

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.419/98

Date of order: 22/9/99

Mohammed Salim Khan, S/o Shri Shafi Mohammed, R/o  
3 (BHA) 19, Vigyan Nagar, Kota, Rajasthan.

Vs.

...Applicant

1. Union of India through Secretary, Ministry of Finance  
Department of Revenue, Govt. of India, New Delhi.
2. The Commissioner, Narcotics, Gwalior.
3. Deputy Commissioner, Narcotics, Kota.
4. The Superintendent, Deptt. of Preventive and  
Intelligence Cell, Guwahati (Assam).

...Respondents.

Mr.P.P.Mathur - Briefholder of Mr.R.N.Mathur - Counsel  
for applicant.

Mr.Sanjay Pareek - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application after amendment the prayer of the applicant has been to quash the impugned order dated 5.1.99 and to allow the applicant to continue on the same post at Kota.

2. Facts of the case as stated by the applicant are that the applicant while working as Driver in Narcotics Department at Kota, was transferred from Kota to Guwahati (Assam) in December 1998. The applicant filed an O.A to quash that impugned order of transfer and ~~had~~ sought interim relief by way of stay on the operation of the impugned order of transfer. Operation of the impugned order ~~was~~ stayed vide this Tribunal order dated 15.12.98. It is stated that the applicant was again transferred from Kota to Gwalior vide impugned order dated 5.1.99 when the matter was subjudice before this Tribunal. The applicant sought an amendment in the O.A. In view of the new development, the amendment was allowed. After incorporating the amendment in the O.A, the prayer of the applicant for interim relief was also allowed and the operation of the impugned order dated 5.1.99 was stayed. It is further stated by the applicant that he was transferred twice within the span of 20 days and the transfer of the applicant was done with a view to harass/punish the applicant. It is also stated that this transfer is against the transfer policy of the Narcotics Department. Therefore, the impugned

order of transfer is illegal. It is stated that father and mother of the applicant are ~~xx~~ 80 and 76 years ~~xx~~ old and both of them had underwent operation recently, therefore, the transfer of the applicant is unjust and unreasonable and the same is liable to be quashed. The applicant has, therefore, filed this O.A for the relief as mentioned above.

3. Counter was filed. In the counter, it has been stated that the applicant has been transferred within the jurisdiction of Narcotics Department and number of complaints have been received against the applicant against his involvement in collection of illegal gratification during the settlement operation. Therefore, the transfer of the applicant was in exigencies of service/public interest and the applicant was transferred as per the transfer policy/guidelines and this O.A is devoid of any merit, therefore, liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record and legal citations as referred by the counsel for the applicant.

5. The learned counsel for the applicant, during the course of his arguments has argued:

- (i) That the impugned order of transfer dated 5.1.99 was passed in violation of the provision given in Sec.19 (4) of the Administrative Tribunals Act, therefore, the impugned order is nonest.
- (ii) That the transfer on the basis of complaint can only be done after the enquiry on the said complaint when the allegations made in the complaint are established. In support of his contentions, he has referred the following judgments:

1998 (7) SCC 59

1998 (3) CAT (Lucknow) 69

1998 (2) SLR 418

JT 1997 (6) SC 229

6. In the alternative, the learned counsel for the applicant has also submitted that looking to the personal difficulties of the applicant, he should have been transferred near to Kota.

7. On the other hand the learned counsel for the respondents has submitted that the impugned order dated 5.1.99 is not in violation of the provisions of Sec.19(4) of the Administrative Tribunals Act as the same has been passed before admitting the case. He has also submitted that the

transfer made on the basis of complaints is not punitive in nature, therefore, cannot be held as illegal. He further submitted that for the personal difficulties, the applicant should have ~~been~~ approached the competent authority who can only take a decision in this regard.

8. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

9. As regards the first contention of the learned counsel for the applicant is concerned, it is not disputed that the impugned order dated 5.1.99 was issued before the case is admitted by this Tribunal. This Tribunal vide its order dated 26.3.99, after hearing the learned counsel for the parties, admitted this O.A. The learned counsel for the applicant has argued that as soon as the Tribunal applied its mind and found that it is a fit case for adjudication, the O.A. <sup>is</sup> deemed to have been admitted. We are not inclined to accept the contention of the learned counsel for the applicant as at the first instance in this case notice of show cause was issued to the respondents as to why this O.A should not be admitted. Thereafter after filing the reply, etc, and after hearing the parties at length this Tribunal was of the opinion that it is a fit case for adjudication, therefore, the case was admitted and parties were directed to file reply to the amended O.A and thereafter rejoinder to the reply.

10. According to the provision given in Sec.19(4) of the Administrative Tribunals Act, it is provided that "where an application has been admitted by a Tribunal under sub-section (3), every proceedings under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

11. In Man Singh Vs. Union of India & Ors, (1997) 36 ATC 93 it was held that passing of orders by reviewing authority after admission of original application by the Tribunal is honest and the reviewing authority has no jurisdiction to pass any such order. In the instant case, admittedly, the order dated 5.1.99 was passed before the case was admitted on 26.3.99. Therefore, the impugned order dated 5.1.99 cannot be said to have been passed in violation of Sec.19(4) of the Administrative Tribunals Act.



12. As regards the second contention of the learned counsel for the applicant is concerned, it is well settled that transfer is an incidence of service and more so for the government officers and it is not to be interfered with by the Court unless it is shown to be clearly arbitrary, vitiated by malafides or amounts to infraction in professed norms or principles governing the transfers.

13. in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors, JT 1999(1) SC 396, the Hon'ble Supreme Court had an occasion to distinguish between the terms 'Motive' and the 'Foundation' while dealing with transfer, and this concept of motive and foundation is equally applicable to the transfer orders as well.

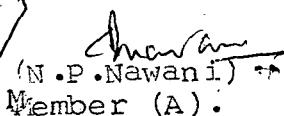
14. In G.S.H.Reddy & Ors. Vs. A.P.State Road Transport Corporation, Hyderabad & Ors, Andhra Pradesh High Court D.B 427, held that "Drivers of respondent Corporation transferred from one depot to another on administrative grounds in view of the vigilance report making certain complaints against them, held, such a transfer cannot be termed as punishment nor the facts demonstrate that the transfer is malafide, therefore, the order of transfer was not held illegal.".

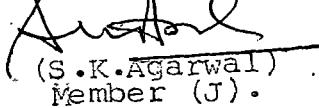
15. In Arun Damodar Veer Vs. State of Maharashtra, Bombay High Court (D.B) 125, has held that the transfer on account of complaint is not punitive and the competent authorities cannot be faulted with in effecting the transfer of the petitioner.

16. In the instant case, serious complaints are against the applicant stating his involvement in collection of illegal gratification during the settlement operation in Narcotics Department. In view of these serious complaints, if the applicant has been transferred by the impugned order of transfer, we are not inclined to interfere with the said order as neither it is based upon malafides nor it is against the statutory norms.

17. As regards the other prayer of the learned counsel for the applicant is concerned that the applicant should be transferred at any other station near to Kota, the applicant is free to make a representation before the competent authority and the competent authority will dispose of the representation by a reasoned and speaking order, considering all the personal problems of the applicant and pass necessary orders.

18. With these directions, this O.A is disposed of with no order as to costs. The interim order stands vacated.

  
N.P. Nawani  
Member (A).

  
(S.K. Agarwal)  
Member (J).