

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-386 of 1996

(Date of decision 21.3.1997)

Banshi Dhar Singh,
S/o Late Shri Chandra Mohan Singh,
Resident of Village & P.O.Dahiwar, P.E.
Buxar, District- Buxar.

..... Applicant

By Advocate: Mr. S.P.Mukherjee.

Versus

1. The Union of India represented through the
Secretary, Min. of Forest & Environment,
New Delhi-110003.
2. The State of Bihar through the Chief Secretary,
Govt. of Bihar, Patna.
3. The Commissioner and Secretary to Government,
Department of Forest & Environment, Govt. of ~~India~~
Bihar, Patna.
4. The Under Secretary to Govt. Department of Forest &
Environment, Govt. of Bihar, Patna.
5. The Principal Chief Conservator of Forest,
Bihar, Ranchi.
6. Shri B.A.Khan, Indian Forest Service,
Conservator of Forest, Palamu State Trading Circle,
Daltonganj.

..... Respondents

By Advocates: Mr. Rameshwar Prasad,

Mr. B.N.Yadav

Mr. S.C.Dubey.

MD

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Central Administrative Tribunals Act, 1985 with a prayer that the transfer order dated 7th August, 1996 (Annexure -20) be quashed after holding that the order was not passed under administrative exigency and as such, is illegal and void.

2. The applicant, Shri Banshi Dhar Singh belongs to the cadre of Indian Forest Service. He was posted as Conservator of Forest Hazaribagh Circle, Hazaribagh vide order dated 8.6.1992 where he joined on 29.7.1992. It is asserted that soon after joining the post the applicant identified large tracts of forest land under illegal mining and allied activities of West Bokaro Colliery belonging to TISCO and Central Coal Fields Ltd.(CCL) belonging to the Government of India. It is asserted that these illegal mining activities were found to be progressing since the year 1980 and earlier no effort was made to stop these activities. The applicant initiated legal proceedings against these companies and their employees who were responsible for these activities. The applicant issued notice to the General Manager West Bokaro Colliery on 7.1.1993. He also submitted report to the then Regional Chief Conservator of Forest (RCCF), Hazaribagh. The notice sent by the applicant was challenged by the company before the Hon'ble Patna High Court by filing a writ petition. The Hon'ble High Court issued order dated 24.2.1993 directing the RCCF, Hazaribagh to pass speaking order after giving the company an opportunity of being heard.

MM

The RCCF, Hazaribagh passed order on 24.2.1993 in pursuance of the order by the Hon'ble High Court in favour of the company stipulating however, that the said order was subject to modification, alteration or cancellation by the Principal Chief Conservator of Forest or the Government of Bihar. The applicant then sent a letter dated 25.3.1993 to RCCF drawing his attention to serious omission and flaws in the order. The Govt. of Bihar vide Resolution dated 7.8.1993 constituted a committee of technical experts to go into the matter regarding legality of the order dated 15.3.1993 passed by RCCF. The committee submitted his report dated 19.1.1994 holding that the order dated 15.3.1993 by the RCCF was not consistent with the provisions of law. The Govt. of Bihar agreeing with the findings directed for strict observance of Forest Conservation Act. The applicant accordingly, by a letter dated 15.12.1994 directed the General Manager, West Bokaro Colliery to stop forthwith all unauthorised and illegal mining. The company filed a writ petition before Patna High Court challenging the order dated 15.12.1994. That writ petition was allowed holding that it was contradictory to the orders passed by the RCCF. Thereafter the applicant vide letter dated 6.8.1996 requested the RCCF to get the order dated 15.3.1993 immediately modified by the Principal Chief Conservator of Forest, Bihar or the Government of Bihar in accordance with the findings of the Technical Committee dated 19.1.1994. However, the order by the RCCF has not been modified so far. The companies are, in the circumstances, going ahead with the illegal mining. The applicant has also mentioned instances where he detected and reported illegal mining. He has also mentioned that he had also conducted raids on 14.3.1996 in Rajrappa Project of Central Coal Fields Ltd. and seized equipment and machines used for illegal mining. The Conservator of Forest, Eastern Region, Govt. of India also inspected the site and submitted his report to the Chief Conservator of

W

Forest (Central). It is further asserted that the applicant is the President of the Bihar unit of Indian Forest Service Association. He also sent letters to the Minister concerned with regard to the illegal mining. He also informed the Union Minister, Environment and Forest, Govt. of India by letter dated 12.4.1996. The applicant asserts that he has made serious efforts to prevent illegal mining over the forest land. He had excellent service records during his tenure at Hazaribagh. He was also recommended for award. During his tenure the revenue from the forest also increased. The applicant then has asserted that due to his acts in respect of illegal mining by the above mentioned companies, it appears that the same has precipitated the wrath of applicant's superiors including Head of Department. It is asserted that due to the above mentioned reasons the impugned order transferring him from Hazaribagh to Palamu has been passed.

