

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order : 6-6-1994

CA 204/94

R.D. MEENA

... APPLICANT.

Vs.

UNION OF INDIA & OPS.

... RESPONDENTS.

CORAM:

HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant

... SHRI R.N. MATHUR.

For the Respondents

... SHRI M. RAFIQ.

PER HON'BLE MR. O.P. SHARMA, MEMBER (A).

Applicant R.D. Meena has filed this application u/s 19 of the Administrative Tribunals Act, 1985, wherein he has prayed that order dated 19.3.94 (Annexure A-1), by which he was transferred from Jaipur to Ranchi, may be quashed and the respondents may be directed to explain the extra-ordinary and urgent necessity and administrative exigency for transferring the applicant from Jaipur to Ranchi, after perusing the entire records, etc.

2. Before the facts contained in the present application are discussed, it is pertinent to recall that the applicant, working as Sub-Regional Employment Officer (SREO), Jaipur, was transferred to Rourkela in Orissa on the same post. He had filed an OA, No.177/93, against the said transfer. The Tribunal vide order dated 23.11.93 (Annexure A-3) in the said OA held that the applicant's transfer from Jaipur to Rourkela may not be in the interest of administration as the applicant does not know the language of Orissa. The order transferring the applicant to Rourkela was quashed and the respondents were directed that the applicant may be posted anywhere in the country where Hindi is understood as local language, and in case the applicant knows any other language then he can also be posted where that language is spoken. Thereafter, the respondents passed order Annexure A-1 dated 19.3.94 transferring the applicant to Ranchi. The present

OA has been filed seeking quashing of the said order of transfer.

3. Earlier, by order dated 29.4.94, the Tribunal had granted stay against the order dated 18.3.94. The case was directed to be listed today for final disposal. The applicant filed a rejoinder to the reply filed by the respondents. The rejoinder was taken on record today and perused. Copy of the rejoinder had earlier been furnished to the counsel for the respondents. Both the parties agreed that the case may be finally disposed of today.

4. The applicant's case is that his transfer to Ranchi has been ordered at the instance of Shri Hari Mishra, Director of Employment Exchanges, mentioned as respondent No.4 in this application. It has been alleged that the transfer has been made with the mala-fide intentions of respondent No.4. The applicant was posted as SREO, Jaipur, in July, 1983, keeping in view the fact that he is well acquainted with the problems of job seekers belonging to SC/ST communities of the area which is in the jurisdiction of SREO at Coaching-cum-Guidance Centre for SC/ST communities at Jaipur. It is the policy of the Government to appoint a person on this post who is aware of the local problems and is also acquainted with the local language and the dialect so that he may communicate efficiently with the local persons who are otherwise backward. In the order passed by the Tribunal on his earlier application, it was clearly stated that the applicant should be posted to a place where Hindi is understood as local language. The inhabitants of Ranchi do not speak Hindi in a routine. The applicant has been posted at Ranchi only to circumvent the order of the Tribunal and there is no difference between transfer to Bourkela and transfer to Ranchi, between which the distance is about 100 Kms. On a personal meeting with respondent No.4 on 7.3.94, the applicant requested him to transfer him either to Delhi or to retain him at Jaipur. At that time the respondent No.4 stated that, "he shall see that the applicant is again transferred to a distant place."

5. The order of transfer to Ranchi is also unlawful for the reason that the post of SREO no longer exists at Ranchi because it has been lying vacant for the last one year and in accordance with the circular dated 19.5.93 a post lying vacant for one year ceases to exist. The person occupying the post of SREO must be acquainted with the local language and the dialect to be able to guide the job seekers. Realising the usefulness of the applicant's continuance at Jaipur, the Project Director of the Coaching-cum-Guidance Centre at Jaipur, who is also Labour Commissioner of the Rajasthan, recommended the applicant's case to respondent No.2 for continuance at Jaipur by letter dated 2.4.94 (Annexure A-5). An earlier Project Director had also recommended the applicant's case for continuance at Jaipur (Annexure A-6). The post of SREO has not been filled up at Jaipur and an Assistant Employment Officer has been asked to take over charge from the applicant. The respondents have also issued advertisement for filling up the post of SREO, Jaipur, (Annexure A-7). There is no administrative necessity for transferring the applicant from Jaipur. Posts of SREO at other Hindi speaking places such as Kanpur and New Delhi are lying vacant and the applicant can discharge his duties at these places, though not as smoothly as at Jaipur.

