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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 577 of 1991

Date of decision: 25.7.91

I.C. Mittal

Applicant

vs.

Union of India

Respondents

PRESENT

Shri A.K. Sharma, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Miss Usha Savara, Member (A).

(Judgment of the Bench delivered by Hon'ble  
Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant, who was directed to be transferred on 8th June, 1990 by the respondents to the Regional Office at Guwahati from Delhi, is aggrieved by the said order and has filed this application under Section 19 of the Administrative Tribunals Act of 1985 (hereinafter referred as 'Act'). Furthermore, the applicant has also prayed for the payment of arrears of his salary from 1986-87 and also other dues which according to him were deducted by the respondents.

2. The respondents in their return have controverted the facts contained in the O.A. and maintain that the transfer order passed by the respondents was neither malafide nor against the rules. They have also taken the stand that without availing the departmental remedies, as provided under Section 20 of the Act, the applicant has directly filed this O.A. under Section 19 of the Act which is not maintainable. They have also prayed for the costs.

*Laundry*



3. The applicant is posted as Executive Engineer in the Ministry of Surface Transport (Roads Wing) at New Delhi. Though the fact has been suppressed in the O.A., yet the applicant at the Bar, on enquiry from the Bench, admitted that he is posted in Delhi from 1975. After the orders were passed on 8.6.90, the applicant served a notice upon the <sup>Secretary,</sup> Ministry of Surface Transport, Parliament Street, New Delhi, through his counsel on 20.6.90 (Annex. 'E'). This notice served by his advocate belies the stand of the applicant that he was not served with the transfer order and he had no knowledge of the existence of the transfer order because he was on sick leave.

4. The law with regard to transfer is well settled by the pronouncements of the Supreme Court and also by the numerous judgments of this Tribunal. The applicant contended at the Bar that Annexure-'A' dated 7th April, 81, is an Office Order concerning the departmental policy on transfer of technical officers in the Roads Wing. According to sub-para (iii) of this transfer policy, the applicant cannot be transferred from his present post at Delhi. On perusal of Annexure 'A', it is evident from para (ii) of this transfer policy that the normal tenure of an officer at a particular place in the regional office shall be 3 years and in no case it shall exceed 5 years. Needless to say, that according to the admission of the applicant at the Bar, the applicant is posted in Delhi from the year 1975 and he has not moved out from Delhi to any other place. On perusal of the transfer order it is also evident that it is not the applicant alone who was transferred from Delhi, but other 4 or 5 officers were also directed to be transferred by the respondents alongwith the applicant. The contention of the applicant at the Bar that he is discriminated by the respondents in transferring him from Delhi, is baseless and deserves outright rejection.

5. The multiple reliefs prayed for in the O.A. are not in accordance with the Central Administrative Tribunal (Procedure) Rules of 1987. Rule 10 provides that an application under Section 19 of the Act shall be based upon a single cause of action and the

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applicant may seek one or more reliefs provided they are consequential to one another. On perusal of the relief clause of this O.A., it is apparent that the reliefs prayed for are in contravention of this Rule and hence they cannot be considered in this O.A. If the applicant has a grievance against the respondents with regard to his pay and arrears of the emoluments, he can seek his remedy, if so advised, by means of a separate O.A.

6. On perusal of the application and also the documents annexed alongwith it, not an iota of evidence is present to indicate that while the transfer orders were passed, it was with malafide intention. In the absence of any allegation in the O.A. against any of the officers of the respondents having malice against him prevents him from contending that this transfer order suffers from malafide. The transfer order which shows in clear words the transfer of the applicant as well as of other officers is indicative of the fact that neither the applicant was discriminated nor any malafide intention appears on the surface. In the absence of any allegation in the O.A., the contention of the applicant that the transfer order is malafide deserves outright rejection.

7. We shall now dwell upon the main relief prayed for that the impugned order of transfer be cancelled. The law has been well settled by the Supreme Court in the case of Gujarat State Electricity Board and another vs. Atmaram Sungomal Poshani (AIR 1989 S.C. 1433). For convenience, the relevant portion of the judgment of the apex court is reproduced below:

"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 competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer."

8. It would not be out of place to observe that service of a notice through a counsel does not amount to representation filed before the respondents for consideration of the prayer of the applicant, as held in the Gujarat State Electricity Board (supra). The representation has been indicated with the intention that it is

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the employer who is the best judge for the convenience of his employees and it is the employer who is to consider if the transferred employee faces any difficulty by the transfer order. In the absence of any representation, it has to be observed that the applicant has not complied with the mandatory provisions of Section 20 of the Act and hence his O.A. is not maintainable, but we do not intend to reject the O.A. on this technical ground alone. It is well settled by the **Gujarat State Electricity Board** (supra) that transfer is an incidence of service and that an employee does not get any vested right to remain at a place of his choice.

9. We are constrained to observe that the relevant material facts were not disclosed by the applicant in the O.A. and hence the applicant has not come with clean hands before the Tribunal. One who seeks equity must come honestly and with clean hands before the Tribunal. In the absence of any malafide intentions on the part of the respondents, the applicant does not deserve any relief as prayed for in the O.A. Consequently, we are of the view that the O.A. is devoid of any merit and hence it is dismissed. In the facts and circumstances of the case, we deem it just and proper to impose costs upon the applicant of Rs. 300/- only. The respondents shall get this cost from the applicant as the cost of this O.A.

*Usha Savara*  
(USHA SAVARA)  
MEMBER (A)

*Ram Pal Singh* 25.7.91  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)