

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

O.A.NO. 1481 of 1995.

Between

Dated: 6.3.1996.

S.C.Lohia

...

Applicant

And

Union of India represented by:

1. Director R&D, Bureau of Police, Research and Development, Ministry of Home Affairs, Block No. II, IIIrd and IVth floor, C.G.O.Complex, Lodi road, New Delhi.
2. Government Examiner of Questioned Documents, Central Forensic Laboratory Complex, Ramanthapur, Hyd.
3. H.M. Saxena, Deputy Government Examiner, Questioned Documents, Central Forensic Laboratory Complex, Ramanthapur, Hyd.

...

Respondents

Counsel for the Applicant : Sri. K.S.R. Anjaneyulu

Counsel for the Respondents : Sri. N.V.Raghava Reddy, Addl. CGSC.

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:...2/-

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O.A.No.1481/95.Date: 6-3-1996.J U D G M E N T

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

The applicant in this OA while working as Deputy Government Examiner of Questioned Documents (DGEQD for short) at Central Forensic Laboratory, Hyderabad was issued with transfer order dt. 29.5.1995 bearing No.6/26/91-Admn.(Part II) (Annexure-2) transferring him to Calcutta. The said transfer order was assailed in OA No. 673/95 which was disposed of by orders dt. 9.10.1995. The Director General, Ministry of Home Affairs, Bureau of Police Research and Development, New Delhi, (R-1 in that OA) was asked to dispose of the representation of the applicant dt. 1.6.95 keeping in view the contentions raised in that OA and pass speaking order in regard to the transfer of the applicant. Liberty was also given to the applicant to approach this Tribunal if he is aggrieved by the reply to be given by R-1 in that OA. R-1 in that OA disposed of the representation of the applicant by impugned proceedings dated 10.11.1995 bearing No.6/5/95-Adm.I (Annexure-1).

2. Even before the disposal of OA 673/95 the records, which lead to the transfer of the applicant from Hyderabad to Calcutta in the same capacity as DGEQD, Central Forensic Laboratory were called for. The records which were perused reveal that one Sri H.M.Saxena who was also working as DGEQD, Central Forensic Laboratory at Calcutta at that time had applied for transfer to Hyderabad and that request was accepted by the competent authority. The records does not

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reveal any reason for transfer of the applicant from
from Calcutta to Hyderabad
Hyderabad to Calcutta and Sri Saxena (R-3) except
for the reason that Sri Saxena had requested for trans-
fer to Hyderabad. In view of the fact that no reasons
were indicated for the transfer a direction as above
was given in the OA referred supra.

3. The present impugned order dt. 10.11.95
which was issued in pursuance of the directions in
OA 673/95 states that the applicant herein was trans-
ferred to Calcutta ~~as he is senior to R-3~~ with an inten-
tion to fill up the vacancy that would arise after the
retirement of one Sri H.S. Tuteja, DGEQD at Calcutta on
as he is senior to R-3
31.5.1996. It also states that the transfer of the
applicant and R-3 has been done keeping in view the
request of R-3 for transfer from Calcutta to Hyderabad
and also in public interest and in the exigencies of
work. The memo dated 10.11.1993 is assailed in this O.A.

4. In the reply statement filed by the respondents,
which is very short, it is stated that "transfer of the
applicant to Calcutta is in public interest and for the
smooth functioning of the organisation and that transfer
was ordered on administrative grounds". R-3 though
received ^{the} notice, did not file a reply nor he represented
his case either personally or through his counsel.

5. From the above replies given by the official
respondents, one can come to a reasonable conclusion that
the transfer of the applicant herein to Calcutta and
posting R-3 to Hyderabad has been done on the basis of
the request made by R-3 to come to Hyderabad from Calcutta.

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Whether the transfer ordered transferring the applicant from Hyderabad to Calcutta and R-3 from Calcutta to Hyderabad is in the public interest and for administrative reasons is the point for consideration in this OA.

6. The learned counsel for the applicant submitted that the transfer ordered ~~xxxxxxx~~ for accommodating another person is held as discriminatory by CAT, Ahmedabad Bench reported in X 1991(1) ATJ 243 - D.R.Sengal Vs. Chief Post-Master General and Ors. §. In that OA one Sri K.C. Raval was ordered to be transferred from Rajkot to Gandhinagar at his own request and costs and the petitioner Sri Patel in that OA was transferred in public interest to accommodate Sri Raval. In that context, it was held by CAT in Raval's case that accommodating Mr. Raval and retaining Mr. Patel together gave a strong presumption in favour of the petitioner, regarding discrimination and arbitrariness of the orders. Here also the transfer of the petitioner and posting R-3 in his place lead to the presumption that the petitioner was discriminated and hence the transfer orders issued are arbitrary.

