

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.992/99.

DATE OF ORDER: 16-8-1999.

BETWEEN :

R.K. Sarkar, S/o
Late Kishori Mohan
aged about 57 years,
Small Industries Service Institute,
Balanagar, Narsapur X-Roads,
Hyderabad -500 037.

.. APPLICANT

A N D

1. Union of India,
rep.by its Secretary,
Department of S.S.I. and
A.R.I.,Ministry of Industry,
Udyog Bhavan,
New Delhi - 110 011.

2. The Development Commissioner,
Small Scale Industries Department
of S.S.I. and A.R.I.
Ministry of Industry,
Government of India,
7th Floor, Nirman Bhavan,
New Delhi - 110 011.

3. G.M. Ambhore, Director,
Small Industries Service Institute,
Government of India,
10th Industrial Estate,
Polo Ground,Indore-152 003.

.. RESPONDENTS

Counsel for Applicant : Mr. R. Brizmohan Singh

Counsel for Respondents : Mr. K.Narahari,ACGSC
Mr. M.V.Krishna Mohan
For R-3.

Coram :

The Honourable Mr.Justice D. H. Nasir, Vice-Chairman.

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O R D E R.

Justice D.H.Nasir, VC:

1. Transfer is an incidence of service and the presumption is that it is resorted to for administrative convenience. The Service Tribunals, therefore, should ordinarily refrain from interfering with the transfer orders. This is a well settled position of law and the same need not be reopened for any discussion. However, when it is brought to the notice of the Tribunal that the transfer is vindictive or punitive, it becomes the duty of the Tribunal to examine the question thoroughly well and even in a situation where transfer is made in contravention of the norms set out for the same, it becomes necessary for the department to render satisfaction to the Tribunal that there was any overwhelming administrative convenience which warranted the transfer.

2. In the instant case, the applicant Mr. A.K.Sarkar who was posted as the Director of Small Industries Service Institute at Hyderabad, was transferred abruptly by an order dated 30th June, 1999 to Goa. Six other officials were also transferred along with him and in place of the applicant, the private respondent No.3 G.M.Ambhore was posted at Hyderabad. Respondent No.3 has already taken charge from the applicant as the Director, S.I.S.I. The legality of the order dated 30th June, 1999 appearing at Annexure-A.1 to the O.A. is challenged in this O.A. It is also mentioned in the impugned order that all the Directors whose names are mentioned in the said order had been transferred in "public interest".

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3. The learned counsel Mr. Brizmohan Singh for the applicant drew our attention to the guidelines dated 3.12.1991 issued by the office of the Development Commissioner, Small Scale Industries, New Delhi, to be observed in the matters of transfer. Our particular attention was drawn to Sub-paras VI and VII of Para-2 of the said guidelines, which provide as under :

- "VI. Of all other stations, not covered by Para-III above, the tenure will normally be 5 years.
- VII. Officers who are within 3 years of their date of superannuation will not be transferred unless it involves promotion or unless exigencies of public interest specifically demand such transfer or to meet transfer request of the officers concerned subject to availability of vacancies at a particular station where the officers propose to settle down after superannuation."

Keeping in view the above two guidelines, Mr. Brizmohan Singh submitted that the first guideline which laid down that the tenure will normally be 5 years stood contravened by virtue of the fact that the applicant was posted at Hyderabad on transfer in the month of June, 1998 only after working at Cuttack for 4 years. His transfer to Hyderabad in June, 1998 was on promotion as Director, but the order of transfer of the applicant along with six others on 30th June, 1999 was in any case in contravention of Para-2(VI) of the guidelines dated 3.12.1991. The learned counsel for the applicant also submitted that the officers who were within three years of their date of superannuation should not be transferred unless it involved promotion or unless exigencies of public interest specifically demanded such

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transfer. The applicant is aged 57 years and therefore, according to Mr. Brizmohan Singh, the impugned transfer fell within the mischief of Para-2(VII) of the guidelines dated 3.12.1991.

4. On principle we cannot disagree with the submissions made by the learned counsel Mr. Brizmohan Singh that it was incumbent upon the respondents to spell out the administrative convenience in clear terms having regard to the fact that the transfer was resorted to in contravention of the guidelines. The learned Standing Counsel Mr. Narahari on behalf of the respondents, however, submitted that the transfers in question were made in public interest and it was specifically stated so in the impugned order dated 30th June, 1999 that all the Directors covered by the said order were transferred in public interest. In our opinion, however, a mere statement that a particular transfer was in public interest cannot preclude us from examining the legitimacy of the transfer order, because in para-2(VII) itself it is stated in clear terms that the transfer shall not be made unless it involves promotion or unless exigencies of public interest specifically demand such transfer. The language of this clause makes it incumbent upon the respondents in the situation stated above, to unfold how the public interest in the transfer in question specifically demanded that such transfer be made. Since no effort is made by the respondents to satisfy the Tribunal regarding the specific demand concerning public interest, it is difficult to uphold the impugned order of transfer of the applicant to Goa.

