

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

NO. O.A. 1130 of 1996.

Present : Hon'ble dr. B. C. Sarma, Member (A)

PRABIR KUMAR JOARDER

Vs.

1. Union of India, through the Secretary, Min. of Information & Broadcasting, A Wing, Shastri Bhawan, New Delhi.

2. The Chairman, Central Board of Film Certification, 91, Walkeswar Road, Bombay - 400 006.

3. Administrative Officer, C.B.F.C. 91, Walkeswar Road, Bombay.

4. Regional Officer, C.B.F.C., Calcutta Regional Office, 8, Esplanade East, Calcutta - 69.

5. Sri B.S.Biswas, Regional Officer, C.B.F.C., 8, Esplanade East, Calcutta - 69.

... Respondents.

For applicant : Ms. Uma Sanyal, counsel.
Ms. C. Alam, counsel.

For respondents : Ms. K. Banerjee, counsel.

heard on : 22.8.97 :: ordered on : 29.8.97.

O R D E R

This application has been filed by the applicant assailing the impugned order of transfer dated 12.6.96 whereby the applicant was transferred from Calcutta to Hyderabad.

2. Briefly stated, the facts involved in this case are as follows : The applicant after the death of his father, who was a Head Clerk in the Eastern Regional office of the Central Board of Film Certification, was given compassionate appointment as a Group D employee. Thereafter, he was promoted as an LDC on 12.1.81. The applicant is aggrieved by the fact



that by the impugned order he has been transferred from Calcutta to Hyderabad office. It is his specific contention that the regional officer of the said Board is his appointing authority and, therefore, he cannot transfer him outside the Eastern Region. Moreover, the officer who has issued the impugned order of transfer is not his appointing authority and, therefore, he does not have the competence to transfer him from Calcutta to Hyderabad. It is also his contention that he has no transfer liability on all India basis and there is no provision for inter-regional transfer. He was also appointed on compassionate ground and, therefore, he should not be transferred out of Calcutta. The applicant has also averred at para 4(XVI) of the application that it was a case of mala fide transfer. He contends that for redressal of some genuine grievances in connection with his service matter, he was compelled to make a representation to the superior authority, *inter alia*, alleging that due to the purported and illegal action on the part of the concerned officer of the Regional Office, he has been deprived of his service benefits, since the date of his appointment and after getting the information about the said representation, one B.S.Biswas, Regional officer (Acting), who is also in-charge of the department, started mental torture upon him and finally on 30.5.96 he was physically assaulted by the said Shri B.S.Biswas within the office premises. The applicant lodged a complaint to the local police station on 31.5.96. A xerox copy of the said complaint dated 31.5.96 has been annexed to the application. The applicant filed a representation, but that was turned down and being aggrieved thereby, the instant application has been filed with the prayer that the impugned transfer order and the release order dated 13.6.96 be quashed and set aside and a direction be issued upon the respondents to pay the salary from June, 1996 and to accept the medical leave application submitted by him.

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3. The case has been opposed by the respondents by filing a reply. The respondents contend that the transfer order has been passed in public interest by the Bombay Head Office of the said Board and there is nothing wrong in the transfer order. There is no government order to the effect that a Group-C employee cannot be transferred from one place to another within the country and the contention made by the applicant in para 4(XX) of the application stating therein the OM dated 1.11.90 made it clear that a group C employee cannot be transferred from one place to another, cannot be accepted. The said OM is only advisory in nature. The transfer order, the respondents contend, is bona fide and it is made in public interest. They have denied all the other allegations made in the application.

4. The applicant has also filed a rejoinder to the reply, which I have perused.

5. During hearing, Ms. U.Sanyal, 1d. counsel, leading Ms. C.Alam, 1d. counsel for the applicant submitted that the applicant does not have any transfer liability as would be evident from the said OM annexed to the application. According to her, there is no provision of inter-regional transfer and the transfer order is mala fide. She also submitted that the applicant was originally given appointment on compassionate ground and, therefore, he should not be transferred.

