

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 17.8.95.

OA No.309/95

RAJ SINGH MEEL s/o Shri Laxman Singh Meel, Inspector, Income Tax, Investigation Branch (DDIT), Jaipur.

... APPLICANT.

VERSUS

1. Union of India through the Secretary to the Govt., Deptt. of Revenue, Govt. of India, New Delhi.
2. The Chief Commissioner of Income Tax, Rajasthan Region, Jaipur.

... RESPONDENTS.

CORAM :

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN.

For the Applicant

... Mr. S.K. Jain

For the Respondents

... Mr. N.K. Jain

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN.

Applicant Raj Singh Meel has, in this application u/s 19 of the Administrative Tribunals Act, 1985, assailed the order at Annexure A-1 dated 5.7.95, by which he was transferred from Jaipur to Jodhpur as an Income Tax Inspector. He has also prayed for a direction to the respondents not to transfer him from Jaipur to Jodhpur.

2. The facts of the case, as stated in the application, are as follows. The applicant is working as an Inspector in the Income Tax Department. He was posted in the Investigation Branch of the Income Tax Department on 21.5.91 and he has been continuing in the said post till the impugned order was passed. It is alleged that the FIR was lodged against the applicant on the basis of a complaint made by Kalindi Pail Nirman (Engineers) Ltd., stating therein that the applicant had removed some documents from the office of Shri Arvind Gemini and had tried to encash the documents. It was the Central Bureau of Investigation, Jaipur, which desired the transfer of the applicant from Jaipur, on the basis of which the Director, Income Tax (Investigation), Ahmedabad, had written a letter to the Chief Commissioner of Income Tax, Rajasthan Region, Jaipur, who issued the impugned

order by which the applicant was transferred from Jaipur to Jodhpur. The transfer order is challenged on the ground that it was made in violation of the policy guidelines because Shri Jagdish Kulheri and Shri E.L. Sharma, who had been working in the Jaipur Office since 1987, were not transferred and the applicant was picked for transfer on the basis of the criminal case and the demand for his transfer by the Central Bureau of Investigation and the Director, Income Tax (Investigation), Ahmedabad. The applicant had put in only four years of service at Jaipur and his transfer to another station was neither in the exigency of service nor there was any administrative reason justifying his transfer. It is also stated that no reason for transfer has been mentioned in the impugned order at Annexure A-1. It is also stated that the impugned order of transfer is bad in law and as such it is liable to be quashed. The order of transfer has been passed not in the exigency of service but with a view to punishing the applicant on account of the pendency of the FIR and a complaint against him. The impugned order has also been challenged as being mala fide inasmuch as without ascertaining the truth of the complaint the applicant has been shifted to another station. It is stated that the impugned order was issued without any application of mind only at the behest of the CBI and the Director, Income Tax (Investigation), Ahmedabad. The applicant has to look after his old parents. His father is suffering from a ~~serious~~ <sup>ailment</sup> and since the applicant is the only son of his parents, it is not possible for him to shift his family to Jodhpur or leave them at Jaipur. It is further stated that the transfer order is discriminatory and violative of the provisions contained in Articles 14 and 16 of the Constitution inasmuch as the applicant has been picked for transfer from amongst those who had much more longer period of stay at Jaipur on the same post. It is also stated that the complaint filed by Mr. Gemini, on the basis of which the FIR (Ann.A-2) has been prepared, is entirely false.

3. The application has been contested by the respondents. The averments of the respondents are that a First Information Report had been registered against the applicant at Jaipur, wherein it is alleged that the applicant had removed certain papers from the office of Shri Arvind Gemini. Since the witnesses are residing at Jaipur, there is possibility of the applicant's tampering with the evidence and pressurising the witnesses. Under these

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circumstances, in the exigency of service and in the interest of administration the applicant has been transferred from Jaipur to Jodhpur vide the impugned order dated 5.7.95 and the respondents have committed no illegality in issuing the order of transfer. It is also stated that there are no policy guidelines in respect of Group-C employees, wherein transfer orders are not issued for 8 years. Investigations into the criminal case against the applicant are being made at Jaipur itself and there are serious allegations against the applicant. The Superintendent of Police, Central Bureau of Investigation, Jaipur, had a reasonable apprehension that the applicant may tamper with the evidence and may pressurise the witnesses and hinder a fair and impartial investigation of the criminal case registered against him and, therefore, he had requested the concerned authority for transfer of the applicant from Jaipur to another place. The request of the Superintendent of Police, Central Bureau of Investigation, was genuine and the Director of Income Tax (Investigation) had also expressed his opinion for the applicant's transfer from Jaipur to another place and under these circumstances the applicant was transferred by the impugned order in the exigency of service and in the interest of justice. There has been no violation of the provisions contained in Articles 14 and 16 of the Constitution as the transfers are not based on seniority. It is also pleaded by the respondents that a transfer order has not been based on a false and frivolous complaint and the matter is being investigated by the Central Bureau of Investigation. The truth into the veracity of the complaint has to be inquired into. It is also pleaded that the representation made by the applicant in regard to his transfer has been received in the office of respondent No.2 on 10.7.95 and the same is pending consideration and the applicant without waiting for the decision on his representation has approached this Tribunal and as such the present application is premature.

