

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(9)

O.A. No. 2846/91.

Date of decision: May 18, 1992.

SHRI R.S. RATHI

....

Applicant.

Vs.

UNION OF INDIA & OTHERS

...

Respondents.

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

For the applicant ...

Shri B.B. Raval, counsel.

For the respondents ...

Ms. Jasvinder Kaur,
proxy counsel for Shri
Jog Singh, counsel.

JUDGMENT (ORAL)

The petitioner in this case has challenged the order of transfer dated 24.10.1990 passed by Assistant Director, S.I.B., Chandigarh (Annexure A to the OA) by which he has been transferred from Faridabad to S.I.B., Ahmedabad with immediate effect.

2. In absence of provision to the contrary, a Government servant is liable for transfer. Transfer is an incidence of service. The scope for judicial interference with orders of transfer is very limited. Transfer can be challenged when the authority ordering transfer had no competence to do so or when it is mala fide.

3. The transfer of the petitioner was challenged by Shri Raval, learned counsel for the petitioner, firstly; on the ground that the order does not say that it has been effected in public interest. He is right in saying that the order does not speak of public interest. But I am

(10)

not inclined to accept his further contention that it is invalid on that ground. It is not the law that every order of transfer must state that it is made in public interest.

4. In the reply affidavit, the respondents have stated that the order of transfer was made for administrative exigencies. Exigency of service is indeed public interest. Shri Raval is not able to show that transfer was not for administrative exigencies. If the order states that transfer is made in public interest, then the burden lies on the petitioner to show that the same is not in public interest. But if it is not stated that it is in public interest and the order is challenged, it is for the respondent to establish that it was made in public interest. As the order ^{does not} state that transfer was made in public interest, the respondents are required to establish that the transfer was made in public interest. It is stated in the reply that the Intelligence Bureau to which the petitioner belongs is a security organisation, connected with the security of the State. If the personnel of such a department do not comply with the transfer orders forthwith, it is likely to lead to serious security problems particularly, in the present security scenario. It is, therefore, imperative that attempts to thwart the implementation of the transfer orders should be discouraged. It is stated in paragraph 5(K) that the transfer of the petitioner was ordered on administrative grounds and that the petitioner was not discriminated against. The learned counsel for the

respondents submitted that at S.I.B., Ahmedabad to which the petitioner has been posted, none has been posted so far and that position remains vacant. On the materials placed before me, I am inclined to take the view that the transfer was made on administrative grounds. There is nothing to indicate that there was picking and choosing and the action in transferring the petitioner cannot be characterised as arbitrary.

5. It is no doubt true that the petitioner has taken the plea that he is handicapped, that his wife is handicapped, that he has aged parents to look after and the family of his younger brother serving in the Indian Army also depends upon him. All these factors have been pleaded in support of his case that equities are in his favour. The stand taken by the respondents is that the respondents have been accommodating the petitioner from time to time in places near about Delhi for several years and it is only now that he has been posted to a distant place. In other words, the explanation offered is that whenever possible to accommodate the difficulties of the petitioner, the Department has considered his request and helped him in coming out of the situation. Though difficulties of the Government servant may have to be taken into account, when the needs of the administration require his transfer, the interests of the administration has to prevail. As this is a case where the petitioner's services are needed in Ahmedabad, even assuming that the petitioner has some difficulties, ~~he must, in public interest, comply with the order.~~

(12)

6. It is contended by Shri Raval, learned counsel for the petitioner that there was no competence for the authorities to transfer the petitioner beyond the zone in which he was serving and to a place like Ahmedabad located in a different zone. But it is necessary to point out that no such plea is taken in the Original Application. In the rejoinder, the petitioner has come forward with such a cause for the first time. The respondents did not, therefore, have any opportunity to meet this part of the case. The offer of appointment given to the petitioner which he has accepted says that the petitioner is liable to be transferred to any place in India. This is not a condition like the one printed in micro-mini letters on the reverse side of a Laundry Bill which cannot give rise to an implied term of contract. Here is the case of an offer of appointment which the petitioner was expected to read carefully and convey his acceptance of the terms of appointment. Hence, the petitioner cannot claim that his transfer is without competence.

7. As I am satisfied that the transfer has been made in public interest, namely, the exigencies of service and as the petitioner is in a sensitive department, it is obvious that the orders of transfer must be obeyed with utmost expedition. Any tardiness or indifference in this behalf will be detrimental to public interest and cannot be appreciated.

8. Shri Raval, learned counsel for the petitioner states that the petitioner has since filed a request for

(13)

voluntary retirement. The counsel for the respondents, however, submits that the petitioner has not put in the required number of years and, therefore, is not qualified to seek retirement from service. That is not a matter on which I need express any opinion as that is beyond the scope of this O.A. However, it is enough to say that the respondents ought to examine the request if one has been made.

9. For the reasons stated above, this O.A. fails and is dismissed. No costs.

Abelino J
(V.S. MALIMATH)
CHAIRMAN

pkk
190592
200592