6. Mala-fides of respondent No.4 can be established by the fact that earlier he had placed the applicant under suspension. In the rejoinder filed by the applicant some more ^{instances} ~~incidents~~ of the alleged mala-fide actions of respondent No.4 have been given.

7. The applicant's continuance at Jaipur was also recommended by the National Commission for SC/STs (Annexure A-8). His continuance at Jaipur was also recommended by Dr. Sarojini Mahishi, Member of the Commission (Annexure A-9).

8. During the arguments, the learned counsel for the applicant stated that transfer of the applicant to Ranchi was against the policy of the Government regarding transfer of SREOs. He drew

attention to an affidavit filed before the Guwahati Bench of the Tribunal (Annexure A-2) in connection with a case filed before the said Bench, wherein the respondents have stated that it has been the policy not to transfer any SREG as success of a particular Centre depends upon the rapport established by the officer with other agencies. Therefore, in view of the policy stated by the respondents before the Guwahati Bench of the Tribunal, the transfer of the applicant from Jaipur to Ranchi is against the policy of the Government in this regard. The applicant has worked successfully at Jaipur as seen from the recommendations made on his behalf. There is no necessity of transferring the applicant from Jaipur when the post of SREG at Jaipur has been lying vacant. Also the circular (Annexure A-7) issued by the respondents for filling up the post of SREG suggests that the person to be posted at Jaipur will not be transferable out of Jaipur. The same criterion should apply to the applicant also.

9. The learned counsel for the applicant cited before me certain judgements to support the applicant's case. The first case cited by him was Ramadhar Pandey Vs. State of U.P. & Ors., JT 1993 (4) SC. The relevant portion cited by the learned counsel for the applicant is at page-75, wherein the Hon'ble Supreme Court have stated inter-alia that in this case the public interest being absent, the impugned order cannot be sustained. Next he cited the judgement of the Hon'ble Supreme Court in Haseem Bano Vs. State of U.P. & Ors., 1993 Supp (4) SCC 46, in support of the view that where averments made in a writ petition are not controverted by the respondents, these should be presumed to have been admitted. This judgement was cited in support of the argument that the respondents had not controverted the applicant's claim that the transfer was not in the public interest. Finally, he cited the judgement of the Hon'ble Supreme Court in S. Pratap Singh Vs. State of Punjab, AIR 1964 SC 72, to argue that if allegations of mala-fides are made against a person and he himself

does not file a counter-affidavit rebutting the allegations, but the counter-affidavit is filed by an officer having no personal knowledge regarding the allegations, the mala-fides can be held to be proved. This judgement was relied upon by the learned counsel for the applicant in support of the contention that since the applicant had made allegations of mala-fides against Shri Hari Vishan, respondent No.4, and the said Shri Hari Vishan did not file an affidavit countering the allegations as made against him, the allegations made against him by the applicant should be held to be proved and the order of transfer should be quashed, being actuated by mala-fides on the part of respondent No.4.

10. The learned counsel for the respondents stated that order transferring the applicant to Ranchi, a Hindi speaking area, was passed not with a view to circumventing the order of the Tribunal dated 23.11.93 (Annexure A-3) but with a view to implementing the directions given by the Tribunal in para-7 thereof, wherein they had directed the respondents that the applicant should be posted anywhere in the country where Hindi is understood as local language, etc. Five points raised by the applicant in his earlier application, decided on 23.11.93 (Annexure A-3), were decided by the Tribunal while disposing of that application. Those points cannot be re-agitated in a fresh application now. He added that what was stated by the Government, in the affidavit filed before the Guwahati Bench of the Tribunal was with regard to the facts of that case. He produced before me a letter dated 16.9.82 laying down the policy regarding transfers of gazetted officers in the Directorate General of Employment & Training. According to this policy document, persons who have put in five years of posting at a station should be transferred in a phased manner. According to the learned counsel for the respondents, the applicant was transferred after he had spent nearly 11 years at Jaipur, having been posted there since 5.7.83. What was stated before the Guwahati Bench of the Tribunal in the affidavit filed by the Govt.

was not a general policy for all time to come. He further stated that it had been clearly stated in the reply filed on behalf of the respondents that the Government's policy has been not to retain an officer at the same station for more than five years, save administrative exigencies. He denied that respondent No.4 bore any ill-will against the applicant. Transfer of the applicant to Ranchi was made with the approval of the Director General, Employment & Training. He produced notings from the file of the Headquarters to establish his claim in this regard. Since, according to him, the order of transfer was passed with a view to implementing the directions of the Tribunal given in their order dated 23.11.93 (Annexure A-3) and since respondent No.4 did not himself initiate the proposal of transfer of the applicant to Ranchi, no mala-fides could be alleged against him with regard to the applicant's transfer to Ranchi.