4. Heard the learned counsel for the parties. The records of the case have been carefully perused.

5. The learned counsel for the applicant contended that the order, by which the applicant has been transferred, does not contain any reasons for transfer and, therefore, it deserves to be set aside. He has placed reliance on (1993) 25 ATC 77, Ramadhar

Pandey v. State of U.P. and others, in which their Lordships of the Hon'ble Supreme Court made the following observations :-

"The order dated July 8, 1992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter-affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved."

It is evident that the transfer of the applicant was made on the advice of the Central Bureau of Investigation, Jaipur, and the Director, Income Tax (Investigation), Ahmedabad, since a criminal case in regard to certain serious allegations against the applicant is under investigation. In view of the facts stated in the application and the reply filed on behalf of the respondents, it is very difficult to say that the transfer was not made in public interest or on administrative grounds. So far as the applicant's plea that the transfer was made in violation of policy guidelines is concerned, no policy guidelines have been produced by the applicant in support of his plea.

6. The learned counsel for the applicant has further placed reliance on AIR 1975 SC 529, Municipality of Bhiwandi and Nisampur v. M/s. Kailash Siding Works. The facts of this case are entirely different from the facts of the present case and this ruling of the Hon'ble Supreme Court is of no help to the applicant as he has not alleged mala fides against any particular person and there is no averment to the effect that the impugned order was passed in a reckless manner. The learned counsel for the applicant further relied on (1994) 27 ATC 40, T. Abdulkader v. Union of India and others, wherein the Ernakulam Bench of the Tribunal observed, as follows :-

"7. The courts have taken the view that the administrative authorities are bound to exercise the discretion of power of transfer of officials in the best interest of administration having regard to the facts and circumstances. The discretion should be exercised bona fide and in the best interest of service necessity and

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exigency. If the transfer order has been issued at the request or interest of the higher authorities including the Ministers, the administrative authority is proclaiming that he is not discharging his duties in the best interest of the administration, but only to oblige such authorities and in such cases, the transfer orders cannot stand the scrutiny of law before any judicial forum."

The impugned order was issued by the transferring authority due to a complaint against the applicant regarding demand of bribe from Shri Arvind Gemini by him, on the basis of which a First Information Report was registered in the Special Police Establishment, Jaipur Branch, and the same is under investigation by the Central Bureau of Investigation. It is not the function of the Tribunal to inquire into and ascertain the truth of the complaint against the applicant. In the circumstances, this discretion was exercised by the transferring authority bona fide and in the best interest of service necessity and exigency. It cannot be said by any stretch of reasoning that the discretion of the power of transfer was exercised by the transferring authority in the present case to oblige any person. This ruling also is of no help to the applicant.

7. Relying on (1993) 23 ATC 836, Jayashree L. Narayanan (Mrs) and another v. Union of India and another, <sup>it is</sup> contended that normally a person who has served long at the same station continuously should be considered as a person who has to be transferred first and a person who has come most recently to a station should be the last person to be transferred out normally. In this case it was held at page 838, as follows :-

"The principle of seniority or juniority in a particular cadre cannot determine the question of the order in which persons in a particular station will have to be transferred out on administrative grounds. There may be other considerations which may require the principle of length of tenure, which we consider as fair for determining transfers, being deviated from in the interests of administration."

*Critique* There was a serious complaint against the applicant which is being

inquired into by the Central Bureau of Investigation and a proper investigation into the complaint itself has necessitated the transfer of the applicant from Jaipur to Jodhpur. Reliance is placed on a Full Bench Judgment of the Tribunal, Ramlesh Trivedi v. ICAR, reported in (1988) 7 ATC 253, wherein it was laid down that the Tribunal cannot strike down an order of transfer as penal merely because it is in respect of a person against whom there are allegations of misconduct. Any such view would make a person against whom there are allegations of misconduct immune from transfer until those allegations are established in a regular enquiry which would necessarily take a long time. An order of transfer is not liable to be struck down unless it is passed mala fide or in violation of statutory rules. Reliance is placed on AIR 1995 SC 1056, State of Madhya Pradesh and another v. S.S. Kourav and others, wherein their Lordships of the Hon'ble Supreme Court held, at page 1057, as follows :-

"The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals Are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation."

The impugned order is neither mala fide nor it was passed in violation of any statutory rules.

8. In the result, this application is dismissed at the stage of admission.

*G. Krishna*  
(GOPAL KRISHNA)  
VICE CHAIRMAN

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