

In the Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-733/91

Date: 5.4.1991.

Shri N.K. Singh .... Applicant

Versus

Union of India through .... Respondents  
the Secretary, Min. of  
Home Affairs & Others

For the Applicant .... Shri Gopal Subramaniam,  
Sr. Advocate with  
Mr. Ramji Srinivas, Advocate

For the Respondents .... Shri G. Ramaswamy, Attorney  
General with Mr. M. Chandra  
Sekharan, Addl. Solicitor  
General, Mr. C.V. Suba Rao,  
Addl. Govt. Advocate, and  
Mr. N.S. Mehta, Sr. Standing  
Counsel.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to  
see the judgement? *Yes*
2. To be referred to the Reporter or not? *No*

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

The question for consideration in this application  
filed under Section 19 of the Administrative Tribunals  
Act, 1985, is whether the impugned order dated 26.3.1991,  
issued by the respondents, whereby the services of the  
applicant who has worked as Joint Director, C.B.I.,  
since 26.2.1990, have been placed at the disposal of  
the Border Security Force with immediate effect, is  
legal and valid. *On*

2. At the outset, it may be stated that the implementation of the aforesaid impugned order will not cause any disruption to the family life of the applicant, nor will it involve any loss of pay, other privileges or status presently enjoyed by him as an I.P.S. officer who is on deputation to the Centre. The challenge to the impugned order is based on the alleged mala fides on the part of respondent Nos. 2 and 3 (the Prime Minister of India, and the Minister of Law & Justice, respectively).

3. The application was filed before the Vacation Bench of this Tribunal on 25.3.1991, when notice was directed to be issued to the respondents, returnable on 1.4.1991. The case was taken up for admission and consideration of the question of interim relief on 1.4.1991. After hearing Shri G. Ramaswamy, the learned Attorney General, for the respondents and Shri Gopal Subramaniam, the learned counsel for the applicant, we feel that the application could be disposed of at the admission stage itself and we proceed to do so.

4. The applicant is a member of the Indian Police Service belonging to the Orissa Cadre. The facts disclosed in the application indicate that he is a senior Police Officer with several achievements to his credit, including handling of investigations of cases of "national importance" such as 'Kissa Kursi Ka' case, the 'Jeep Scandal' case, and the 'Sugar Deal' case. It was he who arrested the late Mrs. Indira Gandhi, the former Prime Minister of India in October, 1977. He was awarded Police Medal for meritorious service in 1977 and President's Police Medal for distinguished service in 1987. He had worked in the C.B.I. earlier from 1972 to 1980 in various capacities. He had also a stint in the Indo-Tibetan Border Police Force in 1965. He came on deputation to the Centre for a period of 5 years in Feb., 90. The notification dt. 26.2.1990, issued by the Deptt.

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of Personnel & Training states that the President has appointed the applicant as Joint Director, C.B.I. w.e.f. 12.2.1990 and until further orders.

5. The case of the applicant is that he is heading the special investigation work in the C.B.I. relating to the following matters:-

- i) RC I(s)/90 - SIU-I/SIC-1 dated 7th April 1990 - Phone tapping case.
- ii) RC-2(A)/90-ACU-II dated 29.3.1990 - A-320 Airbus case.
- iii) RC-1(s)/90-SIG dated 25th May, 1990 - St. Kitts case.
- iv) RC-2/S/90-SIG dated 8th August, 1990 - Letter forgery case.

6. The applicant has stated that except the 'phone tapping case', the investigations in respect of the other three cases are still in progress.

7. The deputation of the applicant to the Centre was at a time when Shri V.P. Singh was the Prime Minister of the country. The present Prime Minister took over ~~XXXXXX~~ in November, 1990. The allegation made by the applicant in the present application is that the present Prime Minister has sought to ~~put~~ <sup>various</sup> ~~pressures~~ on him in the conduct of the three investigations which are still in progress by the Team of which

he ~~applicant~~ is the Head. He has given in the present application certain instances in support of his allegation of mala fides against the Prime Minister as well as the Law Minister.

8. The learned Attorney General stated that the allegations of mala fides are vague and have not been substantiated. According to him, the transfer of the applicant from the C.B.I. to the Border Security Force has been effected on administrative grounds.

9. We have carefully gone through the records of the case and have considered the rival contentions. The legal position regarding the transfer of an employee from one place to another, is well settled. In Gujarat Electricity Board and Another Vs. Atma Ram Sugomal Poshani, 1989 (2) S.C.C. 602 at 607, the Supreme Court has observed as follows:-

"Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant 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 the 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 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. 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 with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case."

10. In Union of India & Others Vs. H.N. Kirtania, 1989 (3) S.C.C. 445 at 446, the Supreme Court has reiterated the same view. It was observed as under:-

".....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."

11. In view of the aforesaid judicial pronouncements, no Government servant appointed to a cadre of transferable posts, can contend that he has a legal right for being posted at any particular place and for a particular period. The learned Attorney General stated that in the instant case, the applicant has rushed to the Tribunal even before the impugned order dated 26.3.91 was issued by the respondents. In case he is aggrieved by the impugned order of transfer, he should have made a representation to the Government, bringing out his own difficulties. That has not been done. The further question arising for consideration is whether there is violation of any statutory rule or whether the impugned order is vitiated by mala fides.

