

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 340/2012

Friday, this the 6th day of July, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

1. S.Unnikrishnan Nair,
Inspector of Police,
Central Bureau of Investigation (S.C.B),
Lavanya, Chavadinada, Venganoor,
Thiruvananthapuram-695 523.
2. K.K.Rajan,
Inspector of Police,
Central Bureau of Investigation (S.C.B),
Kailasam, Gurudev Nagar,
Ayathil.P.O., Kollam-691 017. -

Applicants

(By Advocate Mr Pirappancode V.S.Sudheer)

v.

1. Union of India represented by
its Secretary,
Department of Personnel & Training,
New Delhi-110 001.
2. Director,
Central Bureau of Investigation,
C.G.O. Complex, Lodhi Road,
New Delhi-3.
3. Superintendent of Police,
Central Bureau of Investigation,
Thiruvananthapuram-695 001.
4. Nandakumar Nair,
Additional Superintendent of Police,
Central Bureau of Investigation,
Thiruvananthapuram-695 001.
5. S.K.Peshin,
Superintendent of Police,
Central Bureau of Investigation,
E.O.U. VI, New Delhi-110 001.

6. O.P.Gathotra, IPS,
Joint Director, E.O.Zone,
Central Bureau of Investigation,
New Delhi-110 001.
7. Ashok Kumar, IPS,
Joint Director, Central Bureau of Investigation,
Head of Zone,
Chennai-600 006. - Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1 to 3, 4 & 7)

This application having been finally heard on 03.07.2012, the Tribunal on 06.07.12 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Annexure A-17 to A-19, whereby the two applicants in this O.A. stood transferred out of Kerala are under challenge in this O.A. Applicant No. 1 stands transferred to Kolkatta while Applicant No. 2 to Guwahati.

2. The capsulated facts of the case with terse sufficiency are as hereunder:-

(a) Both the applicants are functioning as Inspector in the Central bureau of investigation (S.C. B) Thiruvananthapuram.

(b) one Mr Sampath, died in police custody in March 2010 and on a writ petition filed by his brother, the High Court had ordered investigation to be conducted by the Central Bureau of Investigation.

Annexure A-1 judgment dated 25 - 05 - 2010 in WP © No. 13426

refers. In compliance of the aforesaid the direction of the High Court, the Supt of police, Central Bureau of Investigation, Special Crime Branch issued an order on 21 - 06 as 2010 directing applicant No. 1 to conduct the investigation and the he would be assisted by certain named officials including applicant No. 2. (who was at the relevant point of time functioning as Sub Inspector) Annexure A-2 refers.

(c) According to the applicants, on account of the good work in the investigation conducted by the team under the leadership of applicant No. 1, all the members of the investigation were afforded Cash rewards. Annexure A-3 refers.

(d) In the aforesaid writ petition, the petitioner moved an application alleging that there was a conscious attempt to suppress the involvement of two superior police officers behind the murder of his brother Mr Sampath and sought a direction from the High Court to the Director, Central Bureau of Investigation to submit a detailed report regarding the investigation so far conducted and also to produce the entire case diary. In its order dated 22 - 12 - 2010 (Annexure A-5) the High Court had observed, after perusing the Case Diary, that the investigating team "**has done excellent work.**" In this order, the High Court has given certain directions that the Chief Investigation Officer Shri Haridath would submit a report every three weeks under intimation to the High Court to the Chief Judicial Magistrate, Ernakulam, regarding the progress of the investigation. The Chief Judicial Magistrate shall also monitor the investigation and if need be,

call for the case diary for his perusal. The present team shall not be dislocated or changed without the orders of the High Court. Should any member of the investigating team feel that there is any interference with his freedom either from the C.B.I or from elsewhere such member shall be free to address this Court through the Registrar General in a sealed cover. Annexure A-5 refers.

(e) There was yet another order of the High Court, dated 24-01-2011 naming some officers of the CBI and administering warning that they should not interfere with the functional autonomy or freedom of the Investigating Team and in case the High Court chanced to come across any more unwholesome conduct in future from the side of any of the named officers or those above them trying to influence or prossurise the investigating team, the High Court would be constrained to discharge the unpleasant duty of initiating action for contempt besides summoning the Director of C.B.I. and directing him to initiate suitable action against such officers. Annexure A-6 refers.

(f) The above order at Annexure A-5 was taken up before the Apex Court challenging the directions given by the High Court with reference to the procedure for conducting the investigation stating that the same is contrary to the settled principles for investigation enshrined in the Criminal Procedure Code and the procedure under the CBI Manual, which inter alia provides for the report of investigation by subordinate officers to be reported to the Head of Branch on day to day basis by submitting the Case Diaries.