3. On behalf of the applicant it has also been asserted that as he was the President of Bihar unit of the Association he could not have been transferred. Thus, on behalf of the applicant the transfer order has been challenged on the ground of mala fide as well as on the ground/breach of directions issued by the State Government as regards the transfer of office bearers of an association.

4. On behalf of the respondents the allegations regarding mala fide have been denied. It has been asserted that the applicant has been posted as Conservator of Forest in Hazaribagh in July, 1992 and he has remained there for a period exceeding four years though normally the officers are posted at a particular station for three years. It has further been asserted that out of a service span of about sixteen years, the applicant has remained posted at Hazaribagh for about nine years. The respondents have also alleged that a meeting of Departmental Establishment Committee was held on 2.2.1996 in which it was decided that all such officers

W

who have remained at one station for more than three years should be transferred. It has further been asserted that the committee took into consideration the action being taken by the applicant in the matter in respect of alleged illegal mining and so it was decided that he be allowed to continue at Hazaribagh Circle for another six months which ended in June, 1996. It is alleged that the transfer order ^{was} passed in August, 1996 after consultation with the Secretary concerned as well as the Minister and the Chief Minister. It is thus asserted that the transfer order was passed in public interest on administrative ground and the same was not a mala fide order.

5. The respondents have also asserted that the final decision in the matter of mining is to be taken by the Government of India and the Government of Bihar is actually in correspondence with the Govt. of India in this matter. The respondents have also mentioned certain instances where the applicant did not act properly. It is, however, not necessary to mention those instances in detail.

6. In the rejoinder it has been asserted on behalf of the applicant that there were several other officers who remained posted at particular place for much longer periods than four years but they were not transferred. In reply to this, it has been asserted on behalf of the respondents that some of these officers have already been transferred and some of them are awaiting their transfer on promotion.

7. I have heard the learned counsel for the parties and have perused the material on record. In this case it is not disputed that the applicant is working on a transferable post. He has remained posted as Conservator of Forest, Hazaribagh for more than four years. The applicant has not brought to my notice any statutory rule which bars his transfer from Hazaribagh merely because he was the President of the Bihar unit of the Indian Forest Service Officers' Association. The applicant

W

has assailed the transfer order on the ground of mala fide. According to him this transfer order has been passed as a result of various actions taken by him against some companies which, according to him, are very powerful. This assertion has been specially denied on behalf of the respondents. It is contended that the transfer order has been passed in normal course after the matter was considered by the Departmental Establishment Committee on 2.2.1996. In fact, according to the respondents, the applicant was allowed to continue at Hazaribagh Circle for a further period of six months in view of the action being taken regarding alleged illegal mining. The question thus is as to whether the applicant has been able to establish mala fide on the part of the respondents in issuing the transfer order.

8. The learned counsel for the respondents has argued that the order in question was passed by an Under Secretary of the Govt. of Bihar after the approval by the Secretary and Minister and Chief Minister. The applicant has however, not alleged any mala fide on the part of these authorities. In the OA the applicant has not referred to these authorities and has not asserted that they had any reason to act mala fide in the matter; though he has asserted that it is due to the action being taken by him that this transfer order was passed.

9. The law relating to transfer of Government employees has been considered in a number of cases by the Hon'ble Supreme Court. In the case Mrs. Shilpi Bose v. Govt. of Bihar AIR 1991 SC 532 it was observed that "the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the

W

competent authority do not violates any of his legal rights."

10. In the case Union of India v. S.L.Abbas 1994 SCC (L & S) 230, the Hon'ble Supreme Court observed "who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of any statutory provisions, the court cannot interfere with it." It was later observed that the "Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer."

11. In view of the law laid down by the Hon'ble Supreme Court this Tribunal cannot act as if it was sitting in appeal over the decision taken by the competent authority to transfer the applicant from Hazaribagh. It may be that the applicant has been vigilant in exercising his duties as Conservator of Forest, Hazaribagh Circle. But can it be said that no other officer who is posted to the Hazaribagh Circle will be competent enough to faithfully exercise his duties. It cannot be said that successor to the applicant who has been posted in his place will be less able or conscientious than the applicant. In this regard the observations made by their Lordships in the case N.K.Singh v. Union of India AIR 1995 SC 428 may be cited with advantage. The court observed } "However, acceptance of the appellate's claim would imply that no other officer in the C.B.I is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of work must be left to the bonafide decision of the superiors in service and their honest assessment accepted as a part of

W

service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of man is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professional norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

12. Keeping in view the law laid down by Hon'ble Supreme Court and also the assertions made by the parties in this case, I am of the view that the applicant has not been able to establish that the impugned order of transfer was not issued on administrative ground but was issued as a result of mala fide on the part of the respondents. In the circumstances, I do not find any substantial ground for interfering with the impugned order. The OA is accordingly dismissed. The interim order is vacated. No order as to costs.


21-3-57
(V. N. MEHROTRA)
VICE-CHAIRMAN