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12. The learned counsel for the applicant contended that the tenure rules for I.P.S. officers (Amended) which were issued on 17.6.1988 (Annexure VI, pages 42-44 of the paper-book) are relevant. We have carefully gone through the tenure rules. These rules do not stipulate that an I.P.S. deputationist to the Centre should be appointed in any particular office or department for a particular period. The actual placement of an officer depends on the exigencies of service and falls outside the tenure rules. The only provision relevant is regarding the tenure at the Centre on deputation which will normally be five years for an officer of the rank of the applicant. The learned Attorney General submitted that the respondents do not propose to curtail the tenure. The question whether the tenure rules are statutory or non-statutory in nature, appears to have no relevance in the instant case.

13. We may now come to the question of mala fides. The allegations made by the applicant in this regard are that the impugned order has been passed "solely with the object of punishing the applicant for conducting truthful, honest and upright investigations into the matters entrusted to him and also with a view to abort any further fruitful investigations into the matters which had been assigned to the applicant." In this context, the applicant has narrated the following incidents:-

- (i) On 9th April, 1990, when the applicant went to meet respondent No.2 (the present Prime Minister of India) and asked him a few

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questions in connection with the phone tapping case, he "expressed his unhappiness". The C.B.I. submitted its report on the phone tapping case on 23rd August, 1990. The 2nd respondent, on going through the report, "expressed his unhappiness" in connection with the investigation of the case. On 15.3.1991, when L met the 2nd respondent, the latter "looked visibly annoyed" and further said that "he was very much annoyed with the applicant because the 2nd respondent was not a person who would make false allegations, including against V.P. Singh".

(ii) The applicant is dealing with St. Kitts case in which Shri Nek Chand Gandhi, alias Chandraswamy and Shri Kailash Nath Agarwal, alias Mamaji, were named as accused in the First Information Report. The allegations pertained to an alleged bank account at St. Kitts in the Caribbean Island in the name of Shri Ajaay Singh, son of Shri V.P. Singh, former Prime Minister with Shri V.P. Singh as the "beneficiary" of the said account. The applicant has stated that Shri Chandraswamy

left India upon the appointment of Shri V.P. Singh as Prime Minister of India and returned to India in the last week of November, 1990 on the appointment of respondent No.2 as the Prime Minister. The C.B.I. has given notices to Shri Chandraswamy to appear before them on various dates, but he has not complied with the same. The applicant has alleged that on 8th January, 1991, the Private Secretary to the Prime Minister telephoned "the C.B.I." to say that Shri Chandraswamy had sustained some injuries and, therefore, the C.B.I. Team must visit his Ashram to examine him. The applicant felt that such a request was not proper and he did not agree to the suggestion. Shri Chandraswamy was once again summoned on 18.1.1991.

(iii) In a meeting convened on 4.2.1991 in his office, the Minister of Law and Justice, the third respondent, "made enquiries" regarding the progress of the letters Rogatory in the St. Kitts case abroad. He is stated to have indicated that "since nothing has

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happened so far, these letters Rogatory should be cancelled". "The C.B.I.", however, did not agree to the said suggestion.

(iv) Upon the publication of a news item in the 'Times of India' dated 23.1.1991 under the caption "CBI summons Chandraswamy", respondent No.2 telephoned the C.B.I. and "expressed his unhappiness" as to why the said news item was published and further said that "Shri Chandraswamy was engaged in matters of national importance".

(v) On 7.2.1991, an official of the C.B.I. left for the Port of Spain. On 8.2.1991, the 2nd respondent telephoned "the CBI" and wanted to know whether it was a fact that some officers had been deputed abroad for investigation in the St. Kitts case and whether certain documents had been seized. When it was pointed out that some documents had been seized by the U.S. authorities in pursuance of the letter Rogatory issued by the Indian Courts and that one Supdt. of Police had been sent for the investigation, the 2nd respondent "expressed his unhappiness and said as to why this was done without consulting him".

(vi) A notice was served at the Ashram to Shri Chandraswamy on 26.2.1991 asking him to appear on 27.2.1991. The applicant has stated that soon thereafter on the same day, he received a call from "the Prime Minister's Office saying as to why raids were being conducted in the Ashram of Shri Chandraswamy" and that "the Prime Minister was annoyed". The Principal Secretary to the Prime Minister also stated that "the Prime Minister was annoyed".

(vii) On 28.2.1991, a telephonic message was received in the "C.B.I." that respondent No. 2 wanted that the C.B.I. should not insist upon any restraint being imposed on Shri Chandraswamy from going abroad and his immediate examination.

14. Relying upon the above, ~~xxxxxx~~ the applicant has submitted that he "verily believes that the action of transfer has been initiated mala fide solely with the purpose of preventing of collection of evidence and further influence investigations into the three controversies".

