

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : DELHI

(5)

O.A. NO. 859/1991

DATE OF DECISION : 30.04.1991.

AMRIT SINGH

... APPLICANT

Vs.

UNION OF INDIA & ORS

... RESPONDENTS

Shri Narinder Chowdhry

... Counsel for Applicant

Shri P. H. Ramchandani

... Counsel for Respondents

GORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)

HON'BLE MR. P. C. JAIN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgment ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgment ? No.
4. To be circulated to all Benches of the Tribunal ? No.

Cler.

(P. C. Jain)
Member (A)

Ram Pal Singh

V.C. (J)

(b)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : DELHI

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DATE OF DECISION : 30.4.1991.

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CORAM : HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)

HON'BLE MR. P. C. JAIN, MEMBER (A)

JUDGMENT

(Judgment of the Bench delivered by
Hon'ble Shri P. C. Jain, Member (A))

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The applicant who is posted as Deputy Manager, Mail Motor Services, Naraina, New Delhi and has been ordered to be transferred from Delhi to Madras vide communication dated 20.3.1991 (Annexure-A), is aggrieved by the aforesaid order of transfer and has, in this application under Section 19 of the Administrative Tribunals Act, 1985, prayed that the same be quashed and respondent No.1 be directed not to take steps on the above transfer order. In pursuance of a notice on admission and interim relief the respondents appeared through their Advocate. We have heard the learned counsel for the parties for the disposal of the OA at the admission stage itself. We have also perused the material on record.

2. The case of the applicant is that the impugned order of transfer is contrary to O.M. dated 24.6.1985 issued by the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pensions (Department of Personnel and Training) (copy at Annexure-C). Another

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ground taken by the applicant is that the impugned order aforesaid is against the order passed by the Chief Election Commissioner of India that no Government officers should be transferred during the period of election work. In addition, the family difficulties have also been referred. Some allegations of malafide have also been made against respondent No.2, eg., Senior Manager, Mail Motor Services, Naraina, New Delhi.

3. Learned counsel for the respondents strongly opposed the application on the grounds that (1) the O.M. dated 24.6.1985 relied upon by the applicant is not a rule having statutory force and that the instructions contained therein are no more applicable to Group 'A' and Group 'B' officers; (2) the allegations of malafide are vague and in any case these are with reference to respondent No.2 while the impugned order of transfer has been issued by respondent No.1; and (3) the O.A. needs to be dismissed in view of various judgments of the Supreme Court, particularly in the case of Gujarat Electricity Board & Anr. vs. Atma Ram Sungomal Kosani (Judgments Today 1989 (3) SC 20), and Union of India vs. H. N. Kirtania (Judgments Today 1989 (3) SC 131).

4. It may be noted here that the applicant has made a representation against the impugned transfer order on 26.3.1991 but it is stated that no reply has been received so far.

5. Let us first deal with the allegations of malafide. The first allegation is that the applicant being a Deputy Manager, MMS is required to go in field in the Delhi region to check up the transportation of public mails, but respondent No.2 withdrew the facility so that the applicant

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can be blamed for non-performance of his duty. It is stated that when the vehicle was allowed by the P & T to be used by the applicant for inspection and attend the accident spot as and when required, the respondent No.2 withdrew this facility and kept the said vehicle at his own disposal. The applicant made a representation in this connection and the respondent No.2 got annoyed and he issued warnings/memos (Annexures G to J) which show that the respondent No.2 was prejudiced and have malafide intentions to harm the applicant. It is also stated that Shri S. K. Bishwas who has been transferred from Madras to Delhi in his place is junior to him but respondent No.2 wants to favour him as he has a close and intimate relations with him. The learned counsel for the respondents rebutted these allegations. In view of the fact that the particulars of alleged allegations of malafide are at best highly vague; these are against respondent No.2 who has not issued the impugned order of transfer; the respondent No.2 has not been made a party by name; and a number of memos/warnings were issued to the applicant both before and after the impugned order of transfer has been issued, we are of the view that the allegation of malafide cannot be upheld. If a superior officer in the discharge of his duties points out deficiencies etc. in the work and conduct of his subordinate, which is in fact the subject matter of the various memos referred to by the applicant, it does not follow that these have been issued only because of malafide intention. The onus of giving specific particulars and establishing them rests on the party who alleges malafide and who has to establish the same before it can be considered as a ground for challenging the action of the other party.

6. As regards O.M. dated 24.6.1985 the Government emphasised therein that the Government servant ^{should} ~~who~~ disist

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from any act of discrimination against members of SC/ST communities on grounds of their social origin. It is also requested therein that senior officers, including the liaison officers of the Ministry/Department should keep a close watch to ensure that such incidents do not occur at all. However, if any of such incidents comes to the notice of the authorities, action should be taken against the erring officers promptly. It is also referred to in this O.M. that it has been pointed out that SC/ST officers are sometimes transferred to far off places and also placed at insignificant positions. It is a common ground between the parties that the applicant belongs to Group 'B', and holds gazetted post, and he is subject to an All India transfer liability. Learned counsel for the applicant himself submitted that such a post is sanctioned only for Calcutta, Madras, Bombay and Delhi. He also stated that the applicant has been in Delhi since he joined the services as a non-gazetted employee about fifteen years back. On the post of Deputy Manager, Mail Motor Services also, it is stated that he has been working continuously since 1985. It may also be stated that the officer who has been posted in his place at Delhi is also a SC officer. Thus the question of discrimination also does not arise even *prima facie*.

7. Learned counsel for the respondents produced before us a copy of O.M. No. AB-14017-27/89-Estt(RR) dated 20.6.1989 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. It is stated therein that a Committee of Members of Parliament which examined the matters relating to representation of SCs and STs in Government services has recommended that tribals should, as far as possible, be posted near their native place. It is further stated that

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the recommendations have been examined carefully, and that it may not be possible or desirable to lay down that holders (belonging to SC/ST) of Group 'A' or Group 'B' posts who have All India transfer liability should be posted near their native places. Thus the reliance by the applicant on the O.M. dated 24.6.1985 which itself does not support his prayer as discussed above, does not help the applicant.

8. The applicant has not produced a copy of the order stated to have been passed by the Chief Election Commissioner to the effect that no Government officers should be transferred during the period of election work. To the best of our knowledge, there is some bar to the transfer of those Government servants who are connected with election work and that too commencing from the date notified by the Election Commission till the election process is over. It has not been shown as to if and how the work of the applicant is connected with the work of elections. Moreover, the impugned order of transfer was issued on 20.3.1991, i.e., prior to the date from which the guidelines issued by the Election Commission came into force.

9. In H. N. Kirtania's case (supra) the Supreme Court held as below :

"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 grounds of malafides.

No violation of statutory rules has been shown in this case. The ground of malafide is not established as discussed above.

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In the Gujarat Electricity Board's case (supra) the Supreme Court held as below :

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. No Government servant or an employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to another 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 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 of the transfer orders he would expose himself to disciplinary action under relevant rules...."

1Q. The family difficulties do not provide a legal right to a transferable Government servant to seek intervention of a judicial forum against the transfer order.

1L. In view of the above discussion, we are of the view that the O.A. is devoid of any merits and the same is accordingly dismissed leaving the parties to bear their own costs.

(P. C. Jain)
Member (A)

30/4/1991

Ram Pal Singh
Vice Chairman (J)

30/4/1991