

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1901 OF 2004

New Delhi this the 1st day of March, 2006

Hon'ble Mrs. Meera Chhibber, Member (J).

IN THE MATTER OF:

Shri A.M. Goswami,
S/o Shri M.M. Goswami.
R/o 495, Sector-9,
R.K. Puram,
New Delhi-110022.

.... Applicant.

(By Advocate Shri R.N. Singh)

Versus

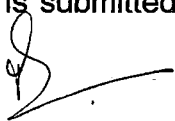
1. Union of India, through
Ministry of External Affairs,
South Block,
New Delhi-110011.
(Through : The Secretary)
2. The Regional Passport Officer,
Regional Passport Office,
Ministry of External Affairs, Govt. of India,
Hudco Trikot-3, Bhikaji Cama Place,
R.K. Puram, New Delhi-110066
3. The Joint Secretary (CPV) &
Chief Passport Officer,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi-110001.
4. Mr. Madhukar Asnani,
Under Secretary (PVA),
Office of Chief Passport Officer,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi-110001.

... Respondents.

(By Advocate Shri S.M. Arif)

ORDER

By this O.A., applicant has challenged the order dated 26.5.2004 (page 25) whereby he has been relieved from his duties from RPO, Delhi on the afternoon of 26.5.2004, with a direction to report for duty at Passport Office, Jaipur after availing usual joining time. This order is passed pursuant to the transfer order dated 25.3.2004. It is submitted by the applicant that the order



dated 25.3.2004 was not served on him yet when he came to know about it, he gave a representation on 12.4.2004 (page 27) for cancellation of his transfer and for granting him leave w.e.f. 3.6.2004 to 30.6.2004 but both his requests were rejected vide order dated 24.6.2004 (page 26) in a stereotype manner. The said order was passed without application of mind because he had sufficient leave in his credit and had also given medical certificates yet his genuine request was also rejected which proves malice in law.

2. He also submitted that the transfer order is in violation of respondent's own policy annexed at page 38 and the guidelines issued by Govt. of India, DOP&T that the wife and husband should be posted at the same station. He has also submitted that there are number of other UDCs, who have been in Delhi with a longer stay yet they have been retained (page 47) but applicant, who has had only lesser number of years in Delhi, has been posted out which further shows mala fides of respondents. Counsel for the applicant submitted that his transfer was, in fact, punitive in nature as is evident from the reply given by the respondents now as they have clearly stated that applicant has been transferred due to insubordination of superior officers whereas no such adverse remarks were ever communicated nor any disciplinary proceeding was initiated against him. Applicant has also alleged mala fides against Shri Madhukar Asnani, Under Secretary and made him party by name but in spite of that no reply has been filed by the said Shri Asnani, therefore, counsel for the applicant submitted that the allegations of mala fides stand admitted in law. He has also submitted that his daughter was in Class X in 2004, which is a crucial year, therefore, applicant could not have been transferred in mid academic sessions in March, 2004. He has thus prayed that both these orders be quashed and set aside. He has relied on the following judgments:

- (1) Samir Kumar Ghosh Vs. Union of India & Ors. (CAT, Jabalpur),
(1990 (1) SLR 611);
- (2) Charanjit Lal Vs. Union of India & Ors. (CAT, Principal Bench),
(1987 (2) ATJ 36);



- (3) Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan and Anr. (Supreme Court), (1994 SCC (L&S) 1180);
- (4) D.R. Sengal Vs. Chief Postmaster General & Ors. (CAT, Ahmedabad) (1991 (1) ATJ 243);
- (5) Y. Kurikesu Vs. The Sr. Supdt. of Telegraph Traffic, Trivandrum Div. & Ors. (CAT, Ernakulam Bench) (1994 (1) ATJ 71);
- (6) Pradeep Kumar Banerjee Vs. Union of India (Calcutta Bench) (1993 (2) ATJ 440);
- (7) Dharampal and Anr. Vs. The State of Rajasthan and Ors. (Rajasthan High Court), 2005 (1) SCT 465);

3. Respondents have opposed this O.A. They have submitted that applicant has All India Transfer Liability, therefore, this transfer order issued in public interest cannot be challenged. He has already been retained at Delhi for the last 18 years. Moreover, in 1988 even though his tenure was for three years at Lucknow, which was to end in 1989, he was transferred to Delhi after two years itself, due to his repeated representations on medical grounds of his wife and on humanitarian grounds, which clearly shows bonafides of the respondents.

4. On merits, they have submitted that applicant has been found to be disobedient on many occasions and even a warning was given to him in writing in January, 2004 (page 79). Even otherwise, his activities were found to be against official decorum, good conduct and discipline, which affected the image of the Ministry and the morale of other employees. Since he had come to the adverse notice of several officers of CPV Division of the Ministry, last two Heads of Department, including the present JS (CPV), who are of the rank of Joint Secretary and are Chief Passport Officers and are designated as his Disciplinary Authority, have ordered action, including transfer, against him.