15. The learned counsel for both the parties referred to the aforesaid matters, but drew different conclusions therefrom. According to the learned counsel for the applicant, these clearly indicate mala fides on the part of respondent Nos. 2 and 3, who are desirous of "soft pedalling" the on-going investigations. The learned Attorney General submitted that apart from the allegations being vague, it is pertinent to note that respondent No. 2, who is the Prime Minister, is also holding the portfolio of Ministry of Home Affairs of which C.B.I. is a department, and that in his capacity as the Home Minister, he has every right to give directions to the applicant in regard to the processing of the pending investigations.

16. We have given careful thought to the allegations of mala fides made against respondent Nos. 2 and 3. The issue relates to the respective roles of the Ministers, vis-a-vis, the civil servants in the conduct of Government business and is an important one. For deciding such an issue which is a purely legal one in the instant case, we need not wait for the counter-affidavits to be filed by the respondents for which the learned Attorney General had sought for some time. To our mind, it is for the

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Government to consider as to whether a case which has been taken up for investigation, should be processed or how it has to be processed. This is in the realm of executive policy which is to be decided by the Minister concerned and not by the civil servants working under him. A civil servant, however highly placed, is bound to implement the policy decisions and directives given by the Minister concerned. It is clear from the application that the applicant did not agree with the directions given by the Minister concerned in certain matters. Such a posture in the public by a civil servant is untenable in our constitutional scheme of things under which the Minister concerned is accountable and answerable to the Parliament for the omissions and commissions of his Ministry/Department and the civil servants under him in the same Ministry/Department are accountable and answerable to their Minister (emphasis added). In Samsher Singh Vs. State of Punjab, 1974 SCC (L&S) 550 at 564, a 7 Member Constitution Bench of the Supreme Court has observed that "constitutionally, the act or decision of the official is that of the Minister". It follows, therefore, that the Minister and the civil servants under him cannot pull in opposite

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directions in the conduct of Government business. We are, therefore, of the view that no Government department, including the C.B.I., can function as an island of power or as an independent agency with no accountability or answerability to the Minister in charge, who in turn, is accountable and answerable to Parliament. In case the Minister takes a decision or gives some directions which are not to the liking of an officer who is entrusted with certain duties, the officer cannot ignore the same and make it a grievance or cause of action in legal proceedings concerning his service matters, alleging mala fides on the part of his Minister.

17. The matters mentioned in the application seem to indicate that the relationship between the applicant and respondent Nos. 2 and 3 has become somewhat strained and there is lack of trust and confidence on both sides. The learned Attorney General stated that even the Director, C.B.I. had been transferred after respondent No.2 (the present Prime Minister) assumed office in November, 1990. He also referred to numerous changes made in the administrative set-up following changes of Government in the past. In the instant case, despite the strained relationship among the applicant and

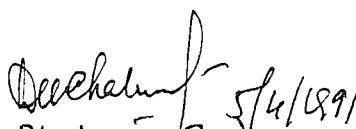
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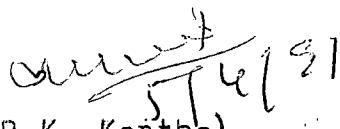
respondent Nos. 2 and 3, the applicant has been accommodated at the Centre by giving him a responsible assignment in the Border Security Force with equivalent rank and status. Whether or not by the impugned premature transfer of the applicant from the C.B.I. to the Border Security Force the public interest in the efficient pursuit of the on-going investigations will be adversely affected, is primarily a matter for the Executive to consider and not for the Tribunal or the Court, as the Executive is the best Judge of what constitutes public interest in a given situation. A civil servant cannot take the stance that he is the best person to perform the duties and responsibilities of a particular office and that removing him from the scene in the mid-stream when investigations commenced by him are half way through, amounts to mala fides. The concept of indispensability of an individual officer, however upright, honest and efficient he may be, is unknown to good administration under any legal system. A civil servant trying to uphold the public policy and preserve and protect public interest against the decisions and directions of his own Minister or Ministers, who are the political masters, is also alien to our legal system.

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18. In our perception, the matters set out in the present application are not such as to infer any mala fides or ulterior motives on the part of respondent Nos. 2 and 3. At the most, they may indicate strained relationship between the applicant and his Ministers. This may also be viewed as a case of incompatibility of temperament not amounting to mala fides. In a case of this kind, we see no justification to interfere with the impugned transfer order dated 26.3.1991. The applicant will, however, be at liberty to make a proper representation to the Government about his personal difficulties, if any. In that event, the respondents shall consider the same and take appropriate decision within a reasonable period, keeping in view the exigencies of service. During the hearing of the case, the learned counsel for the applicant stated that the applicant had not yet joined the Border Security Force, where he has been transferred by the impugned order. In the facts and circumstances, the respondents shall regulate the intervening period as leave of any kind due and admissible to him, in case he applies for the same. The application is disposed of accordingly at the admission stage itself.

There will be no order as to costs.

  
(D.K. Chakravorty)  
Administrative Member

  
(P.K. Kartha)  
Vice-Chairman (Judl.)