

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A NO.391/99 Date of order: 17/9/99

Ashok Kumar Singh, S/o Ghanshyam Singh, R/o Shanti  
Bhawan, Behind Police Station, Dadwara, Kota, Raj.

...Applicant.

VS.

1. Union of India through Secretary cum Director General ICAR, Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. Central Soil and Water Conservation Research & Training Institute, 218, Kaulagarh Road, Dehradun through its Director, Dr.J.S.Samra.
3. Senior Administrative Officer, Central Soil & Water Conservation Research & Training Institute, 218, Kaulagarh Road, Dehradun.
4. Head, Central Soil & Water Conservation Research & Training Institute, Kota Junction, Rajasthan.
5. Dr.J.S.Samra, Director, Central Soil & Water Conservation Research & Training Institute, 218 Kaulgarh Road, Dehradun.

...Respondents.

Mr.Amitabh Bhatnagar - Counsel for applicant.

Mr.Sanjay Pareek - Counsel for respondents.

CORAM:

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

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

In this Original Application the applicant makes a prayer to declare the impugned order of transfer dated 13.4.99 and order passed on the representation dated 30.7.99 as illegal, arbitrary and in violation of transfer policy and to direct the respondents to allow the applicant to work at Kota.

2. In brief facts of the case as stated by the applicant are that the applicant who is working as Scientist in Central Soil & Water Conservation Research & Training Institute at Kota was transferred to Bellari (Karnataka). The applicant filed Original Application No.197/99 before this Tribunal and this Tribunal disposed of this O.A by giving directions to respondent No.1 to decide the representation of the applicant by detailed and speaking order keeping in view the relevant rules, instructions and guidelines on the subject. The said representation was rejected vide communication dated 30.7.99. It is stated by the applicant that refusal of study leave to the applicant and deputation to the applicant for State of Gujarat and refuse to take into consideration the serious ailing conditions of his father, Promotion of the applicant is with a

view to harass the applicant. It is further stated that the respondents failed to take into consideration the grant of longer stay and transfer policy issued by the department for the transfer of Scientist due to prejudices the applicant, therefore, the applicant filed this O.A for seeking the relief as mentioned above.

3. Counter was filed. In the counter all the allegations made by the applicant against the respondents department were denied and it was stated that the applicant was transferred from Kota to Bellari in public interest and representation of the applicant in pursuance of the order passed in O.A No.197/99 was disposed of by reasoned and speaking order. It is also denied that the applicant was transferred with a view to harass him or by malafide of the respondents. It is also stated that the instructions issued in connection with the transfer of Scientist in the Department are merely guidelines, therefore, do not create any legally enforceable right in favour of the applicant and this O.A is devoid of any merit, which is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that the transfer of the applicant was done in contravention of the transfer policy and with a view to harass the applicant. He has also argued that father of the applicant is usually remain ill, therefore, this transfer is punitive to the applicant. Therefore, transfer at far far away place is punitive to the applicant.

6. In support of this contention, the learned counsel for the applicant has referred the following judgments:

- (i) Arvind Dattatraya Vs. State of Maharashtra  
1998 (5) Supreme 167
- (ii) Nagpur Improvement Trust vs. Yadaorao  
1999 (7) Supreme 75
- (iii) Najmal Hussain Vs. State of Maharashtra  
1996 (6) Supreme 402
- (iv) 1998 (8) Supreme 140  
Special Reference No.1 of 1998
- (v) C.F.P.Z.L vs. Union of India  
1998 (2) Scale 474
- (vi) AIR 1971 SC 1228  
State of Punjab vs. Ramji Lal
- (vii) N.N.Singh vs. G.M.  
1973 (2) SLR 1153
- (viii) P.C.Saxena Vs. State of M.P.  
1980 SLJ 466

7. On the other hand the learned counsel for the respondents vehemently argued that the applicant was transferred in public interest and no malafide could be established against the respondents, therefore, there is no justification to interfere in the transfer of the applicant, by this tribunal.

8. I gave thoughtful consideration to the rival contentions of both the parties and also perused the whole record and legal citations as referred by the learned counsel for the applicant.

9. No doubt certain guidelines are issued by the department pertaining to the transfer of Scientist in the department but the applicant failed to establish any violation of those instructions/guidelines in specific terms. Moreover violation of these guidelines do not create any legally enforceable right as it has been held in Union of India Vs. S.L.Abbas, 1994 SC L&S 320.

10. The applicant also failed to establish malafides against any of the respondents although Dr.J.S. Samra has been impleaded as respondent in this case against whom malafides are said to have been imputed but the applicant failed to establish the fact by any direct evidence and no inference of malafides can be inferred.

11. In Shilpi Bose & Ors. Vs. State of Bihar & Ors, AIR 1991 SC 532 held that:

"The Courts should not interfere with transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place of the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

12. In E.P Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555 it was held by Hon'ble the Supreme Court that:

*Suraj*  
 "We must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved and the very seriousness of such allegations demands proof of a higher order of credibility.

13. In Rajinder Roy Vs. Union of India & Anr., AIR 1993 SC 1236, it was held by Hon'ble the Supreme Court that:

"It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such interference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In this case, we are unable to draw any inference of mala fide action in transferring the appellant from the facts pleaded before the Tribunal."

14. In *Shivajirao Nilangerkar Patil vs. Dr. Mahesh Madhav Gosavi*, AIR 1987 SC 294, it was held by Hon'ble the Supreme Court that:

It was somewhat unfortunate that allegations of mala fides which could have no foundation in fact were made and several cases which had come up before this Court and other Courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick."

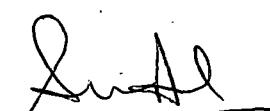
15. In *M. Shankarnarayana vs. State of Karnataka*, AIR 1993 SC 763, it was held by Hon'ble the Supreme Court that:

"It may be permissible in an appropriate case to draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise of conjecture."

16. On the basis of the above legal propositions and facts and circumstances of the case, the only conclusion which can be drawn is that this Tribunal has no basis to interfere in the impugned order of transfer. Therefore, this O.A is devoid of any merit and is liable to be dismissed. The rulings cited by the learned counsel for the applicant do not help the applicant in any way, looking to the facts and circumstances of this case.

17. I, therefore, dismiss this O.A with no order as to costs.

107.

  
(S.K. Agarwal)  
Member (Judl.).