

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 3004
T.A. No.

1992

DATE OF DECISION 18-5-93

Shri S.K.Shukla

Petitioner

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri N.S.Mehta

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✗

JUDGEMENT

(delivered by Shri NV Krishnan, Vice Chairman(A))

The applicant is a Deputy Director (Supplies) under the second respondent. Being aggrieved by the order dated 13-11-1992 (Annexure A-1) transferring him to Bombay in the same capacity and by the promotions of certain officers made on 23-7-92, this application was filed on 18-11-92. When the application came for admission on 20-11-92, Shri C.L.Narasimhan, learned counsel, who then appeared for the applicant, submitted that he would confine the reliefs only to the challenge to the impugned annexure A-1 order of transfer. Subsequently, the applicant filed an amended original application on 26-11-92. The only prayer made by the applicant in the amended application is to quash the impugned order of transfer dated 13-11-92 annexure A-1 transferring him to Bombay.

2. The applicant, who appeared and argued his case in person, is aggrieved by the impugned annexure A-1 order on three principal grounds:

- i) The order is malafide, because it has been passed at the instance of Shri KP Verma, Joint Secretary in the Department of Supplies (Respondent No.1) as he is inimical to him.
- ii) The order was passed to favour Shri M.M. Aggarwal, another Deputy Director, then working under the General Manager, Western Railway, Bombay and is therefore a colourable exercise of power.
- iii) It is violative of departmental instructions regarding principles of transfer.

3. The respondents have filed two replies. A short reply dated 4-12-92 was filed by Shri Musafir Singh, Under Secretary to the Govt. of India on behalf of the respondents seeking dismissal of the O.A. and at any rate, opposing grant of any interim relief. A final reply to the amended original application was filed by the same officer on 4-2-93 on behalf of all the respondents. The respondents have denied the charges of malafide and favouritism and have justified the transfer of the applicant, who has been at Delhi for about 20 years with a break of only two years between 1983-85 when he was transferred to Calcutta. The respondents have contended that, in the circumstances, the applicant is not entitled to any relief.

4. We feel that it would facilitate disposal of the application if we consider seriatim the pleadings and arguments relating to the three grounds referred to in para 2.

5. In so far as the question of malafide is concerned, we first notice that the applicant has not impleaded, Shri K.P. Verma, Joint Secretary, who is alleged to bear

malice towards the applicant. As a matter of fact, the applicant has nowhere alleged specifically that the impugned transfer order was issued at the instance of Shri KP Verma and that this was done by him due to malice.

6. We can now consider the allegations made by the applicant, in his application. The applicant has drawn our attention to a news item in the Hindi weekly 'Sunday Mail' dated 9-15 August, 1992 (Annexure A-4). A translation of that news item is at Annexure A-5. In a nutshell, this news item contains the following allegations:

- i) The Prime Minister's directive for effecting economy in expenditure has been thrown to the winds by the Department of Supplies.
- ii) Government's policy is to close down the Directorate. Yet the number of posts is being increased.
- iii) Seven officers have been promoted as Director in one go.
- iv) Favouritism has been shown to one Shri Balasubramaniam a Deputy Director who has been promoted on account of the interest shown in him by the then Minister of State for Commerce and the then Secretary, Department of Supplies.
- v) Shri A.K.Saxena has been irregularly kept on deputation for a long time.
- vi) A large number of officials have been transferred to other Ministries, instead of merely being sent on deputation, on the ground that they are considered surplus in the Department. Yet, the Department is not slow in making further promotions of officials.

We have mentioned these allegations only to show that they

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have a bearing on the charge of malafide and therefore need no consideration.

7. The specific allegation in the Annexure A-5 news item which refers to Shri KP Verma reads as follows:

"DPC was fixed on 8-6-92 but because of Lok Sabha bye-election in Delhi this date was extended to 11 and 12-6-92. DPC was headed by Mr. SJS Chatwal, Member UPSC, Shri KP Verma, Joint Secretary, Department of Supply was the only other Member. It is noteworthy that as per DOPT O.M. dated 10-4-89 Secretary/Additional Secretary (Supply) had to be essentially a Member of the DPC. How a Joint Secretary alone has been sent to DPC is not known to anyone. In the eyes of DGS&D officials Shri KP Verma is a man of very low repute. It has been alleged that to manipulate deregistration of 160 Companies Shri Verma had resorted to change of crucial note-sheets. This matter was widely reported in Press and had been raised in Parliament also. Finally, Hon'ble Madras High Court had declared the controversial Govt. order as illegal while disposing of writ petition No.18729/90. Despite all these the Minister and the Secretary (Supply) kept on trying to save Mr. Verma".

