"X" (10)

Central Administrative Tribunal
Calcutta Bench

OA No. 856 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Ashim Kr. Ghosh

Vs.

Union of India & Ors.

For the Applicant : Mr. T. Sarkar, Ld.Counsel

For the Respondents: Ms. K. Banerjee, Ld.Counsel

Heard on : 30-4-1998 Date of Judgement : 30-4-1998

O R D E R

Being aggrieved by and dissatisfied with the impugned order dated June, 1996 regarding rejection of representation as per direction of passing speaking order issued on 11.6.96 by the Tribunal in OA No.704 of 1996; the applicant has filed an application again before this Tribunal challenging the validity of the impugned orders of transfer dated 8th May, 1996 (Annexure A-3 to the application) transferring the applicant from New Delhi to Krishnagar and the impugned speaking order dated Junr, 1996 (Annexure A-6 to the application) on the ground that the impugned orders of rejection of the representation of the applicant is devoid of reason and arbitrary. It is also alleged in the application that the Secretary, CWC is not the competent authority to issue the impugned orders of transfer. It is also alleged that the impugned order of transfer is highly arbitrary and illegal and violative of article 14 of the Constitution; since the longer stayee in the cadre of the applicant was allowed to stay in the station; but the applicant being shorter stayee was chosen for the said transfer.

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This copy of annexure "X" is the copy of the original and is attested by me

Tapan Sarkar
Advocate

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2. Respondents filed written reply stating inter-alia that application is not maintainable in view of the fact that applicant joined his duties in CWC, Headquarters on 14-10-96 as per transfer order after passing of a self-contained speaking order after considering his representation as per order of the Tribunal vide letter No.A-19072/887/80.Estt.V dated 11.8.96. It is also stated in the reply that all postings and transfers right from the level of Assistant Engineers and above were approved at Members, CWC/Chairman, CWC level after which, the transfer orders was issued by the officer not below the rank of Under Secretary as per the powers delegated. Thus the orders issued is fully valid and operational. It is stated that the grounds shown in the representation of the applicant were carefully considered but the same was not agreed to and Shri Ghosh was accordingly informed. So, it cannot be said that his representation has not been considered and it is also stated that representation of Shri Ghosh dated 30-5-96 has been considered by the Chairman, CWC but was not agreed to. Decision of the Chairman has been communicated to Shri Ghosh vide letter dated 17-6-96 and thereby instant application is devoid of merit and liable to be dismissed.

3. Ld.Advocate Mr. T. Sarkar, appearing on behalf of the applicant, submits that the alleged speaking order dated Junr'96 (Annexure A-6 to the application) is devoid of reason, since the order (Annexure A-6) did not disclose any reason as to why his case was not considered. It is also submitted by Ld.Advocate Mr. Sarkar that the impugned order of transfer was not issued by the competent authority. Hence, order of transfer is liable to be quashed in view of the decision of the Hon'ble Appex Court reported in 1996 (SIR) 703 Dr. R.C. Tyagi Vs. Union of India & Crs., where the Lordship held inter-alia that the competent authority is to issue transfer order, order issued other than competent authority would be without jurisdiction. Ld.Advocate Ms. Banerjee on behalf of the respondents submits that the applicant was transferred from Krishnagar, West Bengal to New Delhi by order dated 8-5-1996 and the applicant challenged the order before the Tribunal and Tribunal directed the respondents to dispose of the representation of the

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applicant and accordingly the case has been considered and disposed of and that has been communicated to the applicant vide letter dated 17-6-97. Thereafter, he joined at New Delhi. So, there is no illegality in making the order of transfer and in passing the speaking order as alleged by the applicant in this case. Ms. Banerjee further submits that Tribunal has no jurisdiction to interfere with the order of transfer issued by the competent authority in public interest. Ms. Banerjee further submits that she asked the Department to produce relevant file ~~of the relevant records~~ regarding delegation of power; but they did not produce it as asked for. Ms. Banerjee also relied on the decisions of Hon'ble Appex Court reported in SLR 1993(25) ATC 844 (Union of India Vs. S.L. Abbas) and (L&S) 66 (State of M.P. Vs. S.S. Kumar) and also SCC 2486 and SCC 1056 for the purpose of showing that Tribunal should not act as appellant authority in the matter of administration of transfer in public interest.

