

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1234 of 1996

DATE OF JUDGEMENT: 7th November, 1996

BETWEEN:

M.K.PRASAD, IFS

.. APPLICANT

AND

1. Union of India represented by its
Secretary, Ministry of Environment & Forests,
CGO Complex, Lodhi Road,
New Delhi 03,

2. Govt. of Andhra Pradesh represented by
the Chief Secretary, Secretariat,
Hyderabad,

3. The Principal Chief Conservator of Forests,
Aranya Bhavan, Lakdikapool,
Hyderabad,

4. Shri Lokesh Jayaswal, IFS

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI K.SUDHAKAR REDDY

COUNSEL FOR THE RESPONDENTS: SRI N.R.DEVARAJ, Sr.CGSC for R1
Sri IVRK Murty for R-2 & R-3
Sri Meherchand Noori for R-4

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDICIAL)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER(ADMN.))

Heard Shri K.Sudhakar Reddy for applicant, Shri
N.R.Devaraj for R-1, Shri I.V.R.K.Murthy for R-2 and R-3
and Shri Meher Chand Noori for R-4.

2. The applicant in this OA joined as Divisional
Forest Officer, Khammam on 23.10.95 (FN) on the strength of

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the G.O.Rt.No.4787/General Adm. Dept. The applicant was deputed to undergo one week of compulsory training on "Policy and Legal Issues in Forestry" at Indira Gandhi National Forest Academy, Dehra Dun from 14.10.96 to 18.10.96 by G.O.Rt.No.5121 dated 28.9.96 (Annexure-5). While he was undergoing training, R-2 issued posting order bearing G.O.Rt.No.5302 dated 16.10.96 posting R-4 as Divisional Forest Officer, Khammam vice the applicant and further indicating that the applicant will await further posting orders. The impugned transfer and posting order dated 16.10.96 is at Annexure-I.

3. This O.A. is filed challenging the posting of R-4 vice the applicant as DFO, Khammam and for a further consequential direction to retain him at Khammam.

4. The main contention of the applicant in challenging the posting of R-4 vice him and indicating that further orders for posting the applicant will follow are on the following grounds:-

(i) The proposals for transfer and posting orders of the IFS Officers are normally initiated by R-3 and those proposals are scrutinised by the State Govt. and final orders issued on that basis. In the present case, no proposal in regard to the transfer of the applicant had been mooted by R-3 and R-2 for extraneous considerations posted R-4 at Khammam vice the applicant thereby dislodging the applicant. The transfer order issued insofar it

concerns the applicant and R-4 is not in the public interest. The applicant has been posted ^{to} in Khammam on 23.10.95, only a year ago and there are no complaints or vigilance cases against the applicant warranting his transfer.

(ii) The applicant submits that his transfer within a year of his posting at Khammam is against the spirit of the G.O.M.S.No.1289 dt.6.11.63 and G.O.M.S.No.210 dated 5.2.65. As per the above G.O.M.S. the transfer order should normally be issued to those who have put in at least 3 years of service in that place and that too during ~~school~~ ^{to educational institutions} vacation/as far as possible. Premature transfers can be ordered due to vigilance and other cases and in case of promotion. Even in such cases, such ^{pre-mature} transfer should indicate at least in the file, the reasons for transfer.

5. An interim order was issued in this OA dated 24.10.96 whereby further posting order of the applicant was not to be issued. It was also directed in the interim order for the production of the necessary notings on the file in connection with this transfer.

6. A reply has been filed by R-2. The factual position in regard to the applicant having joined as DFO, Khammam in October 1995 and deputing him to undergo one

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week of compulsory training from 14.10.96 to 18.10.96 has^{ve} been admitted. It is further stated in the reply that the said transfer ^{was} is an incident^{ce} of Govt. service issued by the appropriate authority and is not in violation of any statutory provisions. Normally proposals for posting of IFS Officers are obtained from R-3 in a routine manner. There are no specific guidelines in this connection and there is no hard and fast rule that the proposals initiated by R-3 only should be ordered. The Govt. after due consideration, keeping in view administrative exigencies and in public interest may either deviate, alter or modify the said proposals suo moto. In the present order of transfer, there are no malafides or political influence. Hence the applicant cannot challenge this transfer order on the basis of his view that the transfer order^{was} issued is on malafide consideration actuated by political influence. The application itself is a misconceived one and the Govt. reserves the right to order a transfer without indicating the reasons for such a transfer. The G.O.M.S.No.1289 dt.6.11.63 and the G.O.M.S.No.210 dated 5.2.65 pertaining to State Govt. employees in the matter of transfers and those instructions have no application to All India Service Officers who are governed by All India Service rules.