8. The applicant has also drawn our attention to another news item in the 'Sunday Mail' dated 11/17-10-92. A-12 is the English translation. It mentioned about the wife of a particular official of the Department of Supply, known for tampering with the note sheets of government's files trying to bring in a Fax machine which was foiled by the Customs authorities. It is in this context that the applicant states as follows in para 11(d) of his application:

"The applicant further submits that the principal character in this case of malafide exercise is Shri KP Verma, the Joint Secretary in the Ministry of Commerce (Deptt. of Supply) against whom very damaging reports appeared in the press vide Annexure IV and V. Closely on the heels of this report, another fresh report more damaging than the former appeared in the Sunday Mail (weekly dated 10-17 Oct. 1992) in which it was reported that the wife of a high officer in Deptt. of Supply, Ministry of Commerce attempted to smuggle Fax machine at Indira Gandhi International Airport. The official was not named but there was a reference to the effect that he was 'notorious for tampering with the Note sheets in Government files'. Copy of the Press clipping of the report dated 10-17 Oct. 92 in Sunday Mail (Hindi) is annexed as Annexure XII. The same reference of tampering

of note sheets had also appeared in the Press report dated 9-15 August, 1992 in Sunday Mail which was annexed to O.A.No.3004 of 1992 and marked as Annexure IV and V. The logical inference is that the officer concerned can be Shri KP Verma. It is significant that neither of these ~~xs~~

Press reports have so far been refuted by the Union of India (Respondent No.1). The documents now placed before this Hon'ble Tribunal contains irrefutable evidence about the motive for mala fide action against the applicant inasmuch as Shri KP Verma unjustifiably entertain the suspicion that the applicant is the source of information to the press, felt aggrieved and indulged in mala fide measures against the applicant in retaliation."

Thus the reason why the applicant apprehends that Shri KP Verma was prejudiced against him is that the applicant thinks that Shri KP Verma entertained, unjustifiably, the suspicion that the applicant was the source of information to the press which published the An. IV and An.XI news items.

9. After hearing the applicant for some time on 20th March, 1993 we found that he was rambling and not coming to the precise point regarding mala fide. We, therefore, gave him the following directions:-

"The applicant has been arguing for quite some time that there is mala fide in this case. He is directed to pin point the allegations made by him in the original application in this regard and also draw our attention to any available records to substantiate it in the case of mala fide."

The matter was heard in the afternoon on the same day and again on 24-3-93, when the O.A. was finally reserved for orders. Despite this direction, the applicant was not able to show anything better than what has been referred to in the preceding paras. We, therefore, specifically asked him whether he was summoned by Shri KP Verma, the Joint Secretary and charged with getting these news items published and either scolded or rebuked

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and whether he was, at any time thereafter, threatened with dire consequences and more particularly, whether he was given an ultimatum that he would not be allowed to remain in Delhi any longer and be transferred soon. The applicant frankly submitted that there was no such meeting with Shri KP Verma and no such threats were given to him.

10. Except, perhaps, for one instance, there is no reference to Shri KP Verma in these news items. There is nothing therein to connect Shri KP Verma with the applicant. We are, therefore, of the view that the news items An. 5 and An.12 relied upon by the applicant to substantiate the charge of mala fide, do not establish any such prima facie case. Nowhere in the application has the applicant alleged that Shri KP Verma does not like him and is inimical towards him either because of certain incidents which happened between the two of them or in view of the serious difference of opinion between them on many issues or any other such reason. In fact, no reason has been given at all except that it is his assumption that Shri KP Verma suspects him of having got the news items published. Nothing is mentioned to show why such a suspicion is entertained. In the circumstances, we do not find that the charge of malafide has been made out.

11. The next attendant circumstance to which the applicant has drawn our attention in the same context is the news item in the news-paper 'Jansatta' dated 14-11-93 (An. A-18). The news item is head lined "Office of Deputy Director of Directorate of Disposal raided" and states that on 13-11-92 the Vigilance Department raided the office of the applicant who is referred to by name when he was not in his office and his room has

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has been sealed and that he has also been transferred. The news item further states that, according to sources, the raid is in connection with the bungling in procurement and investigation regarding corruption in regard to which a complaint has been received linking him with M/s Mecro Lab. Ltd., Bangalore. In this connection, the applicant has made the following allegations in para 4-xi-E of his application.

