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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-19 36/91 with
MP-3294/91

Date of decision: 21.2.1992

Shri G.R. Gupta

.... Applicant

Versus

Union of India through
Secretary, Ministry of
Home Affairs & Others

.... Respondents

For the applicant

.... Shri G.D. Gupta, Advocate

For the Respondents

.... Shri K.T.S. Tulsi, Addl.
Solicitor Genl. with
Shri M.L. Verma, and
Kanwar Sultan Singh, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who is a promoted I.P.S. Officer and is working as Additional Commissioner of Police in the Delhi Police, has prayed in this application that the impugned order dated 9.7.1991 whereby it has been sought to transfer him from Delhi to Mizoram, be quashed in view of the peculiar facts of his case and his retirement in about 1 year and 10 months time. In MP-3294/91 filed by

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him, he has prayed for a direction to the respondents to produce certain files relating to him and other colleagues in order to fortify his stand. The respondents have not filed a proper affidavit claiming privilege. The Director, Ministry of Home Affairs is not the competent authority to claim privilege under Sections 123 and 124 of the Indian Evidence Act and the affidavit filed by him cannot be accepted.

2. During the hearing of the case, we felt initially that the respondents be directed to claim privilege, if they so chose, by filing a proper affidavit and thereafter, a ruling could be given on the question of privilege raised by them. After hearing both the sides, we felt that the application could be finally disposed of, without going into the question of privilege. We, accordingly, leave open the question of privilege raised by the respondents in regard to the documents sought to be produced by the applicant.

3. Shri Tulsi, Learned Additional Solicitor General, submitted at the outset that the scope for interference with an order of transfer is limited, as laid down in the recent decision of the Supreme Court in Union of India Vs. H.N. Kirtania, 1989 S.C.C.(L&S) 481. The Supreme Court has held that a Central Government employee

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holding a transferable post, is liable to be transferred from one place to the other in the country and he has no legal right to insist for his posting at any particular place of his choice. Transfer of a public servant made on administrative grounds or 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 ground of mala fides.

4. ^{As learned counsel} Shri Gupta, appearing for the applicant, submitted that the facts and circumstances of the instant case clearly indicated discrimination, arbitrariness and unfairness which are attributes of mala fides.

5. We have duly considered the matter, including the case law cited before us. We have come to the conclusion that the impugned order of transfer is tainted with arbitrariness and unfairness and is hence unsustainable in law. Our reasons for coming to this conclusion are given in the following paragraphs.

6. During his entire service career as a Police Officer spanning over a period of about 25 years from 1966, the applicant has never pleaded with the authorities concerned for not transferring him outside Delhi. All his postings during this period were at the instance of

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7. The special circumstances referred to by the applicant which have not been controverted by the respondents in their counter-affidavit, relate to his long period of suspension followed by protracted disciplinary proceedings against him, his ultimate exoneration and reinstatement and creation of a post of Additional Commissioner of Police with a view to adjusting him against one such post. All these indicate not only the ordeal gone through by the applicant during these years but also the concern of the competent authorities to rehabilitate him.

8. During the period from 26.7.1982 to 5.11.1984, when the applicant was working as D.C.P. (Social Security District) Delhi, major penalty proceedings were initiated against him under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 wherein four Articles of Charge were brought against him, namely, -

(1) Failure to supervise the security arrangements effectively at the residence of the late Smt. Indira Gandhi, the former Prime Minister;

(2) failure to take action to verify the records of Police officers deployed on security District/Security unit;

11

(3) failure to activate the Special Intelligence Cell; and

(4) changing the shifts/duty points of police personnel posted at the residence of the late Prime Minister without the approval of senior officers.

9. The Central Government, by its order dated 30.7.1990, exonerated the applicant from the charges framed against him. In arriving at this conclusion, the Central Government took note of the observation of the Inquiring Authority in its report dated 28.2.1987 that the omission or lapse was "on the part of the system itself". The Central Government stated that "Shri Gupta has already undergone a lot of mental agony and humiliation besides monetary loss. His juniors in service have been promoted to senior grades in between and the delay in finalisation of these proceedings cannot be attributed to him so as to term his suspension as a justified one. Further, the Government feel that imposition of the penalty on Shri Gupta at this belated stage would be unfair". (Emphasis supplied) (Vide page 35 of the paperbook).

