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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
...

O.A. No.2547/93

Date of decision 4.3.1994

THE HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN(A)

THE HON'BLE SHRI B.S. HEGDE , MEMBER(JUDICIAL)

Shri J.C. Mehta,
Enforcement Officer,
Enforcement Directorate,
6th Floor, Lok Nayak Bhawan,
New Delhi

... Applicant

(By Senior Advocate MS Shyamla Pappu
with Advocate Shri A.Kalia)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Government of India, New Delhi
2. The Director,
Enforcement Directorate, Lok Nayak
Bhawan, New Delhi

... Respondents

(By Senior Advocate Shri M.Chandrasekharan,
with Shri P.P.Khurana and Shri Madhav
Panikar, counsel)

O R D E R

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

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
being aggrieved by the orders dated 14.7.93 and 20.7.93

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(Annexures A-1 and A-3) respectively. Accordingly, he prayed for the following reliefs:-

- (i) To quash the impugned order dated 14.7.93 (Annexure-A-1) and dated 20.7.93 (Annexure A-3) and allow the applicant to continue at his present place of posting; and also
- (ii) interim relief, that pending final disposal of the O.A. the operation of impugned orders be stayed and applicant's salary and allowances arbitrarily withheld from August, 1993 be released.

2. The applicant joined the Enforcement Directorate as Assistant in the year 1976. Later, he was promoted to the post of Enforcement Officer Class III on 13.11.82 but was posted at Headquarters Office located at Lok Nayak Bhawan, Khan Market, New Delhi, till he was transferred to Bombay vide respondent's letter dated 14.7.93 (Annexure A-1).

3. He challenges the order of transfer on the following grounds:-

1. He states that the impugned transfer order is not in public interest and is contrary to the declared transfer policy of the Government. He also alleges that the impugned posting is malafide which is not

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permissible under the law and he has been discriminated as he is neither the senior-most nor the junior-most in the matter of stay in Delhi. He further states that officers similarly placed with longer stay in Delhi have not been disturbed etc.

Aggrieved by the impugned order, the applicant made representation vide dated 19.7.93. Nevertheless, he has been relieved on 20.7.93 from his office at Delhi. There after, he again made representation on 21.7.93, 23.7.93, 29.7.93, 16.8.93, 17.9.93 and 19.10.93 etc. but so far he has not received any reply from the respondents. On the other hand, the respondents vide their letter dated 23rd July, 93 directed the applicant to explain as to why disciplinary action should not be taken against him for in subordination, using abusive language against his seniors.

4. The Respondents, in their reply, denied the contentions of the applicant and stated that since transfer orders have already come into effect and the applicant has already been relieved of his posting in Delhi on 20.7.93, therefore,

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the application has no merit and is to be dismissed.

The posting of the applicant to Bombay is neither arbitrary nor discriminatory as he has enjoyed an interrupted stay at Delhi for a period of 15 years. While denying the contention of the applicant that the transfer is made with mala fide intention, they contend that he was not the only one transferred. Along with him 15 other Enforcement Officer have also been transferred to various places on administrative grounds (in the exigency of service) and in public interest.

Therefore, his contention that he has been discriminated has no substance. All the transfers have been made in public interest and in the exigency of public service and all others have joined their new postings except the applicant.

5. In the light of the above pleadings, the short question for consideration is whether the applicant is justified in challenging the order of transfer in the facts and circumstances of the case.

6. The learned counsel for the applicant, Ms Shyamla Pappu, Senior Advocate, assailed the order of transfer on the following grounds:-

- (i) That the order of transfer is made on malafide ground and colourable exercise to accommodate some one else.
- ii) Though the applicant made a representation, instead of considering his request, the department has issued a show-cause notice threatening to initiate the departmental proceedings against him.
- iii) She further urged that those who have stayed in Delhi for longer duration have not been disturbed and the applicant has been picked up, specially in order to accommodate one Shri S.Navraj, which clearly shows that the transfer is not in public interest.

In support of her contention, she relied upon the Tribunal's decision in K.K.Jindal v. General Manager, Northern CAT Railways and Ors (AIR 1986/(PB) 304) wherein the Tribunal has observed " it cannot be gain said that the transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. At the same an order of transfer can uproot a family, cause irreparable harm to an employee and derive him into desperation. It is on account of this, that transfer when effected by way of punishment, though

on the face of it, may bear the insignia of innocence are quashed by courts. This is a human aspect of the matter. However, exigencies of administration and public interest must take precedence over individual inconvenience and hardship..... Though the state is not bound to enumerate a policy in this regard, in which case individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would, prima facie, be unsupportable. A strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to rules if any framed and policy, if any, enunciated by the Government. Even if there are none, order of transfer cannot be arbitrary or discriminatory, for that is a constitutional requirement which every order must satisfy".