"To the utter surprise and agony of the applicant, the applicant came to know of a deep rooted conspiracy on the part of the respondents to defame him and cause him severe mental agony. This fact came to his notice after the applicant was kindly heard by this Hon'ble Court seeking stay against the transfer order. A false story against him was planted by the vested interests in Jansatta, a Hindi daily dated 14-11-92 in which it was alleged that the applicant was involved during the most part of his twenty years of service in the irregular procurement of medicines of the order of billions of rupees."

Again, in the same sub-para, he alleges as follows:-

"The applicant submits that the timing of planting the false story is significant as it coincides with the malafide transfer against which the applicant sought a stay from this Honourable Tribunal. The transfer order was served on 13-11-92 and false story was planted in the Press on 14-11-92. True copies of the Press clippings and English translation thereof are annexed to this application and marked as Annexures XVII and XVIII".

12. What is more interesting is the manner in which the applicant connects this story in the 'Jansatta' with Shri KP Verma which he does ~~this~~ in the next sub-para as follows:-

"XI-F. The manner in which the name of the applicant was dragged into the planted story of the Press is significant. The applicant's name was sought to be associated with the pharmaceutical industry which is the same industry over which the national Press brought out the scandalous reports of tampering with Government files by Shri KP Verma so as to manipulate the irregularity involved in deregistration of 160 pharmaceutical companies. Logical inferences lead to the conclusion that the said Shri KP Verma is the spirit behind the malafide exercise including the planting of the false story against the applicant inter alia aimed at vitiating the atmosphere around the applicant".

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We are unable to either draw any conclusion from these arguments that Shri KP Verma got this story planted in the 'Jansatta' or any conclusion that this discloses mala fide on the part of the respondents in transferring the applicant.

13. In regard to this news item, the respondents have stated as follows in their second reply dated 4th February, 1993:-

"Sealing of the room of the applicant at the Headquarters and further actions like delocking his drawers and making inventories of their contents, etc. were normal activities forming part of surprise vigilance checks and his protestations there against are not tenable".

In the course of arguments, Shri NS Mehta, the learned counsel for the respondents pointed out that even now i.e. after about four months after the incident, the applicant has no case that during the course of this search the Vigilance Department has deliberately planted documents etc in the room to incriminate him.

14. We are satisfied that the search of his room by the Vigilance Department cannot be a ground of malice against the respondents in regard to the transfer. It took place after the transfer and cannot be connected with the transfer. The reason given by the respondents that it was part of the normal vigilance check made appears to explain the search.

15. We can conveniently notice two authorities relied on by the applicant because they have a bearing on how a charge of mala fide can be made or proved. The applicant relied on the judgement of the Kerala High Court in 'Pushpakaran Vs. The Chairman, Coir Board (1978(1) 3LR 301) and the judgement of the Supreme Court in E.P.Royappa's case (AIR 1974 SC 555) to contend that the order of transfer can be quashed on ground of mala fide. He admitted that

he has not studied these judgements except to the extent they are referred to in the Tribunal's Full Bench Judgement in Kamlesh Trivedi Vs. ICAR 1 (1989(1)SLJ 641 CAT).

16. It is sufficient to mention here that in Puspakaran's case the transfer order was quashed because, among other things, malafide was found to be established against the Chairman, Coir Board against whom specific allegations were made. Likewise, in Royappa's case the petitioner had impleaded the Chief Minister of Tamil Nadu because he had made specific allegations against him on a number of counts which were not found to be established. In other words, if a charge of malafide is to be made, the person against whom the allegation is made should necessarily be made party and specific allegations have to be made, which can be met by that party. This application miserably fails in this regard. Therefore, the charge of malafide is baseless.

17. The next important plea taken by the applicant is that the transfer was not made to serve any administrative or public interest but was meant to help M.L. Aggarwal who was posted in his place after his transfer. He refers to the unseemly haste in entrusting the charge of his post to M.L. Aggarwal who was, as it were, waiting in Delhi to receive the charge.

18. We have perused the impugned An. A-1 order of transfer. On the face of it, the order does not indicate that the such is the case. In the reply filed by the respondents it is stated that the main reason for the applicant's transfer is that he has been at Delhi for a very long time. On his own admission, the applicant has been in Delhi from 15-2-1972, when he was first appointed to the Indian Supply Service as an Assistant Director and continued to remain posted at Delhi since then, except for a short spell from 22-8-83 to 11-7-85 when he was

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transferred to Calcutta. The mere fact that ML Aggarwal was posted in his place after transferring him from Bombay after a short spell cannot be construed to mean that the respondents have exercised their power of transfer for a collateral purpose.