7. R-4 has also filed a counter. The main thrustⁱⁿ of this counter is to the effect that transfer is an incident^{ce}^{ce}

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of Govt. service. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with such an order [(1993) 25 ATC 844 - Union of India and others V. S.L.Abbas)]. R-4 also relies on the reported case 1993 (23) ATC 426 (Rajendra Roy v. Union of India and another) to state that the inference of malafides "should be based on firm facts pleaded and established, not merely on insinuation and vague allegation". In the present transfer case, R-4 submits that there is no foundation ^{for any} alleged malafides. He also submits that the transfer is a routine matter ^{by Government} and keeps on effecting transfers for the better and effective administration and such transfers cannot be questioned. He further submits that the transfer orders cannot be questioned on the basis of personal hardship also [1993(23) ATC 426].

8. The above rival contentions were considered. We have also gone through the confidential file bearing No.69/SC.IFS/96 produced before us.

9. It is well settled on the basis of the dictum of the Apex Court that a Court or Tribunal should be slow in interfering with an order of transfer unless it is shown to have been passed malafide or in violation of rules of service and guidelines for transfer without any proper

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justification.

10. Whenever allegations of malafide exercise of power of transfer are made, the allegations have to be construed on their intrinsic worth and on the test of probability [AIR 1964 SC 962 - Rowjee L.S. v. State of Andhra Pradesh]. From the above, the only way to ascertain whether the present transfer is actuated by malafides or for extraneous considerations other than public interest is by perusing the notings in the necessary records which led to the issue of the transfer order. On that basis only it was directed in the interim order dated 24.10.96 to produce the confidential file containing the above notings.

11. The confidential file No.69/SC.IFS/96 produced by the learned standing counsel for R-2 was perused carefully (the same was put in a cover after perusal, sealed and returned back).

12. The various notings were examined. It is seen from the notings that in the case of the transfer of IFS Officers, the proposals are normally initiated by R-3 or called for from R-3 and then those proposals were further studied by R-2 and the final proposals formulated and put up to the Chief Minister for final orders. In this connection, the notings of the Chief Secretary in Page 13 of the file referred to above is very relevant to be noted. This noting reads as below:-

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"The maximum 'requests' from non officials/politicians is in this All India Service (as between IAS/IPS/IFS). There is need for us to listen to the HODS and effect transfers. Equally, the Principal CCF needs to be advised to suggest based purely on merits".

13. From the above notings, it can be reasonably concluded that there are requests from non-officials/politicians in the cases of transfers/postings of IFS Officers. Hence it cannot be said that there are no interference from politicians in the postings of IFS Officers. Hence when it is submitted that the posting of R-4 ^{was} ~~is~~ at the intervention of a political pressure, it cannot be said that the above statement is altogether baseless. The Chief Secretary himself admits that the suggestion of R-3 in regard to the postings and transfers of IFS Officers purely on merits is to be called for. In view of the above observations, it is to be noted that the proposal of R-3 is a valuable input for deciding postings/transfers of IFS Officers. Even if such recommendations are not accepted by the competent authority, initiating proposals for postings/transfers of IFS Officers directly by the Govt. is to be discouraged as admitted by the Chief Secretary himself. Hence when the applicant submits that the present transfer order is without R-3's recommendation, it has to be construed that it may be due to reasons other than merit.

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14. In Page 17 of the above referred confidential file, it seems that R-3 had suggested posting of R-4 as W.P.O. either at Rajahmundry/Guntur. In Page 19 of the confidential file, it appears that R-3 had proposed posting of R-4 who ^{was} ~~is~~ waiting for posting as W.P.O. Party No.III, Rajahmundry. In Page 25 of the file, R-3 "has once again forwarded certain consolidated proposals along with his considered views on the said proposals". In that proposal, R-4 was suggested to be posted as Deputy C.F. (JFM), O/o PCCF, Hyderabad. But the Secretary (POLL) in his proposal at Page 29 of the above referred confidential file has suggested posting of R-4 as Dy.C.F. (STC), O/o the Conservator of Forests, STC, Hyderabad. From the above notings, it looks that the Secretary (POLL) had not followed the proposals of R-3 but made his own proposal which was put up to the Chief Secretary and to the Chief Minister. The proposals of Secretary (POLL) were accepted in toto except that of R-4. R-4 was to be posted as DFO, Khammam in place of the applicant as approved by the Chief Minister. No reason has been given in regard to the posting of R-4 replacing the applicant. It is also not noted that the approved proposal of posting of R-4 is in the public interest. Hence there is a lingering doubt in regard to the posting of R-4 whether it ^{was} ~~is~~ due to public interest or otherwise.

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15. In this connection, the Central Administrative Tribunal, Lucknow Bench in the reported case (1996) 34 ATC 172 (Surendra Mohan v. State of U.P. and others) had observed that "the expression public interest is not a magic word which can do service for anything in any situation. Nor is it a carpet under which anything could be swept. The expression has a definite purport and in a particular case such interests must be disclosed or discernible. The expression 'public interest' like the expression 'exigency of public service' is often made an apology for something that cannot be justified. It is true that these concepts are not capable of visible demonstration. At the same time, they cannot be used as a camouflage for a collateral purposes."

