

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA NO. 585 OF 97

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

A. Roy
Director, SISI,
111 & 112 B.T.Road,
Calcutta-

VS

1. Union of India through the
Secretary, Ministry of Industry,
Dept. of Small Industry,
Dept. of ARI Udyog Bhavan,
New Delhi-11

2. The Development Commissioner(SSI)
Nirman Bhavan, New Delhi-11

3. The Director (Admn.)
O/o Development Commissioner(SSI)
Nirman Bhavan, New Delhi-11

For the petitioner : Mr. C.R. Bag, Counsel

For the respondents : Mrs. K. Banerjee, Counsel

Heard on : 30.7.97 : Order on : ~~25.8.97~~ ¹¹ 1-9-1997

ORDER

M.S.Mukherjee, A.M.I.

This is a petition u/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved that he has been transferred by the respondents from Calcutta after having been posted there for merely one and a half years subsequent to his working in the hard and difficult area of North Eastern Region for more than 11 years.

2. The petitioner, who had been posted in Calcutta as Director, Small Industries Service Institute (SISI) had been transferred from Calcutta to Guwahati by an order dt. 1.4.97 issued by the office of Development Commissioner, Small Scale Industries, New Delhi vide Annexure-B to the petition. The petitioner was aggrieved by this order because for more than 11 years and 10 months he had already served in the difficult North Eastern Region and had just been posted to Calcutta only one year and six months back. According to the petitioner, in

terms of the norms laid down by the respondents themselves (Annexure-A dt. 3.12.91) regarding posting/transfer of S100 officers, he was not required to serve in the North Eastern Region further and that the normal tenure of an officer in a particular station is 5 years. The petitioner contends that the order of his transfer from Calcutta to Guwahati had been made by the authorities only to punish him for his having earlier approached the Principal Bench of this Tribunal in New Delhi while he was posted there, seeking his transfer from New Delhi to Calcutta on the ground that he had already served ^{for} so many years in the North Eastern Region and thus he was entitled to a choice posting in Calcutta. The petitioner further states that thereafter he was transferred to Calcutta in September 1995. But now again the respondents have issued the order transferring him from Calcutta to Guwahati only in order to harass him.

3. Being aggrieved by this transfer order, the petitioner approached this Bench of the Tribunal through OA 401 of 1997 which had been disposed of by this Bench by its order dt. 15.4.97 at the stage of admission itself. While disposing of the said OA, the Tribunal directed the respondents to treat the entire petition as a representation of the petitioner and to dispose of the same suitably by a speaking order and till such disposal the then impugned transfer order dt. 1.4.97 transferring the petitioner from Calcutta to Guwahati should not be given effect to.

4. The petitioner submits that thereafter the respondents have disposed of the petition by the impugned speaking order dt. 6.5.97 (Annexure-D to the petition). Through this order, the respondents have rejected his prayer to stay on in Calcutta, but have instead offered him the option of accepting one of the 3 new postings, viz. Trichur, Ettumanoor or New Delhi and the petitioner was asked to exercise his option by



15.5.97 accepting any one of the aforesaid 3 stations and on his failure to offer any option, the earlier transfer order dt. 1.4.97 by which he was transferred to Guwahati would stand.

5. The petitioner is aggrieved by this impugned communication asking him give option and he has made a further representation to the authorities on 13.5.97 (Annexure-E to the petition), but to no effect.

6. The petitioner has, therefore, filed this petition praying for a direction on the respondents not to transfer him from Calcutta to Guwahati and to allow him to stay in Calcutta till at least 5 years tenure is complete. The petitioner has also prayed for cancellation of the impugned speaking order of the respondents dt. 6.5.97.

7. The respondents have contested the case by filing a written reply. Their case is that the norms relied on by the petitioner are nothing but guidelines and are not mandatory in nature and in the exigency of service, posting and transfer have to be made keeping public interest in view and since the post of Director which the petitioner is holding is a top level post, the respondents after carefully balancing various considerations have issued the impugned order dt. 6.5.97. It is also contended by the respondents that they have reviewed the position in its entirety in compliance with the direction of the Tribunal in OA 401/97 dt. 15.4.97 and it has been thought fit and proper not to transfer him to Guwahati but to give him an option to select any one of the three stations viz. Trichur, Ettumanoor or New Delhi by 15.5.97 and that on his failure to accept any of the aforesaid stations, his earlier transfer to Guwahati would stand. However, on considering the case further and even in the absence of any option given by the petitioner, the respondents have finally decided to transfer the petitioner to New Delhi by order dt.

A/H

16.5.97. Moreover, it is submitted, that Shri A.Sarkar, who had earlier been transferred to Calcutta in place of the petitioner by the previous transfer order dt. 1.4.97, has already taken over at Calcutta. Under the circumstances, the respondents have urged for rejection of the cases.

8. The petitioner has filed a written rejoinder in response to this reply.

9. We have heard the learned counsel for the parties and have gone through the documents produced. In view of urgency of the matter we propose to dispose of the case at the admission stage itself.

10. The petitioner's main grievance about the original transfer order dt. 1.4.97 transferring him from Calcutta to Guwahati is that it was against the norms as circulated by the Ministry. But these norms are, as contended by the respondents, mere guidelines and they are not mandatory or statutory in nature. The Hon'ble Supreme Court has held in a number of cases that unless the instructions are statutory, they are not binding on the respondents and the transfer order can be challenged only on the ground that it is violative of any mandatory statutory instructions or that it is mala fide. (vide S.L.Abbas case reported in 1993(2) ATJ 747)

11. The next ground of attack by the petitioner is that the said transfer order had been made because the petitioner had initially approached the Tribunal in its Principal Bench in New Delhi seeking his transfer from New Delhi to Calcutta. Since then the respondents have been bearing grudge against the petitioner for moving the Tribunal whereafter the petitioner was eventually transferred from New Delhi to Calcutta. But at the earliest opportunity thereafter, the petitioner has again been transferred from Calcutta to Guwahati on 1.4.97. The respondents have countered this allegation by stating that the transfer order to Calcutta from

New Delhi had been made on functional and suitability ground and again in administrative interest on overall consideration, the petitioner had to be transferred away from Calcutta. Although the petitioner would allege mala fides we are not prepared to accept such contention as reasonable in the absence of any malice being established on record vis-a-vis the action of the respondents. On the other hand, while going through the impugned speaking order dt. 6.5.97, we find that the Director(Admn.) SSI, has been very reasonable to consider various aspects of the petitioner's case and he has not been rigid in his view and has modified the previous transfer order transferring the petitioner from Calcutta to Guwahati and decided to give the petitioner an opportunity to opt from 3 other new stations. We cannot find any fault with the respondents on this score.

12. The petitioner's next argument is that his transfer away from Calcutta at this stage would disturb the education of his daughter studying in Calcutta. Although this could be a reasonable humanitarian ground, yet this cannot be sole ground seeking cancellation of transfer. It is for the Administration to balance the conflicting humanitarian grounds of various candidates for posting in a particular station. *And other administrative grounds for determination of*
it ad he has been posted it According to the respondents, Shri A.Sarkar, who has been posted in Calcutta vice the petitioner, has already served the North Eastern Region for about 7 years and he is also due to be transferred to Calcutta and therefore they did not propose to interfere with Mr. Sarkar's transfer who has already joined at Calcutta after the petitioner was relieved earlier. We do not find any reason to interfere with this position of the respondents. The petitioner's contention that the entire order of transfer was made to give benefit to Shri Sarkar does not seem to us as valid because Shri Sarkar has also spent a long time in difficult North Eastern region. Moreover, he has

not been made a party respondent in the instant proceedings.

13. The petitioner's other grievance is that the respondents have not adjusted him against another vacancy available in Calcutta in the Regional Testing Centre, Calcutta when the previous incumbent of that post retired. But the respondents have stated that that vacancy had to be filled up by some other officer i.e. Shri M. Bhattacharya, who had already been transferred to the Regional Testing Centre on 1.4.97 and he has also taken over there.

14. In the case of UOI -vs- S.L.Abbas as reported in 1993)2) ATJ 747, the Hon'ble Supreme Court has held that the Administrative Tribunals or court is not to act as appellate authority sitting in judgement on the orders of transfer and it cannot substitute its judgement for that of the authorities competent to transfer. Therefore, unless mala fides or violation of any statutory provisions are alleged, we cannot go into such arguments on merits. These matters should be left to the administrative authority to decide each case on its own merit.

15. Therefore, in overall view of the case, we are not in a position to entertain the petition. However, we simultaneously note that the petitioner had initially been transferred by the order dt. 1.4.97 from Calcutta to Guwahati after having served in Calcutta for only one year and six months in the face of the fact that he had already spent the North Eastern region for more than 11 years. The petitioner had earlier approached the Principal bench of this Tribunal in New Delhi seeking a posting in Calcutta and whether as a result of this or otherwise, he was transferred from New Delhi to Calcutta. But after such a short stint, he was again transferred to Guwahati. Then the petitioner had to knock at the door of the Tribunal again through OA 401/97 and while disposing of the said OA by our order dt. 15.4.97, we

[Signature]

directed the respondents 1 and 2 to treat the entire petition as a representation and review the matter. As a result of this review, the respondents, it is seen, were satisfied that the previous transfer order to Guwahati had been a little harsh on the petitioner. Although the respondents have not agreed to retain the petitioner in Calcutta, they offered him some other station and eventually the petitioner has been transferred to Delhi. So, in our view, through the petitioner's repeated approach to the Tribunal through expensive litigation, he has been able to get some mercy from the respondents by which his transfer to Guwahati has been cancelled.

16. Under the circumstances, although we are unable to allow this petition, in order to partially neutralise the expenses incurred by the petitioner for moving the Tribunal again and again for getting some relief, we award a cost of Rs. 2000/- in favour of the petitioner which shall be paid to him by the respondents within 2 months from the date of communication of this order.

M.S. Mukherjee
19/9/97
(M.S. MUKHERJEE)

MEMBER(A)

A.K. Chatterjee
1.8.97
(A.K. CHATTERJEE)

VICE CHAIRMAN