7. It is stated that R-3 was transferred to Calcutta only in 1994 and transferring ^{him} back to Hyderabad before completion of his tenure at Calcutta is not called for. Normally whenever the transfer is ordered ~~the applicant~~ transferred the incumbent has to be kept in the transferred place till he completes the tenure unless there is a strong reasons to bring him back to his earlier place of posting. In this case no such contingency has been brought out.

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Only reason given is that R-3 wanted to come to Hyderabad for personal reasons and hence he was transferred. The applicant also wants to be retained at Hyderabad for his personal reasons. Taking a decision in favour of one or the other should be on the basis of need and other relevant factors, but in that noting in the file which led to this transfer, which I had perused earlier, did not indicate any such analysis of the need. Even in the impugned order dt. 10.11.1995 no such need/reasons were brought out to bring R-3 to Hyderabad except saying that it has been done on the basis of request of R-3. Hence, one cannot come to the conclusion that the need of R-3 to post him to Hyderabad is more than the need of the applicant for retention at Hyderabad. Further in the notings in the file as well as in the impugned memorandum, it is said that the transfer has been effected in the public interest. The reply of the respondents also says that the transfer has been effected in public interest: but nowhere it has been stated the reasons for issuing this order in public interest. Merely stating that the order is in public interest cannot be a significant ground for issuing this transfer especially when there is a claim for posting at Hyderabad.

8. Whenever there is a controversy in regard to transfer, it is essential that the competent administrative authorities should indicate reasons if the transfer orders are issued in public interest. In the absence of any such indication, the Court/Tribunal cannot come to any conclusion. File does not indicate the reasons to come to conclusion that the transfer orders were issued in public interest. Hence, it has to be held that the public interest in this case is only to bring R-3 to Hyderabad for some unknown reasons. Such arbitrary orders issued under the colour of public interest is untenable.

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9. One of the reasons given in the Memorandum dt. 10.11.1995 is that the applicant has to take over as DGEQD, Central Forensic Laboratory at Calcutta vice Sri Tuteja who is holding that post now and is retiring on 31.5.1996, on the pretext that the applicant is senior to R-3. It is not known whether only a senior employee should be posted vice Sri Tuteza at Calcutta. Normally any employee in the same grade can be posted even if he is not senior unless the reasons for ~~posting~~ posting such senior officers is indicated. The memorandum is silent on this aspect. R-3 who had gone on transfer as DGEQD to Calcutta only in 1994 could have been posted vice Sri Tuteza. The learned Standing Counsel sought to substantiate his case for transfer of the applicant to Calcutta to replace Sri Tuteza as the ^{without any elaboration} applicant is senior to R-3. But, he could not say why R-3 cannot be posted vice Sri Tuteza instead of applicant, as the applicant and R-3 are in the same grade. No reply or instruction has been produced to say that only the senior DGEQD has to be posted at Calcutta and junior DGEQD cannot be posted at Calcutta vice Sri Tuteza. In the absence of any such instructions it has to be held that anybody who is working as DGEQD can be posted to Calcutta and it is not necessary to single out the applicant for posting him at Calcutta ~~xxxx~~ vice Sri Tuteza who is going to retire. It is further submitted ~~for~~ ^{respondent} the learned counsel for the ~~applicant~~ ^P that the transfer of applicant to Calcutta is for smooth functioning of the organisation. The learned Standing Counsel further explained that the applicant has to be posted at Calcutta being ~~as~~ a senior for smooth functioning of the organisation. Nowhere it is stated that the

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organisation at Calcutta ~~xxx~~ will function smoothly only if the applicant is posted. Smooth functioning ^{also} ~~ma~~ of the organisation may be interpreted that the applicant being ^a quarrelsome official is transferred to Calcutta for proper functioning of the organisation at Hyderabad. If such a view is taken, the remedy is to take up with the applicant for his lapses and transfer ^{under} is not the remedy ~~xxx~~ such circumstances. By transferring the applicant to Calcutta, the respondents are shifting problematic officer from one place to another and such transfer may not lead to a smooth functioning of the organisation. In the absence of any reasoning given which will enable smooth functioning of the organisation by transferring the applicant, one can reasonably draw a conclusion that the applicant was transferred on extraneous considerations.

