

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A.NO.553 of 1999.

DATE OF DECISION: 22-11-1999.

Between:

C.V.Ramana Rao.

...Applicant

And

1. The Union of India,
Represented by Under Secretary,
Ministry of Defence, New Delhi.
2. The General Manager, Ministry of Defence,
Canteen Stores Department, ADELPHI, 119,
M.K.Road, Mumbai-400 020.
3. The Joint General Manager-I,
Ministry of Defence, Canteen Stores Department,
ADELPHI, 119, M.K. Road, Mumbai-400 020.
4. Sri Rakesh Kulsherestha, Occ:Manager, HO Mumbai,
Canteen Stores Department, ADELPHI, 119,
M.K.Road, Mumbai-400 020. ... Respondents

COUNSEL FOR THE APPLICANT :: Mr.V.Venkateshwar Rao

COUNSEL FOR THE RESPONDENTS :: Mr.V.Vinod Kumar
Mr.K.Sudhakar Reddy for R-4

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

(Signature)

1. The applicant of this OA is presently working as Canteen Manager, Canteen Stores Department, Ministry of Defence at Secunderabad. He is challenging the transfer order No.73/99, dated 5-4-1999, issued by the third respondent transferring him from Secunderabad to the Head Office at Bombay.
2. The applicant assails the transfer order firstly on the ground that Respondent No.3 under whose signature the transfer order was issued on 5-4-1999 was not competent to do so, as he was not the appointing authority of the applicant. He was appointed as Manager by the first respondent and therefore, according to the applicant, R-1 alone was competent to pass the order of transfer. It is also pleaded by the applicant that the third respondent issued the impugned transfer order because he wanted to do favour to the fourth respondent. It is further pleaded by the applicant that the transfer order could not be given effect to in view of the fact that it was passed before the completion of the normal tenure period. According to the applicant, the revised posting policy of Group 'A' Officers issued on 26-5-1995 laid down that normal tenure of officers would be 2 to 3 years and that the officers who worked at LEH and Dhimmapur/Srinagar would be considered for posting at one of their choicest stations. The impugned order, according to the applicant is contrary to the said revised posting policy of Group 'A' officers. The impugned transfer order was not passed on any administrative grounds but it was passed out of malice against the applicant and for extraneous considerations.
3. In the reply affidavit it is stated in para 3 that the applicant had not made any representation against his transfer. He had earlier filed two original applications bearing OA.Nos.1129 of 1998 and 1340 of 1998. However, he did not make any representation in accordance with the directions given by the Tribunal and therefore, according to the respondents, the OA deserves to be

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straightaway rejected for want of the remedies not having been fully exhausted before approaching the Tribunal.

4. It is further pointed out by the respondents that the amended transfer order No.180/98, dated 5-10-1998 had already been cancelled. It is further pointed out by the respondents in the reply affidavit that OA.No.1340 of 1998 filed by the applicant had been dismissed by this Tribunal as not pressed by the applicant himself and therefore the earlier OA.No.1340 of 1998 could not be linked by the applicant with the present OA and on that ground also, according to the respondents, this OA filed against the transfer order No.73/99 dated 5-4-1999 is infructuous.

5. While narrating the sequence of events the respondents point out that:

- i) The applicant was transferred from Secunderabad to Mumbai, vide Transfer Order No.150/98, dated 24-8-1998.
- ii) He filed OA.No.1129/98 against the above transfer order.
- iii) The Tribunal by its order dated 7-9-1998 disposed of the OA with a direction for retention of the applicant at Secunderabad upto the end of the Academic session.
- iv) The amended transfer order No.180/98 dated 5-10-1998 was issued retaining the applicant at Secunderabad. However, the Officer's appointment was changed as Additional Manager.
- v) The applicant filed fresh OA.No.1340/98 challenging the above stated amended transfer order and obtained status-quo.
- vi) The amended transfer order No.180/98, dated 5-10-1998 was cancelled, vide fresh transfer amendment order dated 14-10-1998.
- vii) OA.No.1340/98 was dismissed by order dated 15-4-1999.

The operative part of the Order passed by the Tribunal in OA.No.1129 of 1998 reads as follows:

"Hence this application is disposed of with a direction that the applicant shall not be transferred from his present posting to the place where he is transferred till the completion of the present academic year; but thereafter the applicant shall comply with the order of transfer."