(g) The Apex Court vide its order dated 01-04-2011 (Annexure A-7) directed that the investigation of the case shall be carried out as expeditiously as possible by Mr. Hari Datt under the supervision of a Joint Director of the CBI who shall be nominated by the Director, CBI. The Apex Court has also observed, "We hardly need to observe that the entire investigation shall be carried out in accordance with the Manual."

(h) In compliance with the direction of the Apex Court Respondent No. 5 and 6 to this OA were appointed to supervise the investigation.

(i) According to the applicants, after the arrival of the aforesaid officers in the investigation, the applicants were marginalized and kept in the team only for namesake and Mr. Haridath had been made to manage things by himself from the second week of April, 2011. Further, according to the applicants, Mr. Haridath had been made to "made or forced to undo whatever he had done earlier, when both the Hon'ble High Court was seized of the matter and the Chief Judicial Magistrate monitoring the case. It was because of the pressure exerted or mounted on him to extricate two I.P.S. Officers that he lost his balance, became insane and started exhibiting abnormalities, compelling him to be under psychiatric treatment."

(j) According to the applicants, their involvement in the investigation function became nil from 03-09-2011, inasmuch as they were not

allowed to even, prima facie, have any interaction with Mr. Haridath, much less to be a part of the investigation.

(l) While so, vide impugned order at Annexure A-17 order dated 18-04-2012, both the applicants had been transferred in public interest respectively to Kolkata and Guwahati. On the same day they were also relieved, vide Annexure A-18 and A-19.

(m) It is against the above said order of transfer and the relieving orders that the applicants have filed this O.A. seeking the following reliefs:-

- (a) Call for the records leading to the issuance of Annexures A-17, A-18 and A-19 and quash the same;
- (b) Direct the respondents to permit the applicants, to continue at the Thiruvananthapuram Branch of the Central Bureau of Investigation, as if Annexures A-17 to A-19 orders have not been issued;
- (c) Declare that the applicants, by virtue of the directions contained in Annexure A-5 order of the Hon'ble High Court of Kerala, are entitled to be a part of the investigating team, conducting the investigation of the Sampath Murder case, and that they cannot be replaced, changed or dislocated under any circumstance;
- (d) Such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

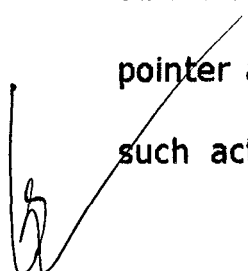
3. Respondents have contested the O.A. They have raised the preliminary objection of administrative remedies not having been exhausted before seeking judicial intervention. In addition, the settled legal provisions of restricted judicial discretion in interfering with the transfers effected on administrative grounds have also been highlighted by referring to some of the decisions of the Apex Court especially, **State of Haryana vs Kashmir Singh (2010) 13 SCC 306** and **State of Uttar Pradesh vs Siya Ram and another CA No. 5005 of 2004**. The fact that the applicants have all India Transfer liability has also been emphasized in the reply. It has also been stated that the transfer is effected in public interest with the approval of the 2nd Respondent. The respondents have stated that while initially, it was the applicant No. 1 who was leading the investigation team, later on, vide order dated 03-12-2010 at Annexure R-1, Shri Haridath was made the head of the team and the applicants were to assist him in addition to three more officers. As regards the allegation that they were kept away from investigation from September, 2011, the respondents contended that in fact both the applicants had proceeded on Medical Leave for two weeks and 10 days respectively and disassociated themselves from investigation. Above all, the respondents have stated that Shri P.G. Haridath, had committed suicide and in his suicidal note, he has named the two applicants apart from two more as being responsible for his tragic end. Annexure R-4 refers. It has also been stated by the respondents in the reply that after 01 - 04 - 2011, the case was supervised by R5 and R6 and R4 and R7 were not associated with the case thereafter and thus have

not supervised the investigation at all. It is the case of the respondents that the applicants, in order to escape the culpability in the suicidal letter of Haridath are concocting allegations.

4. As initially private respondents have not been served, notice was issued and they had also adopted the reply of the office respondents in their reply. Thus, pleadings were complete. As a matter of fact, lot many documents have been filed by either parties, reminding us of the words of Lord Denning in *Jones v. National Coal Board* — *let the advocates one after the other put the weights into the scales — the 'nicely calculated less or more' — but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation.*

5. There have been two misc. Applications calling for the case diaries, and objections were raised in this regard. The two M.As are closed as the Tribunal feels that the case diary need not be perused by the Tribunal to adjudicate the case of the applicant with reference to transfer.