10. It is stated in the reply that the transfer order was ordered on administrative grounds as indicated earlier. No reason has been given either in the file or in the reply or in the impugned memorandum dt. 10.11.95 how the transfer is ordered on administrative grounds. Hence this ground is also to camouflage some other intention of the respondents in ordering the transfer.

11. The learned Counsel for the official respondents relying on [AIR 1993 (SC) 1236 -Rajendra Rao vs. UOI and anor.] ^{those} submitted that only transfer orders ~~are~~ ^{intention.} issued on malafide/ or violation of service rules or without proper justification can only be set aside by the court/tribunal and orders issued in public interest/administrative reasons cannot be interfered with. He also relied on reported judgment in [AIR 1993 SC 2444 - UOI and Ors. Vs. S.L.Abbas] to say that transfers

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cannot be interfered by the court unless it is vitiated with malafides or made in violation of statutory provisions. He also sought to justify the retention of Sri Narender Singh who is senior to the applicant at Hyderabad as his wife is also a Central Govt. employee. But, in the reported judgment in the case of UOI and S.L.Abbas, it was held that "no doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible."

12. In view of the above, the retention of Sri Narender Singh at Hyderabad on account of his wife employed at Hyderabad may not be a justified reason. But, I do not propose to enter into this controversy as Sri Narender Singh is not impleaded as a party respondent in this OA. In the absence of the same, no order behind his back can be passed.

13. The learned Standing Counsel sought to justify the transfer order of the applicant on the score that the applicant is working here for a long time right from early eighties and R-3 has put in less years of service at Hyd. though his tenure at Hyderabad is also for a considerable period from 1983 to 1994. He also justified his stand by saying that R-3 before coming to Hyderabad had been posted in number of places whereas the applicant was not transferred before coming to Hyderabad very frequently. The reason for transfer due to retention in one place for a considerable period is relative. Whether ten years stay is considerable period or over

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Copy to:-

1. The Director R&D, Bureau of Police, Research and Development, Ministry of Home Affairs, Block No. II, IIIrd and IVth floor, C.G.O. Complex, Lodi road, ~~XXXX~~ New Delhi.
2. Government Examiner of Questioned Documents, Central Forensic Laboratory Complex, Ramanthapur Hyd-13.
3. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd.
4. One copy to Sri. N.V. Raghava Reddy, Addl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

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10 years is considerable stay is a matter of interpretation. No hard and fast rule can be laid in regard to station tenure. The very fact that R-3 had also worked at Hyderabad for a considerable period, there may not be any justification for this transfer of the applicant on that account.

14. Considering the above, I am of the opinion that the transfer is effected not on the basis of any sustainable cause, but only with an intention ^{to} ~~of~~ transferring the applicant for some reasons. Though I may not term that reason as malafide or colourable exercise of powers, there is ample ground for setting aside the impugned transfer order as it was issued for extraneous consideration not connected with public interest or administrative reasons.

15. The applicant is already on leave and hence a direction has to be given to post him at Hyderabad if required transferring R-3 as it is stated that R-3 had already joined at Hyderabad. If possible ^{with} R-3 and applicant may be accommodated at Hyderabad and this possibility has to be ^{applied} ~~explained~~ by concerned administrative authority. The period of absence of applicant from the date of relief till he joins back at Hyderabad with this order has to be treated as leave to his credit in accordance with rules.

16. In the result, the impugned memorandum dt. 10.11.95 bearing No.6/5/95-Adm.I is set aside. The applicant should be posted at Hyderabad if he reports for duty with a copy of this order. The period of his absence from the date of his relief till he reports for duty in pursuance of the direction as given above should be treated as leave due to him in accordance with rules.

17. No costs.

Grh.

Dated 6th March, 1996.

(R.Rangarajan)
Member (Admn.)

DR (3) 11.3.96
C.M.R.

URGENT
BP

MA-1481/95

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

R. Ranga Rao
HON'BLE SHRI ~~A.B. GORTHI~~: MEMBER(A)

~~HON'BLE SHRI~~

DATED: 6/3/96

ORDER/JUDGMENT

M.A. NO. / R.A. / C.A. No.

IN
1481/95
O.A. NO.

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED / REJECTED~~

~~NO ORDER AS TO COSTS~~

* * *

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
वैद्युत/DESPATCH
14 MAR 1996
हैदराबाद न्यायपीठ
HYDERABAD BENCH