10. The respondents thereafter revoked his suspension, paid to the applicant full pay and allowances for the period of his suspension, treated the period of suspension

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as duty for all purposes and granted to him Selection Grade of the I.P.S. In order to do full justice and rehabilitate him, they passed an order on 22.2.1991 sanctioning creation of a temporary post of Additional Commissioner of Police in the Delhi Police by keeping in abeyance the post of Deputy Commissioner of Police (Headquarters), Delhi with immediate effect for a period of 6 months or "till such time Shri G.R. Gupta (applicant) I.P.S. (AGMU:1972) the existing incumbent is adjusted against another post of Additional Commissioner of Police, whichever is earlier". (Emphasis added).

11. The intention of the Government, as is borne out from the aforesaid order, was to adjust the applicant as an Additional Commissioner of Police, even by upgrading a post in the Delhi Police. The applicant was posted as Additional Commissioner of Police against the newly created post on 5.3.1991. The respondents have stated in their counter-affidavit that "since a DIG level post in Mizoram was lying vacant for a long time, it was decided to transfer the applicant from Delhi Police to Mizoram" (Emphasis added). If the post of D.I.G. in Mizoram lying vacant for a long time, was the reason to transfer the applicant to Mizoram, it is inexplicable why he was

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not offered the same without taking steps to upgrade the post of D.C.P. in Delhi Police and adjusting him against the newly created post of Additional Commissioner of Police in Delhi Police. The applicant has stated in para. 26 of his application as follows:-

"26. That, in fact, it is reliably understood that the present transfer of the applicant to Mizoram was raised as far back as in June, 1991 when the Government was headed by the then Prime Minister, Shri Chander Shekhar. It is understood that when the file containing proposal for transfer of the applicant to Mizoram was placed before the then Hon'ble Prime Minister, Shri Chander Shekhar in his capacity as Home Minister, he ordered on the file that since the applicant was retiring in the next two and half years, the question of transferring him outside Delhi needed reconsideration. This was obviously in consonance with the decision already taken at the time of promotion of the applicant to the post of D.I.G., as already stated above."

12. The reply of the respondents in their counter-affidavit to the above averment is as under:-

"This is a matter of record and needs no reply subject to Preliminary Objections."

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13. The applicant has stated that a post of D.I.G. became available in Goa consequent on retirement on superannuation of Shri P.V. Sinari, Addl. I.S.P., Goa on 30.11.1990. The applicant was not posted there. According to him, this was primarily because of "the decision of the Ministry of Home Affairs not to post the applicant outside Delhi because he had been left with only about three years of service before his retirement/superannuation." There is no specific denial of this in the counter-affidavit.

14. The applicant has quoted the examples of S/Shri V.P. Suri, IAS (AGMU:1976), S.K. Batra, IAS (AGMU:1980) and T.J. Talwar in whose cases orders of transfer were cancelled because of the general policy of not to transfer officers who had only about 3 years' service before the age of retirement/superannuation. The reply of the respondents is that these officers, unlike the applicant, had done postings outside Delhi and orders transferring them had been modified, keeping that in view.

15. There had been arguments at length at the Bar as to the existence or otherwise of a Government policy of not transferring officers who had only 3 years' service before their retirement/superannuation, the learned counsel for the applicant stating that there

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existed such a policy and the learned counsel for the respondents denying the same. It was in this context that the applicant wanted to demonstrate this from the notings on the file sought to be summoned from the office of the respondents through MP-3294/91. In our opinion, it is not necessary to give a ruling on the existence or otherwise of such a policy and its enforceability or otherwise in a court of law, as the surrounding facts and circumstances clearly indicate that the impugned order of transfer dated 9.7.1991 is unfair and unjust to the applicant who had undergone a trauma in his life due to his posting in a sensitive assignment during 1982 to 1984, mentioned above. It is also against the decision of the Government to rehabilitate him to the extent possible. The applicant has stated that during this period of turmoil, one of his sons aged about 23 years, expired. Whether or not the turmoil has anything to do with his death, is besides the point. The experience undergone by him, to our mind, is more than a punishment to an officer of his level of responsibility.

16. In the facts and circumstances, we hold that the respondents shall not give effect to the impugned order of transfer dated 9.7.1991. During the hearing, the

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learned counsel for the applicant stated that there are ten posts of Additional Commissioner of Police in the Delhi Police. It will be open to the respondents to post the applicant to any of these posts, keeping in view the fact that he is now left with only about one year and 10 months of service before his retirement/superannuation. There will be no order as to costs.

D.K.C. - 21/2/892
(D.K. Chakravorty)
Administrative Member

Arrived
21/2/92
(P.K. Kartha)
Vice-Chairman(Judl.)