

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 697 of 1996 and

O.A. No. 698 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

HON'BLE MR. PARITOSH DUTTA, JUDICIAL MEMBER.

TAPAN SARKAR

AND

SUBRATA CHATTOPADHYAY

VS.

UNION OF INDIA & ORS. (Home Affairs)

For Applicants : Ms. U. Sanyal, Counsel leading
Mr. S.K. Dutta, Counsel, Mr. M.K. Bandopadhyay, Counsel

For Respondents : Mr. M.S. Banerjee, Sr. Counsel.

Heard on : 24.6.96.

Ordered on : 24.6.1996.

O R D E R

B.C. Sarma, AM.

1. Both the applications have been taken up together for admission hearing since they involve similar questions of fact and law.
2. Both the applicants used to function as U.D. Clerks under the Staff Selection Commission Office in Calcutta. By the impugned Order dated 31st May, 1996, both the applicants have been transferred to New Delhi, the applicant in O.A. No. 697 to the Staff Selection Commission Head-quarter and the applicant in O.A. No. 698/96 to the Deptt. of Personnel & Training. Being aggrieved thereby, the instant application has been filed with the prayer that the impugned transfer

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order be quashed and set aside and the applicants be allowed to stay in Calcutta.

3. At the admission stage, there was a prayer for Interim Order and on 10.6.1996, no Interim Order was granted but the respondents were directed to Show cause by today, as to why the Interim Order shall not be passed as prayed for by the applicants in the application. However, when the admission hearing of the matter was taken up today, there is no written show cause against the said Order. However, Mr. M.S. Banerjee, 1d. Senior Counsel appearing for the respondents submits that no Interim Order in this case need be passed. Mr. Banerjee also submitted that the persons, who are posted in place of the instant applicants, have already arrived from Delhi and they were also allowed to join. Consequently, both the applicants have been relieved from their erst-while post in Calcutta, the applicant in OA 697/96 on 6.6.96 and the applicant in OA 698/96 on 21.6.96. Mr. Banerjee, therefore, submits that this is a ^{you like} written transfer Order and there is no malafide at all in this case and, as such, the instant application deserves to be dismissed in limine.

4. The matter has been examined by us after hearing the submissions made by the learned Counsel for both the parties and perusing the records. We note that the instant applicants have been staying in Calcutta for quite some time. Mrs. Sanyal, 1d. Counsel appearing for the applicants, submits that no Option was called for by the respondents in the matter of their transfer from Calcutta to Delhi whereas the Options were invited from the personnel, who were posted in Delhi and elsewhere to come to Calcutta. According to Mrs. Sanyal, the respondents should have also obtained Options from the instant applicants so that they could have intimated to them their willingness to move out of Calcutta to New Delhi. Since it was not done, according to her, the transfer Order is malafide.

7. We havd given ~~sincere~~ ^{serious} consideration to this aspect of Mrs. Sanyal's ~~argument~~, but we are not at all impressed by it. Simply because the applicants contend before us that the Order was malafide, it does not make it so. The applicants have not ~~make~~ ^{made} any specific submission alleging malafide intention on the part of the person ~~ordering~~ who is the Under Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi, in the matter of transfer. It is not their submission that the transfers have been made in violation of the guidelines. We find that the calling of option from the Officers posted outside of Calcutta for transfer to Calcutta is a different matter. Mrs. Sanyal argued that the options were called for filling up of existing vacancies. We are of the view that even though the options might have been called for to fill up existing vacancies, the respondents are not debarred in public interest to fill up vacancy (s) by transferring persons from outside Calcutta. The transfer is an incident of service and we find that both the applicants have all India transfer liability. Mrs. Sanyal, however, argued that in the impugned Order of Transfer 'the public interest' have not been mentioned. We would like to observe that the transfers are either in personal interest or in public interest. It is not the applicant's case that these transfers have been made on personal request by the respondents. This being so, we are of the view that the applicants were transferred in public interest and, therefore, the contention of Mrs. Sanyal fails. In many of the

5. We note that the instant applicants have been staying in Calcutta from quite some time (about 8 years or so). In the interest of efficient administration, the Govt. employees must ^{be} transferred from one place to the other from time to time; ^{otherwise} [↑] they ~~do not have~~ vested [↑] right ~~to remain posted at one place~~. In this connection, the observation made by the Hon'ble Apex Court in the Case of - Shilpi Bose (Mrs.) and Ors. Vs. State of Bihar & Ors. (reported in the 1991 Supp (2) SCC 659) is relevant. Their Lordships had held as below :

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"...the Courts 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 statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested ~~x~~ right to remain posted at one place or the other, he is liable to be transferred from one place to the other..."

On the basis of the above decision of the Hon'ble Apex Court, we have no hesitation to hold that the respondents had transferred the instant applicants in the interest of public and there is no malafide involved in the said transfer orders. The application is liable to be dismissed.

6. For the reasons given above, we do not find any merit in the applications. Both the applications are, therefore, dismissed at the stage of admission itself without passing any Order as to costs.

7. However, we note that although ~~the~~ by the Order dated 10.6.96 the respondents were directed to show cause by the next date of admission hearing as to why Interim Order shall not be passed as prayed for by the applicants in the Petitions, ~~we find that the~~ applicant in the OA 698/96 was relieved from the ~~date~~ ^{office} in Calcutta on 21.6.96 and the respondents also did not show any cause in the matter. However, the applicant in OA 697/96 was relieved on 6.6.96, which is prior to the date on which the order was passed by the Tribunal. In our view the respondents in relieving the applicant in OA 698/96 has taken the decision in undue haste and, by doing so, indirectly they have disregarded the Order of this Court, which should not be done. It is not desirable ^{for} from a government official's to pass such orders in undue haste without waiting for appropriate orders from the Court. However, considering the submission of Mr. Banerjee that the respondents had to do so, because his substitute already arrived from New Delhi and the fact that no specific order was passed by this Court, we do not intend to proceed further in

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the matter against the respondents concerned. But we would like to give them to note caution that in future, we will take a serious view if recurrence of such ^{incident} decision is brought to our notice.

8. Mrs. Sanyal, 1d. Counsel for the applicants further submitted that the applicant in the O.A. 698/96 be allowed 2 months joining time to join in New Delhi, since he is going to marry on 22nd July '96. While such allowing of time cannot be the joining time under the rules, we give liberty to the said applicant to apply for leave for such period necessary and upon receipt of such application from the said applicant, the respondents shall consider the matter favourably.

Paritosh Dutta
(P. Dutta)
Member (J)
24.6.96

B.C. Sarma
(B.C. Sarma)
Member (A)
24.6.96