6. Ms. K.Banerjee, 1d. counsel for the respondents, however, submitted that there is no policy decision taken by the government in respect of the Central Govt. employees that Group C employees cannot be transferred from one place to another within the country. Ms. Banerjee further submitted that the ground that the Regional Officer cannot transfer the applicant from Calcutta to Hyderabad has not been taken in the application. She also contended that the allegation made by the

applicant regarding mala fide of the transfer order is vague and in this connection, she cited the observation of the Hon'ble Apex Court in the case of E.P.Royappa, reported in AIR 1974 SC 555. She also cited the decision of the Hon'ble Apex Court in the case of State of M.P. & Anr. VS. S.S.Kourav & Ors, reported in AIR 1995 SC 1056 wherein it was observed by Their Lordships that court cannot sit on appeal over a transfer order. She also referred the the case of Shilpi Bose & Ors. Vs. State of Behar & Ors., reported in AIR 1991 SC 523.

6. I have heard the submissions of the 1d. counsel for both the parties, perused records and considered the facts and circumstances of the case. There has been a catena of decisions of the Hon'ble Apex Court to the effect that a transfer order cannot be interferred ^{with} by a court or Tribunal unless it is passed in violation of the service rules and guidelines or it is passed in a mala fide manner. In the case of Rajendra Roy Vs. Union of India & Ors, reported in 1993(1) SCC 148, Their Lordships held that unless a transfer order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court or Tribunal should not interfere with the order of transfer. In the case of E.P.Royappa case, mentioned hereinbefore, Their Lordships further held that government has the power to transfer a person from one place to another which does not make the transfer arbitrary and not open to attack under Articles 14 and 16 of the Constitution. In S.S.Kaurav case, Their Lordships also held that Courts or Tribunal are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by

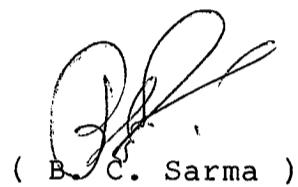
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extraneous consideraion without any factual background foundation. Ms. Sanyal has submitted that the transfer order is not sustainable since the applicant does not have any transfer liability. There is no order produced before me to show that government has any policy not to transfer any group-C employee from one place to another within the country or within the same place. O.M. dated 1.11.90 is only advisory in nature. This does not preclude the department or Ministries to transfer group D or C employees from one place to another which may be necessary in administrative exigency. There is no order produced before me which prohibits transfer of a group-C employee on inter-regional basis. The contention made by the applicant that he was appointed on compassionate ground and, therefore, he should not be transferred, does not have any legs to stand. The applicant might have been appointed on compassionate basis, but after his appointment he must be treated ~~at~~ par with other employees and no special concession can be given to him on that ground. The applicant also contends that the transfer order is mala fide, but the allegation of being mala fide is very vague, as will appear from the grounds stated in the application and the applicant ~~has~~ miserably failed to establish his contention that transfer order was either mala fide or passed with ulterior motive. I note that the transfer order was passed by the Bombay Head Office of the Board and, therefore, I find nothing wrong in the impugned order of transfer on that ground. On the basis of the law laid down by the Hon'ble Apex Court and in view of the facts and circumstances of the case, I am of the opinion that there is no infirmity or illegality in the transfer order and accordingly the application is liable to be dismissed. Ms. Banerjee also submitted that the applicant has been given leave salary from the Hyderabad Office as he had applied for leave.



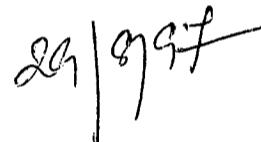
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7. In view of the above, I do not find any merit in this application. Accordingly, it is dismissed. The intervening period from the date of release of the applicant to the date of joining may be treated as per rules on the basis of the application to be filed by the applicant. No order is passed as regards costs.



(B.C. Sarma)

MEMBER (A)



29/09/97