19. The applicant has a case that the order of transfer is in violation of the departmental instructions on the subject. The applicant admitted that there is no office memorandum containing such instructions. However, it is alleged that the respondents have disclosed their policy in this regard in the reply filed by them to OA No.2121/92 filed by Rana Surinder Singh, challenging his transfer from Delhi to Kanpur. A copy of that reply has been filed as An. A-7. The relevant portion of the reply relied upon by the applicant is in para 4 as well as in ~~that~~ sub-^uparas of para 10, dealing with paras 4.6, 4.7 and 4.8 of the OA. The applicant points out that the An.A-7 reply states that Rana Surinder Singh was transferred because he was the next officer in the panel to be transferred and also because he was never transferred outside the headquarters. In other words, either the junior most officer has to be transferred or one of the Deputy Directors in Delhi who are junior to the applicant and have also not yet served outside Delhi even for ^{one} term should have been transferred.

20. The respondents have stated in their reply that no such policy decision has been taken. Transfers are made on various considerations depending on the facts and circumstances of each case. The prime consideration is to ensure effective and efficient transaction of government business and for that

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purpose the department has to consider various aspects like specific functional requirements in different positions in the organisation, individual suitability, performance and aptitude and also the length of time served at a particular place. It is, therefore, contended that there has been no violation in the transfer policy.

21. We are of the view that the applicant has not established that there is a strait jacket policy of the department in regard to transfers that only the junior most official should be transferred or that only the person not yet transferred out should be transferred. The Department has contended that the applicant was transferred because of his long stay at Delhi itself. This is also a relevant consideration for transfer and it cannot be faulted. It is not for us to decide what consideration should have been adopted in a particular case.

22. The applicant faintly raised the issue of the competence of government to order his transfer when they have already delegated the powers of transfer to the Director General. He, therefore, filed MP 3864/92 for a direction to the respondents to produce the authority on the basis of which the impugned annexure-1 orders were issued by the government. At the time of the final hearing, the applicant did not press this issue and conceded that the impugned order cannot be questioned on that ground. Therefore, this M.P. is dismissed.

23. The applicant has relied on the decisions in the following cases:-

- (a) E.P. Royappa Vs. State of Tamil Nadu.
AIR 1974 SC 555

- (b) B.Varadla Rao Vs. State of Karnataka.
(1986) 4 SCC 131
- (c) Kamal Kishore Vs. Management
M/s PAW Airways Inc
AIR 1987 SC 229.
- (d) Kamlesh Trivedi Vs. ICAR & another
1989 (1) SLJ 641 CAT (PB).
- (e) R.Jayaraman Vs. UOI
(1991) 17 ATC 151
- (f) P.Pushpakaran Vs. Chairman, Coir Board
1979 (1) SLJ 309 (Kar).

We have already referred to the decisions in Pushpakaran's case and E.P.Royoppe 's case. In view of the foregoing discussion, we find that the other authorities are not germane to the facts of this case. We mention these judgements only for the purpose of record.

24. It is only necessary to conclude by pointing out that the Supreme Court had considered the question of transfer on a number of occasions and has held that an order of transfer can be interfered with only if it is mala fide or if it is on account of colourable exercise of powers or due to gross violation of statutory rule relating to transfer. In the latest judgement in Rajendra Roy Vs. UOI (J.T.1992(6) SC 732) it was held as follows:-

"After considering the respective contentions of the parties, it appears to us that the appellant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wreaking vengeance against him because the respondent No.2 was anxious to get rid of him and he seized the opportunity of transferring him from Delhi to Calcutta by transferring Shri Patra back to Orissa from Calcutta. It is true that the order of transfer often causes a 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. 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. In a transfereable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department. We are in agreement with the Central Administrative

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Tribunal that the appellant has not been able to lay any firm foundation to substantiate the case of malice or mala fide against the respondents in passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal. It appears that Shri Patra was transferred to Calcutta and after joining the post he had made representation on account of personal hardship. Such representation was considered and a decision was taken to transfer him back to Orissa region. As a result, a necessity arose to transfer an employee to Calcutta to replace Shri Patra. It cannot be reasonably contended by the appellant that he should have been spared and some one else would have been transferred. The appellant has not made any representation about the personal hardship to the department. As such there was no occasion for the department to consider such representation."

The ratio of this decision fully applies to this case.

25. We, therefore, find no merit in this application. It is dismissed. The applicant is, however, free to make any representation to the respondents regarding his personal hardships which, if received, may be disposed by the respondents in accordance with law.

B.S. HEGDE
(B.S. HEGDE)
Member (Judicial)
18-5-93

N.V. KRISHNAN
(N.V. KRISHNAN)
Vice Chairman (H)
18-5-93