

(43)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT : HYDERABAD.

O.A.No.556 of 1990

Date of Decision: 3-8-1990

Between:-

G.Mahmood .. Applicant

and

Union of India represented by

1. The Secretary to Government
Ministry of Finance, Central
Board of Excise and Customs,
North Block, New Delhi.

2. The Collector of Central
Excise, Hyderabad.

3. The Assistant Collector of
Central Excise, Nizamabad.

.. Respondents

Appearance :

For the Applicant : Shri K.S.R.Anjaneyulu, Advocate.

For the Respondents : Shri Naram Bhaskar Rao, Addl.CGSC.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.)
JAYASIMHA, VICE-CHAIRMAN.

1. This applicant is ~~now~~ an Inspector of Central
Excise, Nizamabad, who questions the order dated 28-6-1990
under which he has been transferred to Sirpur Kagaznagar,
Range-I, Warangal Division.

2. The Applicant states that he is an Ex-Serviceman
and joined the Department in 1971 and he was promoted as

.../..

PHK

punishment and in colourable exercise of power and is malafide. Hence he has filed this Application.

5. At the time of admission, we had issued an interim direction not to press the Applicant to move to the new station until the case is disposed off. It was stated that the Applicant was on leave.

6. We have heard Shri K.S.R.Anjaneyulu, learned Counsel for the Applicant and Shri N.Bhaksar Rao, learned Standing Counsel for the Department.

7. Shri Naram Bhaskar Rao, explaining the circumstances leading to the transfer of the Applicant states that on 15-5-1990 a complaint was received against the Applicant about his misconduct/misbehaviour with a partner of an industrial unit, in a drunken condition on 2-5-1990. The matter was investigated and it was alleged in the complaint that the Applicant had demanded payment of Rs.500/- and abused the said partner in a filthy language and threatened him in the presence of his family under the influence of alcohol. The investigation confirmed this. A complaint was also lodged by the said complainant and the matter is under investigation by the Police also. The Applicant was already found to have exceeded his powers and transgressed the limits of discipline and behaved in an uncivilised manner. It is prejudicial to the departmental discipline. In these circumstances it was decided to keep him away from public contact and was posted to the Divisional Office, at the same place viz., Nizamabad, by assigning him different duties. After he was posted to the Divisional Office, it was brought to notice that he has been threatening the staff members ^{the} and abused the steno and Assistant Collector on 20-6-1990

BNJ

.../...

(A)

Inspector of Central Excise in the year 1985. From 1985 he has been transferred from place to place as indicated below:-

29-8-1985	..	Transferred as Inspector, Central Excise, Kakinada.
2-1-1986	..	-do- to Kurnool
27-7-1987	..	-do- to Mancherial, Nizamabad Divn
5-5-1990	..	-do- to Nizamabad Sr-I Nizamabad Dvn.
1-6-1990	..	Joined at Nizamabad Division.
13-6-1990	..	Transferred from Nizamabad Sector-I to Nizamabad Divisional Office.
28-6-1990	..	Transferred to Sirpur-Kagaznagar, Range-I, Warangal Division.

3. The Applicant states that the order of transfer from Nizamabad to Sirpur Kagaznagar is arbitrary and discriminatory and ~~is~~ violative of guidelines and procedure.

4. He submitted a representation on 26-6-1990 and 3-7-1990 and requested that he should be retained at Nizamabad Sector-I as he had completed his period of stay for 3 years at Mancherial of Adilabad District. He also requested that he may be given ^{a posting to} Dichpalli Sector near Nizamabad since he admitted his children at Nizamabad. He also explained that some complaints seem to have been made against him at Mancherial which were not true, baseless and unsustainable. Since he has already completed 3 years tenure at Mancherial of Adilabad District, his transfer once again to Adilabad District is arbitrary and discriminatory. He states that he came to Nizamabad on request transfer without T.A. and D.A. and the transfer back to Sirpurkagaznagar in Adilabad District is resorted to as a measure of

PNJ

.../...

in the presence of staff members and openly threw a threat that he would cut their hands and malign their careers. Because of the investigations into his conduct and misbehaviour and consequential shift in his posting, the Applicant bears a personal grudge against the Assistant Collector of Central Excise. The staff of Nizamabad Divisional Office were found to be working under constant fear and sought for urgent remedial action to safeguard their life and reputation. The Department has, therefore, decided to take disciplinary action against the Applicant and under these circumstances he was transferred from Nizamabad to Sirpurkagaznagar under Establishment Order (N.G.O.) No.72/90, dt.28-6-1990.

8. Shri KSR Anjaneyulu contends that the Respondents ought to have not transferred the Applicant when the disciplinary action is being initiated against him and this amounts to punishment. In support of his contention, he relied on Babu Singh vs. Union of India & others (II (1990) ATLT (CAT) 65) where it was held "that a finding as to misconduct and a finding which attaches stigma to the employee not preceded by an enquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer". He, therefore, states that until disciplinary proceedings are completed, the Applicant cannot be transferred from Nizamabad.

9. Shri Naram Bhaskar Rao on the other hand contends that in Babu Singh's case the positive finding of misconduct was the basis for the transfer order. Here, because of the circumstances explained namely that the Applicant is interfering with the investigations and threatening the persons concerned in the Department at

fNJ

.../...

: 5 :

Nizamabad, it was found expedient to transfer him from Nizamabad to Sirpur&gaznagar. In this connection he relies on the Full Bench Decision of the Tribunal in Kamlesh Trivedi vs. ICAR & another (1989 (1) SLJ 609 (CAT)) wherein the Full Bench of this Tribunal observed that "K.K.Jindal's case is not an authority for the proposition that when complaints are received and the exigencies of service require that a transfer be made, an enquiry must necessarily be held into the complaint before transfer is ordered. Nor did it lay down that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be penal in nature. All that it laid down was that a finding as to misconduct and finding which attaches stigma to the employee not preceded by an enquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer." The Full Bench while concluding (at para-18) observed:

" No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the ^{in view of} grounds could very well be the allegations ^{concerned}. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated."

10. It is already noticed that in this case the transfer is not based on a finding of misconduct arrived at and it is not the operative reason for the transfer. The transfer has been made on the basis of allegations which are being enquired into. In the circumstances the contention of Sri KSR Anjaneyulu that the transfer is a punishment and the Applicant should not have been transferred till the completion of the disciplinary enquiry cannot be sustained.

PS
BWF

never
22
CHECKED BY

APPROVED BY

TEMED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO : MEMBER (J.)

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M(J.)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

DATE : 3/8/96

ORDER/JUDGMENT :

M.A. / R.A / C2A / No.

in

T.A. No.

W.P. No.

O.A. No. 556/96

Admitted and Interim directions issued
allowed.

Dismissed for Default.

Dismissed as withdrawn. DESPATCH

Dismissed.

Disposed of with directions.

M.A. Ordered/Rejected.

No order as to costs.