6. The allegations with regard to favouritism and malice made by the applicant are denied by the respondents in para 9 of the reply affidavit. It is also pointed out by the respondents that normal tenure of posting of Group 'A' officer is 2 to 3 years at any particular place, but the placement of Group 'A' officer was the prerogative of the General Manager, CSD being the Head of the Department, and it was carried out keeping the officers' administrative abilities, career profile and organisational requirements in mind and that the applicant was not entitled to claim the maximum tenure of 3 years as a matter of right. The applicant reported for duty at Secunderabad Depot on 6-5-1997 and had thus completed the tenure of 2 years.

7. From the pleadings and contentions as well as from the oral submissions made by the learned Counsel for the rival parties, it clearly emerges that on the earlier occasion when transfer order came up for consideration before the Tribunal, the Tribunal was pleased to give a direction that the applicant should not be disturbed till the completion of current academic year. But a specific direction was given to the applicant to proceed on transfer as per the impugned transfer order issued by the respondents immediately after completion of the current academic year.

8. It is well settled that the transfer is an incidence of service and ordinarily transfer is presumed to have been made for administrative convenience and infact the Service Tribunal is not expected to interfere with the transfer orders keeping in view the above presumption unless it is brought to the notice of the Tribunal with a cogent and convincing evidence to show that the transfer was made under any malafide consideration or that it was a case of victimisation or that out of any vindictiveness against the applicant the transfer came to be made. In the absence

of any such substantiations against any particular officer of the concerned department, the ground of administrative convenience cannot be brushed aside.

9. With regard to the allegation of malafides against the respondents, the learned Counsel Mr. Venkateshwar Rao drew my attention to the reply statement filed by the respondents in OA.No.1340 of 1998 in which it is stated that the reasons behind the applicant's transfer from Secunderabad from the post of Depot Manager, Area Depot were to remove ^{him} from the command area depot on the grounds of the applicant's inefficiency in supervising and containing certain malpractices in the maintenance of the depot. Transfer of the applicant, as submitted by the learned Counsel Mr. Venkateshwar Rao for the Applicant, on the said ground was penal in nature and could not be ordered without conducting proper inquiry into the alleged malpractices or inefficiency of the applicant.

10. In my considered opinion the contentions raised by the respondents in their reply affidavit in OA.No.1340 of 1998 cannot be treated as any misconduct warranting a regular inquiry into such allegations. The allegation of malpractices infact is not made against the applicant himself; the applicant is only accused of failing to contain such malpractices, not that the applicant himself was indulging in malpractices. It would therefore not be correct to say that the transfer was penal in nature on the basis of the said contention raised by the respondents in the reply affidavit in OA.No.1340 of 1998. 'Inefficiency' is not a misconduct. It is a measure of the incumbent's ability and potentiality to perform his duties in an effective manner. In my opinion, these are precisely the factors, which would fall for consideration of the authorities under the cloak of administrative convenience by which the authorities would be motivated for transferring an incumbent from one position to another. The applicant therefore cannot be given the advantage of his transfer to be treated as unenforceable by holding the same to be of penal in nature or having been resorted to out of any vindictive action.

11. It was also urged by the learned Counsel for the Applicant that the transfer order attributed a stigma on the applicant's character, which submission also in my opinion cannot be upheld because the respondents merely pointed out the same in their reply affidavit in OA.No.1340 of 1998. The ground of inefficiency was not mentioned in the impugned transfer order and therefore the colour of stigma cannot be attributed to the Order of transfer. If such reasons were cited in the transfer order itself, the same could have been treated as stigma but not under the given facts and circumstances of the case before us. The impugned transfer order No.73/99, dated 5-4-1999 appearing at Annexure.XI, page 30 of OA gives the particulars of the names of the Officers, their respective designations, station of posting etc.,. But no mention is made in the said order which could be stated as attaching stigma not only to the applicant whose name appears at Sl.No.13, but not even against the remaining 12 Officers, who were transferred by the said Order. The question of stigma therefore does not come in the way of the respondents.

12. The learned Counsel for the Applicant also challenges the transfer order on the ground that the 3rd respondent who signed the transfer order was not competent to issue the impugned transfer order inasmuch as he was not the appointing authority for the post held by the applicant. This objection stands sufficiently answered by the impugned transfer order itself in which it is stated at the end that "this has the approval of GM".

13. It becomes also evident from Appendix 'A' at page 20 of the reply affidavit, which speaks about power to transfer a Government servant from one post to another under the head "Powers of the Head of the Department". The proceeding issued by the Ministry of Defence, Canteen Stores Department, Mumbai, dated 21-1-1997, attached to the aforesaid Appendix 'A', also disclose in

Paragraph 6 that "Transfer of Group 'A' Officers i.e., upto Adhoc Managers will be approved by the "undersigned". Transfer upto Group 'B' staff will be issued by JGM-II after obtaining approval of the "undersigned". The authority signing the said Charter of duties of Joint General Manager-I and Joint General Manager-II, is the General Manager. There can therefore be no doubt about the fact that Vice Chairman and Joint General Manager-I, who signed the impugned transfer order dated 5-4-1999 was duly authorised to issue the transfer orders and the same had the approval of General Manager also as stated in the concluding part of the said transfer order. The impugned transfer order therefore cannot be treated as suffering from any infirmity with regard to the competence of the Officer who signed the same.

14. The Counsel for the Applicant also drew the attention of the Bench towards Clause (c) of Annexure.A-VII at page 16 to OA, which is dated 26-5-1995 in which it is stated that in case of hard Stations (Misamari, Narangi, Masimpur and Port Blair), the tenure would be as follows:-

- i) For officers with service of 10 years or less - 3 years;
- ii) For Officers with more than 10 years of service - 2 years.

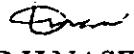
In Clause (d), it is provided that keeping in view the administrative convenience, as far as possible each Officer during entire service should be posted to atleast one tenure/field station. In Clause (4) (a) relating to tenure, it is provided that, subject to satisfactory performance and exigencies of service, the normal tenure of posting of all officers at outstations would be 2 to 3 years. However, the combined tenure of Officers, Bombay (HO) Base Depot and Area Depot) would normally not exceed 5 years.

15. The above provision with regard to tenure gives us a reason to believe that there is nothing hard and fast about the tenure because the same has been

subjected to satisfactory performance and exigencies of service. We have seen above as to how this element of satisfactory performance comes in the way of the applicant for strict adherence to the tenure.

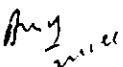
16. It is pertinent to note that by the first transfer order dated 24-8-1998, the applicant was transferred from Secunderabad to HO (MS Branch), which was directed to be kept in abeyance in OA.No.1129 of 1998, till the expiry of the current academic year and the applicant did not take any proceedings against the said direction given by the Tribunal. The transfer order which is challenged in the present OA also stipulates the transfer of the applicant from Secunderabad to HO. Since the order passed in OA.No.1129 of 1998 was not challenged by the applicant before any higher forum, the said order acquired the status of finality and therefore even according to the said order with regard to his earlier transfer, it was incumbent upon the applicant to take charge of his posting at the transferred place instead of indulging into advancing one or the other ground to avoid the transfer. Even if the direction given in OA.No.1129 of 1998 as stated above is ignored for the time being on the ground that after the issuance of the directions by the Tribunal, alterations were made by the respondents in the transfer order, the impugned transfer order dated 5-4-1999 can still not be held to be suffering from any infirmity so as to enable the applicant to stick on to his present posting in Secunderabad.

17. For all the above reasons, therefore, we find no merits in the applicant's case and therefore the OA is dismissed; however, with no order as to costs.


(D.H.NASIR)
Vice Chairman

DATED: this the 22nd day of November, 1999

DSN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

1ST AND 2ND COURT

COPY TO :-

1. BBHND

TYPED BY
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APPROVED BY

2. HRRN M (A)

THE HON'BLE MR. JUSTICE D.H.NASIR

3. BOSJP M (J)

VICE - CHAIRMAN

4. D.R. (A)

THE HON'BLE MR.R.RANGARAJAN :

5. SPARE

MEMBER (ADMIN.)

6. ADVOCATE

THE HON'BLE MR.G.S.BAI PARAMESWAR :
MEMBER (JUDL.)

✓ STANDING COUNSEL

* * *

Order

DATE OF ORDER: 22/11/99

MA/R/EP.No.

in
DA. NO. 553/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED
NO ORDER AS TO COSTS

29 NOV 1999

APR/EPD/VR
2000-14-11-99 SP

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