

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2010/93
MP No. 2941/93 and MP No. 3165/93

New Delhi this the 5th November 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri M.K. Bhardwaj,
1/6351 East Rohtas Nagar
Shahdara, Delhi-32.

Shri S.S. Sewak,
IV 21 N.W. Moti Bagh,
New Delhi-110 021.

Shri D.K. Bhasin,
BA/3E Munirka, DDA Flats,
New Delhi-110 067.
(By Advocate Shri A.S. Dhupia)

... Petitioners

Vs

Union of India, through
Ministry of Defence, Govt. of India

Director General (Ordnance Services)
MGO Branch, Army Hq. New Delhi
(By Advocate Shri H.K. Gangwani)

... Respondents

O.R.D.E.R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant were working in the Office of the Director General (Ordnance Services) (dgos) has jointly filed this application aggrieved by the transfer order dated 12.8.1993 by which they have been transferred out of Delhi to different places mentioned in the Order.

They have prayed for the aforesaid order dated 12.8.1993 be quashed which is violative of Article 14, 16 and 311 of the Constitution of India. The applicants have also prayed for the grant of interim relief that pending decision of the application, the operation of the transfer order be stayed. MP No. 3165/93 is also to the same effect. MP No. 2941/93 is for joining together which is allowed.

A notice was issued to the respondents who contested the application and in their reply opposed the grant of relief prayed for by the applicants. It is stated that as per the transfer policy dated 18.11.1960 and 22.10.1992 issued by the DGOS and officer is allowed tenure of six years in station. All the 3 applicants have spent

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12 to 16 years tenure in Delhi Station. Their transfer orders have been issued in the normal course under the turn over policy. It is further stated that All India Association of ordinates Officers Civilian (Direct) in their OAC of which the applicants have claimed themselves as office bearer passed by the Secretary General is not one of the recognised association/union circulated by the Executant Branch in the letter dated 15.2.1988. Further OAC would pertain to Group B Officers whereas the applicants belong to Group A post and designated as CSOs (Stores). Thus according to the respondents the applicants have no case.

We have also heard the learned counsel parties at length. Firstly, the learned counsel for the applicant argued that there is a violation of transfer policy which laid down the guidelines for effecting transfers. However, this fact is not borne out from the record. The applicants had already completed more than six years at Delhi and are quite within the zone of transfer. The applicants belong to a service which has all India transfer liability and transfer is an incidence of the service. We have perused the transfer policy annexed by the applicant himself at Page 10 of the original application. The transfer can be effected on any of the grounds mentioned in Para 2 of the said letter dated 22.10.1992. However, in Para A there is a mention of the fact that transfer should ordinary be avoided during the academic sessions. The transfer order is of 1993 and it cannot be said that the middle of the academic session has reached in fact by the Order dated 20.7.1993. Applicant Nos. 2 & 3 were detailed on advantageous material management (technical stores) - 12

commencing from 6.9.1993 to 2.4.1994 at College of Material Management, Jabalpur. Applicant No. 1 similarly was detailed as alongwith another officer. The transfer order of 12.8.1993 goes to show that transfer in case of Applicant Nos. 2 & 3 is to be executed on termination of the said course and in case of Applicant No. 1 to be carried out by 10.9.1993. In view of the above facts, it cannot be said that the transfer of the applicants have been in the middle of the academic sessions. In the month of July, the applicants were duly informed about their detainment for the training course.

The learned counsel for the applicant argued that since the applicants are office bearer of All India Association of Ordnance Officers Civilian (Direct) having its Registered Office at New Delhi, they are protected from transfer and in this case a reference has been made to the OM issued by the Ministry of Defence dated 18.11.1960. The reference was also made to the letter of Ministry of Defence dated 19.9.1966 annexed to the original application. The respondents have given the list of Associations which are duly recognised at their end. They have completely denied the recognition of the Association of which the applicants are office bearers and further stated that the applicants are Grade A Officers while the aforesaid Association which is unrecognised pertains to Group B officers. The respondents have referred to Government of India DOP&T OM dated 2.8.1991 - JCA dated 11.10.1991 (Annexure D) "The Recognised service Association are required to regulate their activities in accordance with the Rules in its constitution. One of the conditions for recognition is that the Association should furnish to

the Govt. annually, before the last day of July each year, a list of members and office-bearers and an updated copy of the Rules and Audited statement of accounts. It should be ensured that the Association comply with the conditions of recognition. If the Associations fail to comply with any of the conditions of recognitions, or the Rules in its constitution, they would automatically lose the facilities given to the Recognised Association".

It is the case of the respondents that the said Association which is firstly unrecognised and secondly pertains to Group B officers. The immunity from transfer to office bearers is not applicable. The applicants could not show anything against the above contention of the respondent except that it was pointed out that the list of recognised Association of Army Installation. The Learned counsel for the applicant argued that certain correspondence was entered into with the association of which the applicants are office bearers and so it is not open to the respondents to take the stand that they are now duly recognised association. This argument has no force at all.

The learned counsel also argued that the policy of discrimination has been adopted by the respondents. We are not convinced on this aspect also. The applicants have already completed six years tenure at Delhi and in any case it is open to the respondents to employ their staff at a particular station where the staff can best be utilised. In case of Gujarat Electricity Board Vs. ~~Ama~~ Ram Sumgal Poshani AIR 1989 SCJ P 1433 it has been held by the Supreme Court that transfer from one place is generally a condition of service and the employ has no choice in the matter. In

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the case of Union of India Vs. H.N. Karitani, Judgement Today, 1989 Vol. III SC P 121 it has been held that no interference can be made by the Tribunal merely for violation of guidelines regarding transfer as the guidelines are of non statutory character. The Hon'ble Supreme Court has also considered the matter in the recent case Union of India Vs. S.L. Abbas, Judgement Today, 1993 Vol. III SC P 678. The incumbent here was transferred from Shillong to Garhwal in Uttar Pradesh and the Tribunal, CAT, Guwahati Bench cancel the transfer, the Hon'ble Supreme Court upheld the order of transfer held that it is a matter for appropriate authority where to take work from an employee and court not to interfere unless it is vitiated with mala fides. Government instructions are mere guidelines and not statutory. The same view has been taken by the Hon'ble Supreme Court in the case of Rajendra Roy Vs. Union of India and ors. 23 ATC 1993 P 436 SC.

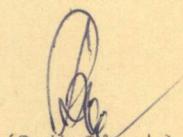
Union of India Vs. N.P. Thomas in the same journal at page 775 and in the case of Ms. Shilpi Bose Vs. State of Bihar reported in 1991 supplement Vol. II, SCC Page 659.

In view of the above law on the subject the court or the Tribunal should rarely interfere with the order of transfer and that too in the cases where there is allegation of mala fides. We have gone through the averments made in the application and there is no ground taken regarding the transfer order being passed out of in fact or law.

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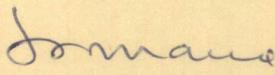
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We do not find a case for interference in the Impugned Order. The application, therefore, is dismissed as devoid of merit leaving the parties to bear their own costs.



(B.K. Singh)

Member (A)



J.P. Sharma

(J.P. Sharma)

Member (J)

Mittal