

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1459/2004

New Delhi, this the 6th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri M.P. Sharma,
Deputy Superintendent of Police,
Central Bureau of Investigation,
Special Investigation Cell-II,
C-I, Hutmants, Dalhousie Road,
New Delhi

... Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. The Secretary,
Cabinet Secretariat,

North Block, New Delhi
2. The Director,
Central Bureau of Investigation,
Block No.3, CGO Complex,
New Delhi
3. The Administrative Officer (Est),
Central Bureau of Investigation,
Block No.3, 4th Floor,
C.G.O. Complex, New Delhi

... Respondents

(By Advocate : Shri M.M. Sudan)

O R D E R (ORAL)

Heard.

2. The applicant has impugned the Office Order No. 728/2003 dated 6.6.2003 as communicated by respondent No.3 whereby he has been transferred from Special Investigation Cell-I (SIC.I), Delhi to SCB, Mumbai and also Memorandum No.DPPERS.I/2004/2121/49/9/2003-PERS.I dated 31.5.2004 whereby the request of the applicant for change of his transfer from Delhi to Mumbai has been rejected.

3. The applicant has been in the service of the respondents for more than 34 years, out of which he has

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spent 28 years on duty at out stations on account of transfers and assignments, as claimed by him. This has led to his health being adversely affected. He underwent Coronary Artery By-pass Graft at Apollo Hospital, New Delhi, in November, 1996 and continues to receive treatment for his heart problems at the said Hospital and also at Dr. RML Hospital, New Delhi. He has also been using pace-maker. He has submitted that he has been advised strictly not to travel for long periods, as that could result in severe attack.

4. While he has made references to a charge memo dated 5.11.1999 having been served on him on his having allegedly threatened certain Inspectors of the CBI and the respondents having initiated proceedings against him individually in contravention of the advice of the CVC for joint proceedings against him and the two Inspectors in question, the same stands stayed under the orders of the Tribunal passed in OA No.739/2004 . There is also reference to the applicant having been implicated as an accused in a criminal proceeding in the Court of CJM Kurukshetra instituted by one Suraj Paul Singh against whom he had registered a case. The said person is also reported to have instituted a civil suit against him. Both the civil and criminal cases are pending in the Court of CJM Kurukshetra. He has submitted that he is to appear in these two cases from time to time. His submission is that he can pursue these cases only if he is allowed to continue in Delhi. His dis-location to Mumbai will result in his frequent visits to Delhi/Kurukshetra resulting in

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unnecessary drain on public money and being frequently away from work.

5. Another fact which has been brought on record by the applicant is that his wife is working in the Ministry of Railways in Delhi and that he has two grown up daughters and further that negotiations for the marriage of the first daughter are in progress. His transfer, under these circumstances, would have adverse effect on these matters. He has also referred to the respondent No.2 having personal grudges against him for the reasons as explained in paragraph 4.6 of the OA.

6. While he submitted a detailed representation against his transfer on 9.6.2003 explaining, among other things, the condition of his health and the other problems arising from his being away from the family and requesting for posting in any one of the non-investigating and non-touring branches within Delhi including Control Room, Coordination Division or the Training Academy, he has alleged that the respondents did not consider his representation inspite of the Superintendent of Police having made a recommendation that his case be considered sympathetically in view of his medical problems and the pendency of the proceedings before the CDI, CVC, New Delhi (Annexure A-7). The said representation was rejected.

7. The applicant had approached this Tribunal earlier also vide OA No.2365/2003 and which was disposed of by the Tribunal with direction to the respondents to consider the applicant's request for transfer afresh on medical grounds

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and particularly on the basis of the medical report prepared by the Medical Board, relevant portion of which reads as under:

"In view of the above, the respondents would now get the report of the Medical Examination Board after getting the applicant medically examined. And thereafter consider the applicant's request for transfer afresh on medical grounds. It would be desirable if such orders are passed expeditiously and in any case within a period of two months from the date of receipt of the report of the Medical Examination. With this, the MA 520/2004 and OA also stand disposed of."

