

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 138/96
T.A. No.

DATE OF DECISION 6.8.96

Vikram Sharma

Petitioner

Mr. N.K. Khandelwal

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondents

Mr. J.P. Joshi, Sr. Central
Govt. Standing Counsel,

Advocate for the Respondent (s)



CORAM:

The Hon'ble Mr. S.P. Biswas, Member (Administrative)

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement? No
- ✓ 2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

S. P. Biswas
(S.P. BISWAS)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR

Date of order : 6.8.96.

OA No. 138/96

Vikram Sharma ... Applicant.

versus

Union of India & Ors. ... Respondents.

Mr. N.K. Khandelwal, Counsel for the applicant.

Mr. J.P. Joshi, Counsel for the respondents.

coram:

Hon'ble Mr. S.P. Biswas, Administrative Member:

.....

BY THE COURT:


Applicant, a Scientific Officer in the department of Atomic Energy, Government of India, posted at Kota, challenges A/1 order dated 12.4.96 by which he has been transferred to Manuguru with immediate effect. Consequently, he has prayed for quashing the same and issuance of an order allowing him to continue at Kota.

2. Heard rival contentions and perused the papers. Shri N.K. Khandelwal, learned counsel for the applicant submits that the special powers conferred upon the applicant by A/2 order dated 15/18.10.91 has been abruptly taken away by A/3 order on 20.1.95, applicant harassed and transferred to an unimportant job in March, 1995, shifted to a small office room so long occupied by a junior officer added with the humiliation of files and office materials lying elsewhere being stacked in his present room under orders of the respondent No. 6, General Manager. Applicant alleges that the respondent No. 6, ever since he joined the Plant in November, 1994, continued nursing malice against the applicant mainly arising of latter's popularity and good manner of working since 1980. The main ground of challenge to the order of transfer is malafide / colourable exercise of powers

attributable to only respondent No.6 and lack of jurisdiction. To drew support to his contention that the A/l order is against the norms laid down and deserves to be quashed, the learned counsel drew my attention to the citations in the following cases :-

- (i) Hira Lal Dhar Dubey vs. Jokhu Singh & Ors.,
(1987) 4 ATC 521.
- (ii) K. Ramachandran vs. Director General, All India Radio, New Delhi & Ors., (1994) 27 ATC 650.
- (iii) G. Prabhakaran vs. Divisional Railway Manager, Southern Railway, Madras & Ors., (1995) 29 ATC 45.

3. In counter, Shri J.P. Joshi, learned counsel for the respondents submits that A/l order was issued in public interest, based on transfer policy of the Board (para 7 of the reply), requirements of the Plant at Manuguru and with the approval of competent authority. The special powers originally delegated to the applicant had to be rescheduled with the change of incumbents. Fresh allocation of office room was ordered keeping in view of the recent organisational changes and "better sitting arrangements for all senior officers". The learned counsel for respondents pointed out the rulings of the Hon'ble Supreme Court as given in the following citations, to advocate against interference in the transfer order :-

- (i) Union of India & Anr. vs. N.P. Thomas, AIR 1993 SC 1605
(This also refers to the case of Shilpi Bose vs. State of Bihar, 1992 SCC (L&S) 127).
- (ii) N.K. Singh vs. Union of India & Ors., AIR 1995 SC 423.

4. The transfer order (A/l), because of the very nature of the case on hand, is reproduced below :-

"Government of India
Department of Atomic Energy
Heavy water Plant

P.O. Anushakti,
Via: Kota (Raj.).

No. NWPK/Estt.1(68)/1277

12.4.96.

OFFICE ORDER

-Shri Vikram Sharma, SO/SF HWP (Kota) has been transferred to HWP (Manuguru) with immediate effect.

This transfer is in public interest and as such he is entitled for joining time, TA/DA etc. as per rules.

On his relief from HWP (A), Shri Vikram Sharma shall report to General Manager, HWP (Manuguru) for further instructions.

Shri Vikram Sharma shall handover his magnetic identity card, Government accommodation, CHSS cards and all other Government articles to the respective sections.

Sd/-
(B.K. Jena)
Administrative Officer

Shri Vikram Sharma, SO/SF
HWP (Kota).

Thro: T.S.M., HWP (K)



5. In a catena of judgements, the Apex Court has, in no uncertain terms, cautioned against interference of transfer orders issued in public interest. The Full Bench of this Tribunal in its decision in OA 770/87 on 27.4.88 also held that transfer orders must "(1) be in public interest and in the exigency of service on administrative grounds. (2) It must not be in 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 the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intention of the instructions embodying the transfer policy. (5) The transfer itself must be ordered by a competent authority in bona fide exercise of the power. (6) It should not be a 'fixed' transfer for setting scores. (7) However, merely because transfer is ordered on complaints or after an enquiry into the guilt of the employee, it cannot be said to be by way of punishment. (8) The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further enquiry after a penalty is imposed in a proper disciplinary proceedings. (9) It does not amount to a double jeopardy."