16. From the above, it is essential that reasons for transfer ordered even on public interest must be disclosed or at least discernible from the notings ^{on} the file. The respondent in their counter submit that the said transfer is an incident ^{nce} of service and has been issued by the appropriate authority keeping in view the administrative exigencies and public interest. But the order passed by the appropriate authority does not disclose any reason of public interest or the administrative exigencies which necessitated the issue of the transfer order. As stated earlier, the final order passed by the appropriate authority posting R-4 vice the applicant was neither suggested by R-3 nor by the Secretary (POLL). Though in the public interest, the final authority may either deviate or modify or alter the said proposals suo moto, reasons for such alteration/deviation/modification has to be disclosed

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or at least discernible from the records. But as observed earlier, no inference can be drawn for the deviation/modifications from the notings. Hence it cannot be said that the final orders are free from doubts in regard to the assertion that the order was issued in the interest of the public and exigencies of service.

17. Though the learned standing counsel for R-2 and R3 submits that the instructions contained in GOMS No.1289 dated 6.11.63 and GOMS No.210 dated 5.2.65 are not applicable to the All India Service Officers, it has to be observed that those instructions are general guidelines and cannot be said that those general guidelines are not applicable to AIS Officers. Issue of transfer order at the end of the school session and retaining the officer for a specified period in one location is meant for administrative efficiency and not merely on account of the hardship that ^{may} ~~will~~ be caused to the transferee officer. In that context, transfer of the applicant within a year of his posting at Khammam and that too during the scholastic session cannot be said to be in order. In that view, the contention of R4 that "personal hardship should not be ^{the} a reason for challenging a transfer order cannot also be countenanced.

18. Though R-4 suggests in his counter that there is no foundation for the allegation or insinuation of the applicant, this statement cannot be held to be valid for the reasons analysed above. The insinuation/allegation of the applicant could not be fully explained by him in his affidavit as he has no opportunity to look into the records. Materials are available in the records to come to

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such conclusion.

19. The learned counsel for R-4 also submits that the applicant has not exhausted the alternative remedies available to him as he has not represented his case to the appropriate authority for redressal of his grievance. There is no doubt that alternative remedies have to be normally availed before approaching this forum. But it does not mean that when such a remedy is available there is a bar to approach this forum. If such remedy is an efficacious one, he ^{can} advert to the same. Under the circumstances, in the present case, we are of the opinion that the alternative remedy may not be an efficacious one.

20. The law laid down in 1993(23) ATC 412 (M.Sankaranayanan v. State of Karnataka) referred to by R-4 may not be applicable in this case. The transfer order issued in that case is that of the Chief Secretary who had to work in close co-ordination with the Chief Minister. In that context, the observations made by the Apex court ^{have} ~~is~~ to be viewed. In the present case, the applicant is only a DFO and he has no occasion to deal with the Chief Minister directly. Hence this citation in our opinion may not be an appropriate one.

21. Though, it is stated, that the present transfer is an incidence of service without malafides and hence cannot be challenged, for reasons analysed as above, we cannot but come to a conclusion that the posting of R-4 at Khammam vice the applicant is not free from doubts that the

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transfer is issued for extraneous reasons. When a transfer order is issued for extraneous reasons and no public interest has been shown to exist in passing the impugned order of transfer, the same is liable to be quashed.

22. In the result, the impugned order GORT No.5302 dated 16.10.1996 insofar as it relates to posting of R-4 vice the applicant as Divisional Forest Officer, Khammam with an indication that the posting of the applicant will be issued separately, is set-aside. R-2 is directed to post the applicant as Divisional Forest Officer, Khammam.

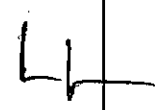
23. The OA is ordered accordingly at the admission stage itself. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

7.11.96
DATED: 7th November, 1996

vsn


D.R. (S) 11/11/96

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O.A.NO.1234/96

Copy to:

1. The Secretary, Min. of Environment & Forests,
CGO Complex, Lodhi Road, New Delhi.
2. The Chief Secretary, Govt. of A.P.,
Secretariat, Hyderabad.
3. The Principal Chief Conservator of Forests,
Aranya Bhavan, Lakdikapool,
Hyderabad.
4. One copy to Mr.K.Sudhakar Reddy, Advocate,
CAT, Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
6. One copy to Mr.I.V.R.K.Murthy, Advocate, CAT, Hyderabad.
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8. One copy to Library, CAT, Hyderabad.
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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

The Hon'ble Shri B-S. Jai Parameswar
M(T)

DATED: 7-11-96

ORDER/JUDGEMENT

R.A./C.P./M.A. NO.

in

O.A. NO. 1234/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