11. Further, he stated that since the post at Ranchi had been lying vacant since 12.6.92 and the applicant was an officer who had served the longest at one place, and further since Hindi was the language of Bihar, it was considered in public interest to transfer the applicant to Ranchi. Further, according to him, the persons to be guided by a SREO are those who have the minimum qualification of Matriculation^{ion} and even if they are persons from tribal areas not originally knowing Hindi proficiently, they would have passed their Matriculation examination with Hindi at least as a one subject and therefore they can be guided properly by the applicant. He denied that the post at Ranchi was ever vacant, as additional charge thereof had been held by another officer from another place. Therefore, the question of the vacancy lapsing did not arise.

12. The learned counsel for the respondents cited before me three judgements. One is, Union of India & Ors. Vs. S.L. Abbas, (1993) 4 SCC 357. In this judgement the Hon'ble Supreme Court

held inter-alia that unless a transfer order is mala-fide or is made in violation of statutory provisions, a Court or Tribunal cannot interfere with it and since the jurisdiction of the Tribunal is similar to that of High Courts under Article 226 in service matters, it is subject to the constraints and norms which High Courts observe. Next he cited the judgement of the Hon'ble Supreme Court in Union of India & Ors. Vs. N.P. Thomas, 1993 Supp (1) SCC 704, to show that interference with a transfer order by the Tribunal is not justified when the post is transferable and the transfer is neither violative of any statutory rule nor is mala fide. Finally, he cited the case of Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors., 1991 Supp (2) SCC 659, wherein the Hon'ble Supreme Court held that courts should not normally interfere with a transfer order which is made in public interest and for administrative reasons, unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fides.

13. The learned counsel for the applicant stated that all these judgements were distinguishable. He perused the records produced by the respondents containing notings regarding the transfer of the applicant to Ranchi and suggested that there was some manipulation in the dates at page-45 thereof. He also claimed that the policy laid down in the document dated 16.9.82, produced before the Tribunal during the hearing, related to transfers of gazetted officers in general, whereas the averments made in the affidavit filed before the Guwahati Bench of the Tribunal (Annexure A-2) related to policy regarding transfer of SREOs only. In view of what had been stated by the Government before the Guwahati Bench of the Tribunal, the applicant was not liable to be transferred from Jaipur.

14. I have heard the learned counsel for the parties and have perused the records including the reply of the respondents and the rejoinder filed by the applicant. I have also gone

13

through the notings produced during the hearing as also the document dated 16.9.82 containing the general transfer policy in respect of gazetted officers in the D.G.E.&T.

15. As mentioned earlier, the applicant was earlier transferred to Rourkela and on the application filed by him before the Tribunal the Tribunal had passed order dated 23.11.93 (Annexure A-3). In the said order it was clearly stated by the Tribunal, while quashing the transfer order to Rourkela, that the respondents should post the applicant anywhere in the country where Hindi is understood as local language. This was a direction by the Tribunal. The notings in the office of the DGE&T suggest that it was in pursuance of this order of the Tribunal that the matter regarding transfer of the applicant was again taken up. It is clear that it was with a view to implementing the order of the Tribunal that proposal to transfer the applicant to some other place was initiated. Respondent No.4 was not the only one who took a decision to transfer the applicant to Ranchi. He no-doubt wrote on the file that the applicant has to be posted at one of the Hindi speaking areas but this is clearly in pursuance of the order of the Tribunal. If respondent No.4 has made this noting on the file, it cannot therefore be said that it is with a mala fide intention of causing any harm or harassment to the applicant. In the notings, three places namely Kanpur (U.P.), Mandi (H.P.) and Ranchi (Bihar) were mentioned as the places where there were vacancies of SREO. These places were described as Hindi speaking areas. The vacancy at Ranchi was stated to have been there since 12.8.92, whereas the vacancies at Kanpur and Mandi had arisen in November, 1993 and October, 1993 respectively. Hence it was thought ^{necessary} to post the applicant to Ranchi. The order of transfer has been passed with the approval of the Director General and there are notings on the file discussing the position of the applicant in detail. No doubt respondent No.4 has not filed an affidavit rebutting the allegations made against him, but the allegations have been rebutted in