6. In view of the above, the scope of judicial interference in matters of transfer is very limited. The Tribunal could strike down an order of transfer if it is in

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violation of statutory provisions or is actuated by mala fides. Even violation of guidelines and instructions would not justify judicial interreference. Mala fide has only to be presumed from established facts. In M. Sankaranarayyan Vs. State of Karnataka (1993) 1 SCC 54: 1993 SCC (L&S) 122 : (1993) 23 ATC 412 the Supreme Court observed,

"It may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures."

The respondents have therefore to satisfy the Court that the transfer was for some administrative exigency. Merely repeating the phrase, 'administrative exigencies' in the reply would not suffice when a specific charge of mala fides is made on certain facts which are borne out from records and are not disputed by the respondents.



In the instant case, respondents admittedly have no case that the applicant is inefficient, disobedient, incompetent or dishonest. On the contrary, as per records the applicant's long experience was one of the weighty considerations for his transfer. When the Tribunal is alerted, it has necessarily to tear the veil of deceptive innocuousness and see what actually motivated the transfer. As is evident from the reply statement (para 7.14), that in April, 1995 the applicant was advised by the Chief Executive, Mumbai, "to behave responsibly and ensure a conducive atmosphere for the smooth functioning of the Plant instead of making false wild allegations against respondent No. 6." Obviously, respondent No. 6 was nursing a grudge against the applicant. Transfer of an officer from one post to another in the same capacity (A/3 order dt. 20.1.95) cannot be questioned. Administrative authorities are competent to effect such changes. But the sequence of events thereafter does not augur well in terms of unbiased handling of administrative affairs or even fair treatment to the aggrieved official. The organisational changes did not result in additionality of fresh senior officials. The applicant was ordered to move to a juniors' room. There are no explanation as to why office materials lying elsewhere could not remain there or in some other

junior's room and had to be stacked only in the small office room of the applicant. Respondent No.6, being the controlling officer, did not notice any indifferent nature of working by the applicant who has been handling much wider responsibilities efficiently and honestly for four years. From 20.1.95 to 12.4.96, the applicant faced, without any fault of his /reason, a series of unhappy events like (i) withdrawal of all delegated powers (20.1.95), (ii) an internal transfer from the position of Engineer-in-Chief to Fire Service/Drawing Section (23/3/95), (iii) shifting to a junior's room (as 24/3/95), (iv) stacking in the room materials meant for store room (24.3.95), and (v) finally the impugned order of transfer on 12.4.96. The respondent No. 6 has been found to be at the back of all these. The only explanation is "exigency of service". Recently the Supreme Court in Rajendra Roy vs. Union of India held :

"In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established."

(Rajendra Roy vs. Union of India (1993) 1 SCC 148)

In the instance case, the antecedent facts and circumstances establish beyond doubt that there was unfairness and malice. Behind the mask of innocence, there is hidden sweet anger, a desire to get rid of an inconvenient senior official, undisputedly more popular than respondent No. 6.

8. Though the two case laws cited do not rule out interference but they do not lend to any support to the contentions of respondents. The case of Shilpi Bose vs. State of Bihar, 1992 SCC (L&S) 127, does not suffer from any infirmity. In N.K. Singh's case, ^(supra) the allegation of malafide was strongly refuted as also the alleged ulterior motive for the transfer. The present case is, therefore, distinguishable. Except saying repeatedly that the order is in "public interest," the respondents have not been able to satisfy the Court as regards the nature of administrative exigency that warranted the transfer order. When an allegation of unfair treatment is levelled with specific instances or charges of motives are imputed to a particular authority (respondent No.6 in this case), it was the duty of the respondents to refute that charge in course of pleadings. In this respect, it is

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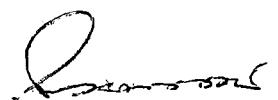
apposite to recall decisions of the Hon'ble Supreme Court in Manager, Government Branch Press vs. D.B. Belliappa. It was held :

"Where a charge of unfair discrimination is levelled with specificity or motives are imputed to the authority making the impugned order of termination of service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to make the impugned action."

Respondents, in the present case, failed to take action on the lines aforesaid. In the circumstances, I am left with no alternative but to infer that the impugned order of transfer is a colourable exercise of power, actuated by malafides.

9. That apart, the infirmity of want of jurisdiction, which goes to the root of the matter, cannot be rectified subsequently in order to breathe life into the order of transfer which has been passed without jurisdiction and is ab initio void. Available records do not show that "prior approval" of competent authority was taken or received in time. Here, the order of transfer has been issued by Administrative Officer, who is far below in the hierarchy. The order does not even mention that it is with reference to a communication from competent authority or it is issued with the consent of the latter. On the contrary, it was admitted by the learned counsel for the respondents that the "format" of A/l order is wrong. Respondents could not also produce any order delegating the power to anyone at the Plant level at Kota. Such an order is liable to be struck down.

10. Seen in the light of 9 point guidelines in para 5 aforementioned, the impugned order clearly impinges sl. Nos. (2) and (4) of the guidelines set by the Full Bench of this Tribunal. In the result, the Original Application is allowed and A/l order dated 12.4.1996 is, therefore, set aside. The respondents are at liberty to issue fresh transfer order, if considered necessary, in the light of observations as above and in accordance with law. No order as to costs.


(S.P. BISWAS)
MEMBER (A)