6. Counsel for the applicant argued at length that the transfer is accentuated by malafide which is evident from the fact that the applicants were prevented from performing the investigating work as directed by the High Court and that the diluted grading in the ACR is a pointer about the mala fide intention of Respondent No. 4 and 7. All such actions have taken place only to ensure that two of the IPS



Officers who had to be implicated in the Sampath Murder case were sought to be bailed out by the respondents and in that process, the applicants have been made a scape goat. The counsel had referred to the following two cases to hammer home the point that honest officers are harassed: -

(a) *Najamal Hussain Mehadi v. State of Maharashtra, (1997) 1*

SCC 532, wherein the Apex Court has held as under: -

"When a sincere and honest police officer is harassed by the senior officers like Shri Tike at the behest of a wealthy hotel owner, one can well imagine the mental torture and agony of the officer concerned. That Shri Tike wanted to shield the restaurant owner is apparent from the order passed by him on 28-10-1991 prohibiting the Inspector of Police like the appellant from checking the restaurant and only permitting the Senior Inspector of Police to check the restaurant even if the hotel contravened the provisions of law and indulged in nefarious activities. No justifiable reason has been advanced for passing such order, and to us it appears, that it was purposely passed to prevent the appellant from discharging his lawful duties in the matter of checking the hotel."

(b) *Somesh Tiwari v. Union of India, (2009) 2 SCC 592,*

wherein the Apex Court has held as under: -

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the

employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

7. As to malafide, the applicants rely upon the part played by Respondent No.7, Shri Ashok Kumar, who happened to be reviewing officer for the applicant No. 1 and who had watered down the grading of 'very good' given by the reporting officer to one of 'average'. According to the applicants, the reason is nothing but that he was one of the officers, whom the High Court had interdicted from interfering with the investigation (vide Annexure A-6 order). For another spell, 'average' report had been given by Respondent No. 4 and the same endorsed by Respondent No. 7. Copies of the report have been filed by the applicants, vide Annexure A-9 and A-10 respectively. While on representing against the same vide Annexure A-11, the the Director CBI, incremented the 'average' grading as 'good' for the earlier period, but refused to interfere with the grading for the latter period (where the grading given by the reporting officer and the reviewing officer happened to be 'average'). Annexure A-12 refers. Similar treatment was meted to applicant No. 2 by the said Respondent No. 4 and 7 but here again, the lower grading of the aforesaid officers, on representation had been converted as 'very good', vide Annexures A-14 to A-16.

8. Counsel for the applicant invited the reference of the Tribunal to certain observations of the High Court, vide order dated 22-12-2010,

wherein, the High Court, inter alia as observed as under:

But eyebrows were raised at the higher level in the CBI when the Chief Investigating Officer sought permission to add to the array of accused two I PS officers of the State police. It appears that certain officers of the CBI got afflicted by the "birds of the same feather syndrome" and started finding fault with the Chief Investigating Officer who was served with a few memos. There has even been an attempt to trivialise the goonda intrusion into the house of a member of the investigating team. The suspect officers may be the batch mates, former colleagues, training mates or the like. But while investigating a murder case, no such clannish consideration should weigh with any officer worth his name. The reconstitution of the investigation team by inducting one Haridath as the Chief Investigating Officer naturally engendered a fear in the minds of the petitioner that some attempt was afoot to deflect the course of investigation. It is that fear which necessitated this application.....

It is hoped that the reconstituted investigation team with P.G. Haridath, D.S.P. at the head and ably assisted by Unnikrishnan Nair and four other police officers will soon make a headway in the matter and submit a final report against all persons (howsoever high they may be) responsible for the brutal torture of Sampath leading to his tragic death."

9. Senior Central Government Standing Counsel for the respondents, defending the order under challenge submitted that the scope of judicial intervention in matters of transfer is limited. The Counsel invited the following decisions of the Apex Court in this regard:-

(a) State of Haryana v. Kashmir Singh, (2010) 13 SCC 306, at

page 310 :

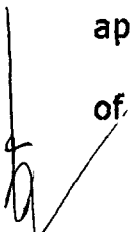


"12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation."

(b) *State of U.P. v. Siya Ram, (2004) 7 SCC 405, -*

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan."

10. Arguments were heard and the documents scanned. At the outset, it is to be clarified that in so far as various averments and contentions relating to the investigation of Sampath Murder case, conducted by the applicants and others as contained in the pleadings, these are out of the scope of the domain of this Tribunal and the Tribunal is confining itself only to the limited issue as to whether the applicants' rights if any have been hampered by the action on the part of the respondents.