5. From the submissions made by the learned counsel for the rival parties, what crystallises is the proposition that the transfer was punitive and therefore, the same

could not have been resorted to without giving the applicant sufficient opportunity to explain and without conducting a regular departmental inquiry. In paragraph-7 of the reply statement, it is stated that the applicant was not performing his duties satisfactorily. Apart from this allegation made in the reply statement, the learned Standing Counsel Mr. Narahari tabled certain documents in the form of letters addressed to the applicant in his capacity as Director which, according to the learned Standing Counsel, spoke volumes about the unsatisfactory performance of the applicant. Before we look into the contents of these letters, it need be stated in clear terms that this practice of producing documents during the course of hearing is not in good stead. It amounts to taking the ~~otherside~~ by surprise which cannot be overlooked. In fact, the same should have been produced with a Memo seeking permission of the Tribunal to produce the documents at that late stage by serving a copy of the Memo and the copies of the documents on the other side so that the other side may have sufficient opportunity to deal with the same. The respondents would do well to take care of this aspect of production of documents in future.

6. The sum and substance of the letters produced on behalf of the respondents is to point out delays in the execution of certain construction and renovation works and that there had been a delay in submitting the estimates for repairs and renovation activities of the building to be undertaken by the C.P.W.D. In D.O. letter dated 28th June, 1999 addressed to the applicant, it is pointed out that there was lack of discipline among the staff in the S.I.S.I. and the applicant had differences

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which percolated down to the lower levels and had led to unnecessary complications in the inter-relationship of the entire staff, ^(and) as a result, two groups had been formed. In paragraph-3 of the said letter it is pointed out that the overall performance of the SISI was not upto the mark. It is acknowledged that the applicant had done some good work with regard to Computer education but in the other spheres of work, the applicant left much to be desired. The applicant was alleged to be not reviewing the work periodically for ensuring that the targets set for the completion of work were fulfilled.

7. At the same time certain averments made by the applicant in his rejoinder affidavit which are not resisted by the respondents by filing a sir rejoinder are noteworthy. In paragraph-6 of his rejoinder affidavit the applicant submits that the second respondent was not entitled to take performance of the officer into consideration for the purpose of ordering transfers because such an exercise would permit the second respondent to punish the subordinates by way of transfer. The applicant further states that he took a strong exception to the statement made that his continuance at Hyderabad was not found to be in public interest and he was not performing satisfactorily. In paragraph-7 the applicant mentions that in so far as his performance as Director, S.I.S.I. Hyderabad for the financial year 1998-99 is concerned, he had only 9 months at his disposal and that 3 months in financial year 1998-99 having elapsed even before he could join at Hyderabad, but with dint of hardwork, performance and by virtue of his leadership qualities he could not only achieve the targets but also

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could effect the significant improvements in most of the activities of S.I.S.I., Hyderabad, surpassing the figures achieved in the previous years by the earlier Directors. He further states in paragraph-8 of his rejoinder affidavit that apart from discharging his responsibilities as a Director of S.I.S.I. at Hyderabad, he was supervising the Branch of SISI also at Vizag, Field Testing Station at Hyderabad. All promotional and developmental activities were carried out on the basis of financial years, such as, 1997-98 and 1998-99 on the basis of targets assigned every year under "Action plan" by the Development Commissioner, New Delhi. The applicant goes on to narrate plethora of facts to show as to how efficiently he carried out the responsibilities as Director.

8. We cannot ascertain the correctness or otherwise of the allegations made by the respondents and on the other hand, the claims of satisfactory performance advanced by the applicant. However, it emerges from the submissions made by the learned counsel for rival parties that the main factor was the quality of service put in by the applicant and in that situation, neither the claims advanced by the applicant nor the allegations made by the respondents could be taken for granted. It is necessary in such cases to float a regular departmental inquiry so as to ascertain the truth of the allegations made against the applicant for justifying the need of his transfer. This exercise has not been gone through in the instant case and therefore, it is difficult for us to uphold the

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the transfer of the applicant from Hyderabad to Goa.

9. We are conscious of the fact that staying the transfer of the applicant forthwith would entail certain amount of hardship, particularly with regard to the placement of six other Directors whose transfer was made under the impugned order of transfer. We, therefore, believe that the interest of justice would be served if a direction is given to the applicant to take charge of his post at Goa and simultaneously to direct the respondents to take suitable measures to see that the applicant is posted at his pre-transferred post at Hyderabad as early as possible.

10. In the result, therefore, while the O.A. is allowed; with a view to ensuring the avoidance of administrative hardship to the farthest extent possible, at the first instance, the applicant is directed to take charge of his transferred post at Goa within two weeks from today and thereafter within two months, the respondents shall take all necessary measures to ensure that the applicant is posted back to his pre-transferred post at Hyderabad. The applicant shall have an option to continue to be on leave and in that case, the respondents shall comply with these directions within three months from today.

The O.A. is allowed accordingly. No costs.

Dani
(D.H. NASIR)
VICE-CHAIRMAN.

Dated the 16th day of August, 1999.

Dani
17/8/99

DJ/

*copy of
by [signature]*

1st AND II nd COURT

COPY TO:-

- 1. HOHND ✓
- 2. HRRN M (A) ✓
- 3. HBSJP M (J) ✓
- 4. D.R. (A) ✓
- 5. SPARE ✓
- 6. ADVOCATE ✓
- 7. STANDING COUNSEL ✓

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD:

25/8/99

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN:
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

ORDER DATE: 16/8/99

MA/RA/CP.NO
IN

DA. NO. 992/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.R. CLOSED

R.A. CLOSED

D.R. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(9 copies)

केन्द्रीय प्रशासनिक अपघिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

23 AUG 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH