of the Society they cannot be held against him. The learned ASG and learned counsel for respondent No.2 also drew our attention to the judgements of the Hon'ble Supreme Court in **Gujarat Electricity Board & Anr. v. Atmaram Poshani JT 1989 (3) 20 and Union of India & Ors. v. Shri H.N. Kirtania JT 1989 (3) 131.**

We have considered the matter in great depth. Essentially, the issue involved is that of transfer of the applicant from Delhi to Calcutta. The applicant has challenged transfer on the ground that the parking space in the four-storey block was allotted to respondent No.2 in consequence of his influence and that the transfer is the direct outcome of the active interest taken by the applicant in getting the allotment of the parking space cancelled by the Group Housing Society, and therefore his transfer involves malafide on the part of respondent No.2

The flat in question and the parking space were allotted to the respondent No.2 about a year and half ago. The affairs of the Society appear to have no link with the

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official functioning of either the applicant or respondent No.2. The applicant also cannot have any grievance against his transfer as he has had a tenure of 14 years in Delhi. The respondents have after carefully considering the cases of all the Joint Secretaries issued the order of transfer of the applicant. Despite the refrain of the applicant on the affairs of the Housing Society we are not able to establish any link between the two events. Further respondent No.2 is not the final authority to make an order of transfer. The transfer order is issued with the approval of the Minister. The applicant expressed his doubts if his order of transfer was at all approved by the Minister himself. We do not have to search for an answer to dispel his doubts as the representation made against the order of transfer was rejected by the Minister, which fact was communicated to him. Beside he was given a personal hearing by the Minister. We, are, therefore, not impressed by the apprehension expressed in this regard. The transfer of a Government servant appointed to a cadre of transferable post is the normal incident of service.

The Hon'ble Supreme Court in **Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani** (supra) have observed that:-

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"No Government / or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant

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must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case."

In fine, we neither see any malafide action in the transfer of the applicant nor any connection with the affairs of the Group Housing Society. The representation made by the applicant was considered by the Minister concerned and has been rejected. He was also given a personal hearing but his submissions have been rejected and the order of transfer has been maintained.

In the facts and circumstances of the case, we do not see any merit for our interference in a purely administrative action taken on bonafide grounds. The O.A. togetherwith the three MPs Nos. 2515, 2516 and 2517/91 are, therefore, dismissed, with no order as to costs.

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(I.K. RASGOTRA)

MEMBER(A)

10/10/91

10.10.1991.

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(T.S. OBEROI)
MEMBER (J)