

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

OA NOS.459 & 427/99.

DATE OF ORDER : 09 -2-2000.

BETWEEN:

O.A.459/99.

A. Ramanaiah, s/o A.Kondaiah

.. Applicant

And

1. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg., New Delhi - 110 002.
2. The Principal Director (Commercial), Office of the Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi -110 002.
3. The Accountant General (Audit-II) A.P. Saifabad, Hyderabad-4.
4. [±] Sri B.P. Pandit S/o Not known.
Occ- Principal Director(Com) and Secretary Audit Board,
O/o. Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi-110 002.

.. Respondents

Counsel for Applicant : Mr. P. Bhaskar

Counsel for Respondents: Mr. V.Vinod Kumar, ACGSC

O.A.No.427/99

Between:

1. G. Veeranjaneeyulu, s/o G.Bapaiah

2. M.S.S.Vara Prasad Rao, s/o Veera Raghavaiah.. Applicants

And

1. The Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi - 110 002.

Contd... 2.

2. The Principal Director(Commercial),
Office of the Comptroller and Auditor
General of India, 10, Bahadur Shah Zafar Marg, New
Delhi- 110 002.
3. The Accountant General (Audit-II),
A.P. Saifabad, Hyderabad - 4.
4. Yeshwant Pathak, Audit Officer,
(Commercial), A.G.(Audit-II), A.P.
Hyderabad.
5. A.A. Narsimha Murthy, Audit Officer,
(Commercial) A.G.(Audit-II), A.P.
Hyderabad.
6. Sri B.B. Pandit, Principal Director
(Commercial), Office of the Comptroller and
Auditor General of India, Bahadur Shah
Zafar Marg, New Delhi-110 002.
7. The Accountant General (Audit-II),
Orissa, Bhubaneswar. .. Respondents

Counsel for Applicants : Mr. P. Bhaskar

Counsel for Respondents : Mr. V.Vinod Kumar, ACGSC

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.MANICKAVASAGAM, MEMEBER (ADMN.)

... 3.

O R D E R.

Justice D.H.Nasir, VC :

1. This is a transfer matter. The applicant is working as Senior Audit Officer(Commercial) in the office of the Accountant General (Audit)-II at Hyderabad, (R-3). He was posted on transfer from Patna in the month of August, 1984. The order dated 26.2.1999 was issued transferring the applicant to the office of the Deputy Director, Member Audit Board at Visakhapatnam. The said order of transfer, according to the applicant, was issued without following any guidelines and transfer policy. The learned counsel for the applicant emphatically submitted that the officers who were transferred out of the State on promotion and retransferred to native State, were not liable to be transferred until superannuation, allegedly according to the existing transfer policy. But in fact, according to the learned counsel, a number of Senior Audit Officers who never went out of Hyderabad either on promotion or on transfer were not transferred vide the impugned order. Elaborating further his submission, the learned counsel for the applicant said that the principles of natural justice required the seniormost officers in the station to be transferred but in the instant case, seniors were retained while the applicant was singled out and transferred.

2. Needless to say that the Service Tribunals are supposed to be slow in interfering with transfer of a Government employee which is ordinarily made for administrative convenience and in public interest, unless it is convincingly shown by the person affected by transfer that the transfer was vitiated on account of any mala fides on part of authority concerned against the

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applicant or that the transfer was punitive or vindictive in nature and was resorted to in gross violation of any norms or conventions for transferring a Government employee from one station to another.

3. None of the above vices could be seen to exist in the present case and therefore, there ^{is} ~~was~~ no cause for this Tribunal to interfere with the impugned transfer order. Not a single instance is quoted by the learned counsel for the applicant as to how a presumption with regard to the transfer being mala fide or vindictive in nature or punitive could be raised in the present case. However, before arriving at any conclusion, let us have a look at the contentions raised by the respondents.

4. Reiterating the same principles as stated above that the Service Tribunals should refrain from interfering with transfers unless the same is shown to be vindictive or punitive in nature or any gross violation of any norms and conventions was committed, it is pointed out by the respondents in the counter affidavit that in terms of para-4.2.1 of the Comptroller and Auditor General's Manual of Standing Orders (Admn) Volume-I Audit Officers/Sr. Audit Officers were liable to be posted anywhere in India in any of the offices or posts under the control of the Cadre Controlling Authority and subject to rules and orders issued by Government of India/Comptroller and Auditor General in that respect from time to time. Further according to the respondents, the cadre of Senior Audit Officer/Audit Officer (Commercial) is an All India cadre having all India transfer liability and was therefore, under the control of Principal Director (Commercial) in the office of the Comptroller and Auditor General of India, New Delhi. It is further contended in the reply statement that the argument that the applicant

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had already served one or more spells outside his present station of posting was not relevant. Moreover, the Cadre Controlling Authority retained the officers concerned at the same station for long tenures to the extent it was administratively possible. The applicant served for more than 14 years in the same station and the orders for his transfer ha^d been issued in accordance with the general administrative decision taken at the Headquarters on the basis of uniform criteria applied in respect of all the officers posted at different stations. Since the treatment given to the applicant was on par with the similarly placed officers and that there was no question of any discriminatory treatment given to the applicant while issuing the transfer order, the representations from the various Associations and the applicant were considered and rejected by the respondents.