5. They have further explained that the order dated 25.3.2004 was passed by the Transfer Board and not by an individual, which consisted of (1) JS (CPV) Dr. Ashok K. Amrohi, (2) JS (NRI) Shri M.S. Grover, (3) Director (South) Shri K.S. Bhardwaj, (4) Director (PVA) Shri E. Martin, and (5) US/DS (PV) Shri Ravi Shankar, which shows that Respondent No. 3 against whom allegations of mala



fides are alleged was not even involved at the time of deciding applicant's transfer, therefore, the allegations of mala fides are not at all relevant as far as his transfer is concerned, apart from those allegations being concocted and without any basis.

6. They have further submitted that even though transfer order was passed in March, 2004 but applicant was relieved in May, 2004 only, by which time the exams of Class X are over, therefore, it cannot be stated that he was transferred in mid academic session. In any case, since stay was granted by this Tribunal, applicant has continued to remain in Delhi in compliance with Court's orders. As far as the medical grounds raised by applicant are concerned, they have stated that meniere's disease is nothing but a kind of hearing disorder with some symptoms like diarrhoea, nausea, vomiting and dizziness, etc whenever there is an attack. It does not seem to be a disease involving long periods of bed rest and the treatment can be taken at Jaipur also because CGHS facilities are available there also. They have further explained that whenever transfer orders are issued, number of officials start giving medical certificates in order to resist the transfer, which is evident from the fact that the day applicant got stay order from the Tribunal, next day he joined the duties. Moreover, two years have already passed but surgery has still not been done, which shows there was no emergency. As far as the guidelines on the question of posting husband and wife at the same station are concerned, they have relied on the judgment of Hon'ble Supreme Court in the case of Rajendra Roy Vs. Union of India (1993 (1) SCC 148). Counsel for the respondents also undertook to produce the records to show how applicant has been stated to be resorting to indiscipline and undesirable conduct and disobedience. He has thus submitted that this is a normal transfer order passed in public interest, therefore, it calls for no interference. The O.A. may, therefore, be dismissed. He has also relied on Union of India and Ors. Vs. Sri Janardhan Debanath and Anr. (2004 (2) Scale 430).

7. I have heard both the counsel and perused the pleadings, original records as well as the judgments cited by both the counsel.



8. Perusal of the records show that cases of as many as 116 persons were considered for transfer wherein applicant's name figures at Serial No. 103. Transfer was not issued by an individual but by a Board, which consisted of senior officers, as mentioned above. The allegations of mala fides are made against Shri Asnani, Under Secretary but he was neither associated with the said Transfer Board nor he had any role to play in the transfer of applicant. Therefore, the allegations of mala fides are totally irrelevant as far as the transfer order of applicant is concerned. It is also seen, that as per Appendix-1 placed before the Transfer Board, Delhi-Jaipur-Ghaziabad fall in the same zone as far as staff up to the level of Assistants is concerned. Records also show that applicant was considered for transfer out of Delhi because there were serious reports received against him for indiscipline inasmuch as he was in the habit of absenting from office without taking any prior approval and for not obeying the orders of the seniors and for demanding gifts from various foreign missions. Referring to these reasons, counsel for the applicant strenuously argued, that since he has been transferred on the ground of insubordination, indiscipline and serious reports, as stated by the respondents, transfer order becomes punitive in nature and could not have been passed without holding inquiry or conveying at least adverse remarks to this effect. This argument has to be rejected outright in view of judgments of Hon'ble Supreme Court. In the case of Union of India & Ors. Vs. Sri Janardhan Debnath and Anr. (2004 (2) SCALE 430), it was specifically held by Hon'ble Supreme Court, whether transfer was in the interest of public service or not, would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution could not have gone into this question. It was further held, the manner, nature and extent of exercise to be undertaken by Courts/Tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order as to whether it adversely affected any service conditions, status, service prospects financially, etc. however, same yardstick, norms or standards



cannot be applied to all category of cases. Transfer unless involves any such adverse impact or visits the person concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, revision or termination. In fact, utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. It was further elaborated whether there was any misbehaviour is a question, which can be gone into in a departmental proceeding. For the purpose of effecting a transfer, it is not necessary to hold the inquiry. What is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of. The contention of the counsel for respondents in that case, to the effect, that an inquiry should have been held before issuing the transfer order was rejected by Hon'ble Supreme Court by observing that if in every case inquiry has to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. Even the question whether respondents therein could be transferred to a different division was not interfered with by Hon'ble Supreme Court as it was observed that it would depend on the administrative necessities. It was not for the Court to direct one way or the other.

9. If the facts of present case are seen in the backdrop of judgments as quoted above, it is seen, somewhat same situation is prevailing in the present case also. There is sufficient material on record to suggest that officers were not happy with the applicant in general, the way he was absenting from office without taking prior approval of the senior officers, disobeying the orders and complaints received from officials/representatives of some foreign Missions that he was asking for gifts, etc. Therefore, it was decided to transfer him out of Delhi in order to have clean image in the Passport Office because it was felt, it was not proper to keep such persons in the said seat. If applicant was transferred out due to these reasons, applicant cannot be heard of complaining that he has been



singled out for transfer. If he has been singled out, it is because of his behaviour and conduct and I find no illegality in it. Hon'ble Supreme Court has already held that in such matters, if persons insist for holding inquiry before transferring them out, the whole purpose will get defeated. Moreover, in the transfer policy itself, it is clearly mentioned that UDCs/LDCs can be transferred, if the concerned official is suspected to have developed vested interests and his continuance in the office is prejudicial to the interests of the Government. Since complaints were received against the applicant, therefore, his case gets covered under clause (b) (i) of the policy (page 38). It is thus clear that applicant has been transferred in view of administrative exigencies and not due to any mala fides as attributed against Shri Asnani, the Under Secretary.

10. Counsel for the applicant next contended that ^{transfer done in} ~~it~~ was ~~a~~ mid academic session and since his daughter was studying in Class X which is a crucial year, the transfer order is not sustainable in law but even this contention has to be rejected because even though the transfer was ordered vide Memo dated 25.3.2004 but it was not given effect to, till 26.5.2004 and he was relieved from his duties from RPO, Delhi, only on 26.5.2004 (page 25) by which time, the exams were already over.

11. It was next contended by applicant's counsel that since applicant's wife is working as Superintendent in Airport Authority of India and her job is not transferable, therefore, keeping in view the guidelines of DOP&T applicant could not have been posted out of Delhi. Even these instructions have been considered by Hon'ble Supreme Court in the case of Union of India Vs. S.L. Abas, reported in 1993 (4) SCC 357 but it was held by Hon'ble Supreme Court that these guidelines do not confer on the government employee any legally enforceable right because the expression used is "as far as possible". On the contrary, it was held, who should be transferred where, is a matter for the appointing authority to decide unless order of transfer is vitiated by mala fides or is in violation of any statutory provisions, the court cannot interfere with it. Similarly, in Rajendra Roy Vs. Union of India (1993 (1) SCC 148), it was held by Hon'ble Supreme Court that the order of transfer often causes lot of difficulties



and dislocation in the family set up, of the concerned employees but on that score the order of transfer is not liable to be struck down. In a transferable post, an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. It was also held that the guidelines are not mandatory and cannot be enforced in law. However, it was open to the applicant to make a representation setting out his hardship due to said transfer. In view of above, transfer of applicant cannot be quashed on this ground only that his wife is working at Delhi.

12. Counsel for the applicant next submitted that since applicant was suffering from some ailment and had even submitted his medical certificate and was to be operated upon, therefore, there was no justification to transfer him from Delhi to Jaipur. However, from the documents annexed by applicant himself, it is seen that though applicant was suffering from some ailment, for which he was advised rest for 3 days on 3.1.2004 but on 3.1.2004, he was declared fit to resume the duties. However, he was referred for further tests (page 32). This was in January, 2004 whereas now we are in the year 2006. A pointed question was asked to the counsel for the applicant as to whether applicant has been operated upon or not, to which, counsel for the applicant stated that he has still not been operated upon. He is yet to be operated. The very fact that he has not been operated for good two years itself shows, there was no such emergency and applicant could have taken the treatment at Jaipur or even if surgery is to be got done, he can report at Jaipur and then get the surgery done by taking medical leave. Respondents have stated categorically that CGHS facilities are available at Jaipur also, therefore, I see no reason as to why applicant will not be able to get his treatment at Jaipur. Therefore, there is no merit even in this contention. It is accordingly rejected.

13. Since applicant has been transferred to Jaipur due to administrative exigencies, it is in his own interest to join at Jaipur even now within 10 days from the date of receiving certified copy. In case applicant finds there is no facility for



getting the operation done at Jaipur and he is recommended by the CGHS doctors to get operated in hospital at Delhi or in any other hospital, it would be open to the applicant to apply for medical leave and get the surgery done as and when recommended. As and when that situation arises, I am sure respondents would consider the request and pass orders in accordance with law.

14. In view of above, no case for interference is made out. O.A. is accordingly dismissed. However, respondents may consider regularizing the intervening period in case applicant is able to produce the medical certificates from recognized hospital, otherwise decide the intervening period in accordance with law. No order as to costs.

8
1/3/06.

(Mrs. Meera Chhibber)
Member (J)

'SRD'