7. In the light of the above, she contends that since there is no declared policy of the Government, therefore, when individual transfer is questioned, it has to be considered on merits. Though the applicant has made

representations, the Respondents did not care to reply. Instead, they intended to initiate departmental proceedings against him. She also states that the order of transfer is in the nature of penalty and punishment which cannot be imposed without conforming to the procedure under the law. In this connection, she draws our attention to the full Bench decision of the Tribunal in Kamlesh Trivedi v. ICAR 1989 (1) SLJ 641 wherein the Tribunal had laid down guidelines that any order of transfer must-

- (1) be in public interest and in the exigency of service on administrative grounds.
- (2) It must not be in a colourable or malafide exercise of power.
- (3) It should not be arbitrary.
- (4) It must be made by a competent authority in accordance with the rules and instructions if any governing the transfer policy.
- (5) The transfer itself must be ordered in a bonafide exercise of power.

Accordingly, she points out that in the present case, the aforesaid guidelines have not been adhered to, therefore, the transfer order is liable to be quashed. In so far as the plea of malafide is concerned, she also relied upon the Apex Court Judgement in UOI v. H.N. Kirtania 1989 (3) SCC 445 =. JT 1989 (3) S.C. 131.

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8. In reply, the learned/counsel for the Respondents, Shri M.Chandrasekharan, draws our attention to Annexure A-1 order, where in 16 Enforcement Officers have been transferred to various places in public interest and on administrative exigencies. Therefore, he denied the contention of the applicant, that his order of transfer is malafide and discriminatory and is not based on administrative grounds. It is clear from Annexure A-1 order that his transfer and posting was not made with any malafide intention. In fact, the said plea has not been substantiated in any manner except for making a bald averment. Therefore, such a contention is not maintainable in law. He further draws our attention, that the applicant, by virtue of the transfer order, has already been relieved of his posting. Instead of joining at Bombay, after a lapse of nearly five months, he has approached this Tribunal seeking stay of the impugned order. Further, it is incorrect to state that he has been singled out, which is apparent from the impugned order. Thus no discrimination has been made out in the transfer order. Undisputedly, the applicant has been working in Delhi for the last 15 years. Therefore, the plea of malafide or arbitrariness in the order of transfers does not exist. Further, he submits, that transfer of public servants made on administrative grounds are in

public interest and 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 the grounds of malafide. Further, he points out that the applicant has not made out any grounds to challenge the order of transfer either on the basis of malafide or arbitrariness. He has also failed to establish the same by any documentary proof, as he has not levelled the charge of malafide in the Original Application and the plea of malafide has been brought out only in the rejoinder. As such, it is not open to him to make out a new case in the rejoinder filed by him. In support of his contentions, he relied upon the following decisions of the Apex Court:-

- i) In Ms. Shilpi Bose v. State of Bihar-1991 Supp (2) SCC 659

" It was held, that court should not interfere with a transfer order which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory or statutory rules or on the grounds of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer

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order is passed in violation of executive instructions or orders, the court ordinarily should not interfere with the order. Instead, the affected parties should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest etc (emphasis supplied)

- ii) Similar views have been expressed in Rajendra Roy V.U.C.I. - 1993(23) ATC/426^{SC}. The Court observed

" unless such order is passed malafide or in violation of rules of service and guidelines for transfer without any proper justification, the Court/Tribunal should not interfere with the order of transfer. The applicant is free to make representation to the concerned authorities about personal hardship, if any, being suffered by the applicant in view of the impugned order. If such representation is made, the same be considered by the department as expeditiously as practicable.

- iii) The Apex Court in UDI v.N.P. Thomas /1993(23) ATC SC 775 7 also held as follows:-

" In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fides. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same

station as far as possible, cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that circle even on promotion".

Thus there is no warrant for any claim based on seniority or juniority in respect of transfer.

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- iv) The observation of the Apex Court in *UOI v. S.L. Abbas* 1993(25) ATC 844 are more emphatic. Para 8, 9 and 10 of the judgment read as follows:-

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3. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A.
....The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority).
9. Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in *Bank of India v. Jagjit Singh Mehta* rendered by a Bench of which one of us (J.S. Verma, J.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner."

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10. The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the respondents contention that if such an order is questioned in a court or the tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the court or the tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

9. We have heard the learned counsel for both the parties and carefully considered the pleadings and records. After careful consideration, we are not able to persuade ourselves to accept the plea of the applicant contending that the transfer is made with the malafide intention and by way of punishment. On a perusal of the judgments cited by the learned counsel for the applicant i.e. K.K.Jindal and Kamlesh Trivedi makes it clear, that the facts and circumstances of the cases are entirely different from the present one and they are clearly distinguishable. As a matter of fact, even in Jindal's case, the Tribunal has emphasised that if the transfer is in exigency of service and for administrative reasons, the employer is the best judge and it also observed that exigencies of

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administrative and public interest must take precedence over individual inconvenience and hardship. In the present case, since the plea of malafide or discrimination as alleged is found to be baseless, the aforesaid decision would not come to the rescue of the applicant. Further, the guidelines laid down in Kamlesh Trivedi's case were squarely adhered to in the present case and, therefore, the plea of malafide or arbitrariness has not been established by the applicant and thus not tenable. It is not the case of the applicant that the authority who passed the order of transfer is not competent to do so. The ground of malafide has not been established and no case has been made out. Therefore, it is apparent that the order of transfer is in public interest and is in the exigency of the service. In the instant case, since the applicant has already been relieved of his posting in Delhi and the transfer orders have already become effective, the same is not capable of suspension. The better alternative would have been to join the new place of posting and make a representation to the competent authority explaining his difficulties in moving out of Delhi and when this is done, it is .