an affidavit filed by another officer. Ordinarily, therefore, the judgement in S. Pratap Singh's case would be applicable but as stated above the proposal to transfer the applicant was initiated in view of the clear directions of the Tribunal contained in para-7 of the order dated 23.11.93 (Annexure A-3). It cannot, therefore, be said that the respondent No.4 sought to transfer the applicant with any mala fide intention, notwithstanding the fact that he did not personally file an affidavit to rebut the allegations made against him.

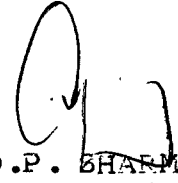
16. If a view is taken that the order transferring the applicant to Ranchi was made in pursuance of the directions contained in the Tribunal's order dated 23.11.93, a further discussion on any other points raised by the applicant or his counsel during the arguments in fact becomes unnecessary. Nevertheless reference may also be made to the observations of the Tribunal in para-5 of the order dated 23.11.93, which are to the effect that it is in the fitness of things that the applicant should be transferred after a long stay of 10 years if the administration considers that it is in the interest of administration to do so. It is not for the applicant to argue that the vacancy at Ranchi had lapsed and therefore he cannot be posted there. He is concerned with his functioning there and with his pay and allowances. He can have a grievance only if on joining there he does not find any work for himself or he does not get any pay and allowances. In fact, the administration's case is that the post there has been lying without a regular incumbent since August, 1992 and there is no other officer at Ranchi to look after the work of the post, whereas at Jaipur there is at least an Assistant Employment Officer to look after the post in case the applicant is relieved from the post of SPED at Jaipur. It is well known that language of Bihar is Hindi. It is possible that persons belonging to tribal communities around Ranchi may not be speaking Hindi but the argument of the learned counsel for the respondent that the persons to be guided would at least be

15

Matriculates and therefore having knowledge of Hindi has merit. Judgement in Ramadhar Pandey's case was given on the peculiar facts of that case. In the present case, a clear public interest is involved in transferring the applicant to Ranchi. In any case when I find that the order of transfer has been passed in view of the directions given by the Tribunal in their order dated 23.11.93, failure of the respondent to reply to one or the other averments of the applicant does not carry much meaning and therefore the judgement in Naseem Bano's case will also have no applicability to the facts of the present case. Recommendations by other authorities in the applicant's favour were mere recommendations and these would not justify the applicant's continuance at Jaipur if his transfer out of Jaipur was necessitated by public interest. I do not know what were the facts behind ^{the} affidavit filed by the Government before the Guwahati Bench of the Tribunal but the policy guidelines contained in document dated 16.9.82 are very clear. These pertain to all gazetted officers. According to this document, persons who have put in five years of service at a station are liable to be transferred out. The applicant being a gazetted officer is covered by these policy guidelines. Even if no one has been posted in place of the applicant at Jaipur and the post is vacant for the time being, the requirements at Ranchi coupled with the applicant's long stay at Jaipur would justify his transfer to Ranchi. If the applicant has worked successfully at Jaipur, as claimed by the learned counsel for the applicant, he can work equally successfully at Ranchi as well. There are only bonafide corrections in dates on page 45 of notings, and not any "manipulations". 17. No doubt a transfer involves a certain degree of hardship but a transfer is an incidence of service. As held by the Hon'ble Supreme Court in the judgements referred to by the learned counsel for the respondents, the Tribunal is not expected to interfere with transfers unless the transfers are either actuated by mala fides or are against the statutory policy. The applicant's transfer

to Ranchi does not violate any of these dicta. In the circumstances of the case, I find nothing irregular or improper with the order Annexure A-1 transferring the applicant to Ranchi.

18. The OA is therefore dismissed with no order as to costs. The interim stay granted vide order dated 29.4.94 would stand vacated.


(O.P. SHARMA)
MEMBER (A)