5. During ^{the} course of arguments, the learned Standing Counsel for the respondents relying upon the decisions of the Supreme Court in several cases submitted that the Supreme Court had made it clear that transfer orders issued by the competent authority in public interest do not violate any of the legal rights of the applicant. It was entirely for the employer to decide when, where and at what point of time a public servant was required to be transferred from his present place of posting and that ordinarily Courts have no jurisdiction to interfere with the valid cause of transfer. These views have been expressed by the Hon'ble Supreme Court in the following cases :

1. AIR 1991 SC 532
(Shilpa Bose v. Government of India)
2. AIR 1993 SC 2480
(State of Punjab v. Joginder Singh Bhat)
3. AIR 1993 SC 2444

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(Union of India v. S.L.Abbas)

4. AIR 1993 SC 1605
(Union of India v. N.K.Samat)

5. JT 1994(5) SC 298
(N.K.Singh v. Union of India)


6. It is further submitted by the learned counsel for the respondents that the scope of judicial review in matters of transfer was very limited as held by the Supreme Court in SHANTIKUMARI v. REGIONAL DEPUTY DIRECTOR, HEALTH SERVICES (AIR 1981 SC 1577) in which the Supreme Court observed that in the case of transfer of a Government servant made in exigencies of service and for administrative reasons, the Court should not normally interfere. Even if a transfer order was alleged to have been issued in contravention of the Government instructions/guidelines, the officials concerned should put up representation to the appropriate executive authority. In the case of GUJARAT STATE ELECTRICITY BOARD v. ATMARAM ((1998) 10 ATC 396), the Supreme Court held that transfer of an employee was an incidence of service and the employee had no right to be posted to a particular place and transfer could not be avoided merely on grounds of pendency of representation or personal difficulty. The learned Standing Counsel for the respondents also referred to and relied upon yet another decision of the Supreme Court in UNION OF INDIA V. H.N.KIRTANIA ((1989)11 ATC 269) in which the Supreme Court held that it was not open to the Court to interfere with the transfer of an employee unless the same was mala fide, illegal or in violation of the statutory rules. The learned counsel further submitted ~~that~~ in SHILPI BOSE v. STATE OF BIHAR (1992 SCC (L&S) 127) ^{that} the Supreme Court probed the question in greater detail and observed inter alia that even if transfer orders were issued in violation of executive instructions or orders,

the Court ordinarily should not interfere with the said orders. The Supreme Court further observed that it was for the administration to take appropriate decision in the matter of transfer on administrative grounds, consider individual cases of hardships; but such decisions shall stand unless they are vitiated either by mala fides or extraneous consideration without factual background foundation. The counsel further submitted that in RAJENDRA ROY v. UNION OF INDIA (1993 SCC (L&S) 138) the Apex Court observed that the transfer order which was not mala fide and not in violation of service rules and issued with proper jurisdiction could not be quashed by the Court. The Supreme Court further observed that mala fide action could be inferred from the pleadings and the antecedent facts and circumstances only if there was a firm foundation of the facts pleaded and established.

7. In the instant case, it is the absence of firm foundation of facts which deprives the applicant from being given the benefit of the transfer orders tainted by the allegations of mala fides and such other infirmities. The applicant has raised pleas all right, but wantonly failed to point out the elements constituting infirmities sought to be attributed to the transfer in question, let alone establishing such facts. In the absence of any such pleading and a convincing foundation of facts, we are at a loss to arrive at any conclusion that the impugned transfer order was tainted with any of the aforesaid vices and therefore, we find no cause whatsoever to interfere with the transfer in question.

8. The facts of the case in ^{this} O.A.No.459/99 and and that of O.A.No.427/99 being almost similar, both were clubbed and heard together. In fact the pleadings are verbatim the same in both the O.As. We therefore, find no

reason to deviate from the conclusions arrived at in the O.A.No.459/99. For the same reasons as stated in O.A.No.459/99 dismissing the said O.A., O.A. No.427/99 is also liable to be dismissed. Hence both the O.As are dismissed. No costs.


(S.MANICKAVASAGAM)
MEMBER(ADMN.)


(D.H.NASIR)
VICE-CHAIRMAN.

Dated the 09th day of February, 2000.

DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HON'BLE
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A (ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

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 PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 9/2/00

MA/RA/CP.NO.

IN

DA. NO.

459 & 427/00

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