8. In pursuance of the directions of the Tribunal, the respondents requested Dr. RML Hospital to constitute a Medical Board for examination of the applicant. The applicant appeared before the said Board. He was kept under medical observation upto 10.5.2004. During the said period he was given treatment for heart problem as well as Gouty Arthritis and Hypertension. He was discharged after 14 days of hospitalisation with an advice to continue treatment. The Medical Board, after carrying out the examination for 14 days, gave the following decisions:

"Sh. MP Sharma is a case of Hypertension since 1984, underwent CABG for CAD in 1996. He also has history of Gouty Arthritis for last 6 years. Available evidence does not justify continued absence from duty for such a long period. He can resume duty, should continue proper treatment on a regular basis and avoid strenuous exertion."

9. The applicant has submitted that he has not been keeping good health for several years and accordingly the respondents should have taken the same into consideration so as to enable him to avoid strenuous exertion and to continue proper treatment on regular basis. The applicant

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has alleged that the respondents have, by forcing him to join at Mumbai, acted in an inhuman manner. They have not appreciated the fact of the matter and also the apprehensions expressed by him in paragraph 4 (xvi).

10. The applicant has endeavoured to interpret the medical opinion of the medical board and has argued that the medical board has very specifically said that he needs proper treatment on regular basis and should avoid strenuous exertions and that these should have been kept in view while considering his request for changing the transfer order and allowing him to continue in Delhi. The applicant has contended that his transfer to Mumbai will be serving no purpose, as he would be practically spending no time in Mumbai for discharging his normal duties in the light of the problems that he is faced with and which have been referred to in the OA and also in the above paragraphs. According to him, his transfer has been ordered not with reference to any relevant policy guide-lines relating to transfer and posting, but is the result of arbitrariness and pick and choose policy as prevalent in the Office of the respondents. He has also alleged malafide in the rejection of his representation.

11. He has referred to the transfers of some individual officers in paragraph 5 (m) which have been cancelled due to their alleged proximity to the respondents, while his request made on medical grounds has been rejected. He has also alleged that the respondents did not allow him to complete his leave and was relieved immediately vide order dated 26.6.2003, modified by them on 30.6.2003. In his

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opinioni, there is no administrative exigency or public interest involved in his transfer. He has further alleged that there have been a number of officers who have rendered more than 30 years in Delhi and have never been transferred in the past. He has further submitted that in view of the fact that he is left with less than 2 years of service before his superannuation, he should not have been transferred out of Delhi particularly when he has serious medical and other problems. In this connection, he has cited the decisions of the Tribunal as given in OA No. 2365/2003 in which it has been held that no Officer can be transferred if he is left with less than two years service.

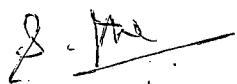
12. The applicant has also filed an MA No. 1363/2004 seeking production of the entire medical reports in respect of the applicant along with medical examination report conducted on day to day basis from 29.4.2004 to 10.5.2004 at Dr. R.M.L. Hospital. Briefly, in the said MA, the applicant has claimed that he remained hospitalized for medical examination purposes from 29.4.2004 to 11.5.2004 on the advice of the medical board and not for 2 days only, i.e., on the 29th April, 2004 and the 11th May, 2004, as submitted by the respondents.

13. The respondents in their counter reply to the OA have submitted that, in compliance of the earlier orders of the Tribunal, the applicant was directed to appear before the Medical Board at Dr. R.M.L. Hospital, New Delhi on 29.4.2004 and 11.5.2004. They have maintained that the applicant is liable to comply with the orders of transfer in view of the opinion of the medical board .On

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perusal of the details of the reply, it is observed that the applicant, who had joined the CBI as Sub Inspector on 16.12.1968 and who was promoted as Inspector and further as Deputy Superintendent of Police in due course, was posted/transferred to out stations as detailed in paragraph 1 of the counter reply. According to them, the applicant was posted outside Delhi for a period of only about six years out of 34 years of his service with them. They have enumerated the guide-lines with regard to transfer of CBI officials in paragraph 2 of their reply in which there is also a mention of the officials who are retiring within 2 years (on or before 31.7.2005) being not transferred irrespective of the length of posting at a particular station. As a mechanism to recommend transfers of Additional Superintendents of Police and Deputy Superintendents of Police following the transfer guidelines as referred to by them, there is a Committee consisting of senior level officers. The said Committee is reported to have considered the case of the applicant and recommended his transfer to SCB/CBI/Mumbai on administrative grounds in accordance with the said guide-lines. Accordingly, the applicant was relieved by SIC-I, New Delhi on 30.6.2003.

14. The respondents have referred to the judgement of the Hon'ble Supreme Court in Gujarat State Electricity Board vs. A.R.S. Poshani (AIR 1989 SC 1433) in which it had been held that 'transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever a public servant is transferred, he must comply with the order but if there is any genuine difficulty in proceeding on transfer, it is open to him to

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make representation to the competent authority for stay, modification or cancellation of the transfer order. If the transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer'. A reference has also been made to the decisions of the Hon'ble apex Court in H.M. Kirtania vs. Union of India (J.T. 1989 (3) SC 131) in which it has been held that 'transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on ground of malafide'. Reliance has also been placed in this regard on the decisions of the Hon'ble apex Court in Shilpi Bose vs. State of Bihar (1991 (17) ATC 935; (1991) Supp. 2 SCC 659) in which similar view is reported to have been held by the Hon'ble apex Court.

15. The respondents have referred to the civil and criminal cases which the applicant has been facing in the Court of CJM Kurukshetra, which have been mentioned by the applicant in the OA. The respondents do not thus dispute the submission of the applicant that his presence is required for attending to these cases.

16. The respondents have also taken me through the medical opinion as given by the medical board in respect of the applicant. It is quite apparent that the medical board has affirmed that the applicant has been a case of Hypertension since 1984 and has undergone CABG for CAD in 1996. He also has a history of Gouty Arthritis for the last six years. There is also an advice in the medical



opinion that he should continue proper treatment on regular basis and should avoid strenuous exertion. The opinion of the medical board on the applicant's absence from duty for a long period and on his resumption of duty is also quite explicit to the extent that they have not found the applicant's continued absence from duty for a long period as justified and also that he can resume duty. This medical opinion, however, does not say a word on whether in the given situation and in the light of their medical opinion, the applicant can appropriately be sent out of Delhi, in view of their opinion that he should continue proper treatment on regular basis and should avoid strenuous exertion. This opinion of the medical board has to be seen in the light of the submissions of the applicant that he is left with hardly two years of service before retirement on superannuation and further that he is receiving necessary treatment in New Delhi hospital and also that he has a few cases to attend to and other liabilities, necessitating his continued stay in Delhi. While it is an established position that transfers made in public interest and on administrative reasons should not be interfered with, it does not flow from what has been submitted by the respondents as to how it was so difficult for them not to keep him in Delhi keeping in view his medical condition, as pointed out by the medical board and also the fact that in their own transfer guide-lines it has been clearly stipulated that the officials who are retiring within two years may not be transferred irrespective of the length of posting at a particular station. It is not clear from their submissions as to why it was unavoidable for them to have posted the applicant out of Delhi despite the

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fact that the medical board had not commented upon this aspect of the matter particularly when the previous OA as well as the present OA have been filed in the context of his transfer only.

17. Having heard the learned counsel for the parties and having given a careful consideration to the facts and circumstances of the case and also keeping in view the medical opinion as given by the medical board constituted for the purpose and without any prejudice to the decisions as relied upon by the respondents in their counter reply, I am inclined to partly allow this OA with directions to the respondents that they allow the applicant to continue in Delhi so as to enable him to 'continue proper treatment on regular basis and avoid strenuous exertion'. Ordered accordingly. With this, the impugned orders of the respondents dated the 31st May, 2004 and also dated 6.6.2003 to the extent that it relates to the transfer of the applicant from New Delhi to Mumbai stand quashed and set aside. The other relevant orders as referred to in paragraph 8 of the OA in so far as these relate to the applicant's said transfer to Mumbai also stand consequentially quashed and set aside. The respondents shall, however, be at liberty to proceed in the matter as per law in regard to what has been conveyed by them to the applicant in paragraph 4 of their impugned order dated the 31st May, 2004. No order as to costs.



(SARWESHWAR JHA)
MEMBER (A)

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