11. In so far as the role played by private respondents in the issue of impugned order, it is to be stated that it is the second respondent who had issued the impugned order. May be one of the private respondents would have been the recommending authority, as stated by the Senior Central Government Standing Counsel. But should it be presumed that the Director had been prejudiced by the private respondents? Answer to the question should be only in negative, for, unless otherwise proved, it should be held that there is proper application of mind independently by Respondent No. 2 in regard to effecting the transfer of the applicant. If there be any reason to believe otherwise, then, probability of the private respondent No. 7 recommending the applicants for transfer much earlier than 18th April, 2012 is more. He need not have had to wait till Mid April, 2012. Because, if the applicants' contention that the said Respondent had damaged the ACRs of the applicants and that he had issued various memos in relation to the investigations, could be taken as pointer to establish some inimical approach by the said Respondent, it must also be kept in mind that the ACRs were written sometimes in March 2011 the Memos were also issued just proximate to that date and by 01-04-2011, the Apex Court had advised detailing of two officers by the Director, CBI to supervise the investigation in Sampath Murder Case and it would have been an easy tool in the hand of the said Respondent to carry out his design of shifting the applicant. That did not happen. The provocation for transfer for 18-04-2012 would have to be traced to any incident that would have happened just prior to the

said date.

12. The prime cause for transfer, as stated by the Senior Central Government Standing Counsel is the suicide note wherein the deceased Haridath had named the applicants. True, that is yet to be conclusively decided and according to the counsel for the applicants, the said note cannot be one of genuine in character but a fabricated one. It has been stated that investigation is on in regard to the suicide of the said Haridath. However, the respondents obviously have decided to keep the applicants away from the scene presumably to reduce the gravity of the situation. The senior counsel is not wrong when he had submitted that the general public has great faith in the investigative machinery and the same should not be allowed to be shattered. Transfer of the applicants would certainly reduce the gravity.

13. The Tribunal is fully aware of the limited scope of judicial intervention. Apart from the citation referred to by the senior Central Government Standing Counsel, the following decisions of the Apex Court would confirm the settled law as to the limited area available for judicial intervention in matters of transfer:-

(a) *Rajendra Singh v. State of Uttar Pradesh, (2009) 15 SCC*

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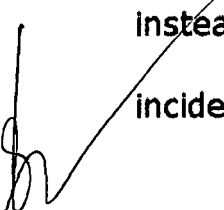
"It is well settled that an order of transfer is amenable for judicial review on limited grounds, namely, it is contrary to rules or has been passed by an incompetent authority or is a result of mala fide."

(b) *Somesh Tiwari v. Union of India, (2009) 2 SCC 592,*

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law."

14. Thus, violation of statutory or professed norms, order passed by incompetent officer and malafide are the three main grounds to challenge an order of transfer. In this case, the first two aspects i.e. the transfer is against any established professed norm, or that the same is by an incompetent authority has not been pleaded. The only ground is malafide. The same is, in the considered opinion of the Tribunal is missing. as the transfer is stated to be ordered in the wake of the naming in the suicidal note the two applicants.

15. ***Najamal Hussain Mehadi (supra)*** relied upon by the applicants may not be of assistance here since, the provocation for transfer is not the way the investigation has been conducted but the suicide note in which the deceased Haridath has named the applicants. Had this incident (leaving a suicide note, naming the two applicants as responsible for the extreme step taken by Haridath) not been there, perhaps there would not have been any transfer of the applicants; instead, if the transfer had taken place in the absence of the above incidence, the reliance placed by the applicants upon the aforesaid

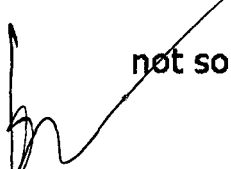


case would have been of full support.

16. Similarly, **Somesh Tiwari (supra)** also would not be applicable to the facts and circumstances of the case, as there is no malice in law and malafide has not been established.

17. Notwithstanding all the above, one aspect has to be considered. The contention of the applicants is that the suicide note is fabricated. In any event, they not having allowed to take active participation in the investigation after 03-09-2011, according to the applicants they cannot be held in any way responsible for the sad end of the said Haridath. If in the future, this aspect has been proved and the applicants are not held responsible, obviously, the transfer of the applicants to such a far off place should be reviewed and the applicants should be brought back to Kerala. This drill has to be ensured by the Director of CBI at the appropriate time.

18. Yet another aspect is that the applicants have not joined the new duty stations, hoping that their case would be decided expeditiously and their move depends upon the decision of the Tribunal. The case would have been decided slightly earlier, but for the fact that there has been certain inadvertent omission on the part of the Tribunal in issuing notice to the private parties, which has compelled to defer the case by at least three weeks. In all expectation, the applicants would have applied for leave for the intervening period. Even if they have not so far done, on their joining the new duty stations, if they apply for



leave for the period they did not attend the office, the authorities may not reject their application but sympathetically consider the same.

19. With the above observation, the **OA is dismissed**. Parties are to bear their costs.

Dated, the 6th July, 2012.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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