4. I have considered the submission of Ld.Advocate of both the parties. I fully agree with the Ld.Advocate Ms. Banerjee on that score that the power in the matter of order of transfer issued by the competent authority in public interest should not ordinarily be interfered with by the Tribunal unless it is shown that the impugned order of transfer is arbitrary and malafide and without jurisdiction/ authority. In the instant case, the applicant specifically made an averment in the applicant that the Secretary, CWC is not the competent authority to issue impugned order of transfer, Chairman is the competent; but impugned order was issued by the Secretary. But the respondents admitted the same in the reply stating that the Secretary, CWC has been delegated with the power of transfer. But the respondents did not produce such paper of delegation in this case. It is found that the applicant approached this Tribunal earlier by filing an application No.704 of 1996 where the Tribunal, by an order dated 11-6-96 (Annexure A-5), disposed of the application with a direction upon the respondents to pass the speaking order after consideration of the representation of the applicant. Further, the said order of

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transfer was stayed till disposal of the representation. And after passing of the speaking order, applicant complied with the order of transfer and reported for duty in New Delhi. In the meantime, much water has been passed through the Ganga; but respondents could not produce a scrape of paper to show that Secretary, CWC was vested with power of transfer by way of delegation of power as stated in the reply. Since the respondents took plea that Secretary was not vested with the power to make order of transfer of the applicant, the burden lies with the respondents to show by producing paper to prove that the impugned order has been issued by the competent authority i.e. Secretary of the CWC as order of delegation.

5. I have gone through the relevant speaking order dated 17th June '96 (Annexure A-6 to the application) and it is found that no reason has been disclosed as to why his representation was not found fit to be accepted. On the face of the order (Annexure - 6) it is found that it is cryptic in nature and devoid of reason. It is found that the respondents did not produce the relevant file before this Tribunal at the time of hearing to show that the representation was really considered by the competent authority i.e. Chairman ~~or any other personnel through~~ reason was not reflected in the speaking order communicated to the applicant. It is the duty of the respondents to produce the relevant records or relevant file to satisfy the Tribunal that the reasoned order was passed by the competent authority. Having not done so, it can be presumed that there is no material to support that the Chairman has considered his representation and rejected the same disclosing the reasons thereof.

6. It is not in dispute that transfer of govt. servant appointed to a particular case of transfer posts from one place to another is an incidental to ~~some one~~ Service. No govt. servant has right for being posted at any particular place. That does not mean that the order of transfer can be passed by other than the competent authority.

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7. In the case of State of U.P. Vs. Ramesh Ch. Sharma, 1996 SCC (L&S), the Hon'ble Appex Court held that if the reasons disclosed by the State is found non-existent or extraneous, the action of the govt. can be quashed.

8. In view of the above circumstances, the impugned order of transfer was not issued by competent authority i.e. Chairman and accordingly it is without jurisdiction and liable to be quashed, and at the same time, the alleged speaking order is devoid of reasons, and liable to be set aside. Hence, the said orders are quashed. Accordingly, I direct the respdts to pass an appropriate order, Persuant the observation made above, within 3 (three) months from date of communication of this order.

Sd/-

(D. Purkayastha
Member (J)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
कलकत्ता न्यायपीठ
Calcutta Bench

KAMIR CHATTACHARYA
Regn. No. 0[illegible]/87
Govt. of India
NOTARY, CALCUTTA

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Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central administrative Tribunal
कलकत्ता न्यायपीठ
Calcutta Bench