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for the competent authority to consider his request and pass appropriate orders accordingly.

10. 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 a reasonable inference of malafide action on the pleadings and antecedents of facts and circumstances. But to draw such an inferences, there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of instruction or vague suggestions. In the present case, no concrete allegation of malafide is made. There is nothing on record to prove that his transfer was made with malafide intention. Therefore it cannot be said that the transfer order of the departmental transferring the applicant to Bombay is violative of any statutory rules or it suffers on ground of malafide. As regards the contention of the applicant that some of his senior colleagues have been retained and his transfer is against the policy of the Government is not based on record and thus cannot be sustained. Since the applicant has been holding a transferable post and has no vested right to remain in Delhi indefinitely and cannot claim

it as a matter of right. Therefore, both the pleas of the applicant fails.

10. In the light of the catena of Supreme Court decisions cited by the learned Senior Counsel for the Respondents, it is the prerogative of the respondent/competent authority to effect transfer of the applicant which cannot be assailed, unless the same is against the statutory rules or the order is passed with malafide intention. Further, it is well-settled that the courts will not normally interfere with the orders of transfer unless it is manifestly clear that the said order of transfer is against the statutory rules or the same is passed with malafide intention or guidelines etc.

11. In the instant case, though the applicant has made many representations, the same have not been disposed of. However, on a perusal of the same, we find that except the representation dated 16.8.93(Ann.A-9) requesting the authorities to modify the orders of transfer on account of his personal difficulties in all other representations, he has not averred any personal difficulties which would require the attention of the competent authorities to consider the same. In fact his representation dated 19.7.1993(Ann.A.2) can hardly be called a

representation. It contains, unwarranted insinuation and its tone and tenor are highly objectionable.

It does not surprise us that the respondents threatened to take disciplinary action against the applicant.

As stated in Gujarat State Electricity Board's case
Atmaram

V. Sungomal Peshani AIR 1989(SC) 1433 if the

order of transfer is not stayed, modified or cancelled, the concerned Government 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 his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules.

12. An ad-interim order was issued on 13.12.1993 suspending the operation of the impugned order which was extended till 28.1.1994 on that day we restored that interim order and directed as follows:-

" However, on the request of the ld. counsel for the applicant, we direct that in case applicant does not want to join Bombay immediately, in view of the pendency of this O.A. he is permitted to submit an application for leave to the IInd respondent today itself for a period of 15 days and Respondent No. II is directed to sanction his leave, if due. Call on 8.2.94 for possible final hearing.

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The applicant is on leave in pursuance of this order.

13. In the conspectus of facts and circumstances of the case, we are of the view, that no case has been made out for any interference with the impugned Ann.A-1 order of transfer dated 14.7.1993. Accordingly, we uphold the order of transfer. As the O.A. is devoid of merit, it is liable to be dismissed. However, it is also necessary to issue some direction in this case.

14. Accordingly, while upholding the impugned Ann.A.1 order dated 14.7.93 we dispose of this O.A. with the following directions:-

- i) In supersession of all the earlier interim order we direct that the period from 13.12.1993 till this order is passed shall be treated as leave due to the applicant.
- ii) In regard to the period from 20.7.93 when he was relieved in pursuance of the Ann.A.1 transfer order upto 12.12.93 (i.e. before the first interim order was passed on 13.12.93) the applicant may make a representation to the second respondent to regularised this period by grant of such leave as is due to him. In case, such a representation is made, the second respondents shall consider it sympathatically ignoring the offensive 'representation' dated 19.7.93 (Ann.A-2) made by the applicant and pass such order

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in accordance with law as may be appropriate, with one month from the date of receipt of the representation.

- iii) The applicant will be entitled to the usual joining time/preparation time to join at Bombay, as if he has been relieved today afternoon in pursuance of the Ann.A.1 order.
- iv) This order shall not stand in the way of the respondent from considering the 'appeal' dated 16.8.93 of the applicant (Ann.A-9) which shall be disposed of in accordance with law within 2 months, after the applicant assumes charge at Bombay in pursuance of the Ann.A.1 order.

No order as to costs.

(B.S. Hegde) 4/3/94
Member(J)

(N.V.Krishnan)
Vice Chairman(A)

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