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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 517/99

199

DATE OF DECISION 13.4.2000

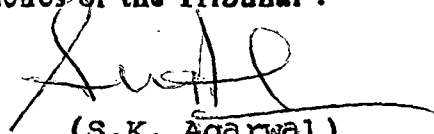
Puneet Deo Mishra Petitioner
○
Mr. Mahendra Shah Advocate for the Petitioner (s)
Versus
Union of India & Others Respondent
Mr. M. Rafiq Advocate for the Respondent (s)

CORAM :

✓ The Hon'ble Mr. S.K. Agarwal, Member (Judicial)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.K. Agarwal)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.517/99

Date of order: 13/4/2000

Puneet Dec Mishra, S/o Shri Gyanendra Deo Mishra, R/o 16,
Gangwal Park, Jaipur.

...Applicant.

vs.

1. Union of India through Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi.
2. The Director, Intelligence Bureau, Mini. of Home Affairs, North Block, New Delhi.
3. Shri Govind Vyas (IPS), Joint Director, Subsidiary Intelligence Bureau, Jaipur.
4. The Assistant Director, Subsidiary Intelligence Bureau, Jaipur.

...Respondents.

Mr. Mahendra Shah - Counsel for the applicant

Mr. M. Rafiq - 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 under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order dated 27.10.99 by which the applicant was transferred to Jodhpur and order dated 1.11.99, refusing to consider the leave application of the applicant prior to his join at Jodhpur.

2. The office order dated 27.10.99 is reproduced as below:

"On his reporting back at SIB Hqs, Jaipur, Shri P.D. Mishra, ACIO-II is further posted to Jodhpur under AD, Jodhpur. He is relieved w.e.f. 27.10.99(AN) with direction to report to AD, Jodhpur, without availing joining time."

3. Facts of the case as stated by the applicant are that he was recruited as Asstt. Central Intelligence Officer Gr.II in July 1986 and on account of his outstanding performance, he was selected for a tour to United Nation. On his return from tour, respondent No.3 has straight away refused the applicant to join the duty and has directed to wait for some time. It is stated that respondent No.3 also uttered humiliating word to the respondents, "I will see", "you have earned lot of money at Bosnia and Kosovo, therefore, you have to face consequences. The applicant fell mentally disturbed therefore, he submitted an application for leave on 27.10.99 but his leave was also not sanctioned. It is stated that the impugned order of transfer was due to arbitrary and adment and inhuman attitude and conduct of respondent No.3 and refusal of

leave by respondent No.3 and treating the applicant as unauthorised absentee is also illegal, malafide and arbitrary and irrational. Therefore, the applicant filed this O.A for the relief as mentioned above.

4. On 17.11.99, an interim order was issued by this Tribunal directing respondent No.3 not to relieve the applicant if he has not already been relieved till the next date.

5. Reply was filed. In the reply the allegations made by the applicant have been emphatically denied and stated that after returning from tour, the applicant was posted to Jodhpur in administrative exigencies and there was no malafide on the part of respondent No.3. An additional affidavit was also filed by respondent No.3 for controverting the allegations made by the applicant.

6. I heard the arguments of the learned counsel for the parties at length and also perused the whole record and the averments made by the parties in their pleadings and legal citations as referred by the learned counsel for the applicant.

7. Transfer is an incidence of service, no government servant has any legal right for being posted at any particular place. Moreover, transfer from one place to other place is necessary in public interest and exigency in public administration ^{is} held valid.

8. In Gujarat Electricity Board Vs. Atme Ram Sugmal, AIR 1989 SC 1433, it was held by Hon'ble Supreme Court that an employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of the legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. It is further held that however, transfer order can be interfered with if it is illegal on the ground of violation of statutory rules or on the ground of malafide.

9. In UOI Vs. H.N.Kirtania, AIR 1989 SC 1774, it was held by Hon'ble Supreme Court that transfer of a public servant made on administrative ground or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide.

10. The law relating to transfer is now well settled and by catena of judgments pronounced by Hon'ble Supreme Court, it has been held that transfer is an administrative function. The employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the

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employers in such matter. Scope of judicial review is very limited and the transfer can be challenged only on two circumstances namely (i) when the transfer is an act of malafide on the part of respondents and (ii) when it is made in violation of statutory provisions.

11. The learned counsel for the applicant vehemently argued that the impugned order of transfer was the out-come of the malafide action of respondent No.3.

12. In E.P.Royappa Vs. State of Tamil Nadu, AIR 1974 SC 55, it was held that "We must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than provided and the very seriousness of such allegations demands proof of a higher order of credibility."

13. This proposition was reiterated in Shivajirao Nilangerkar Patil Vs. Dr. Mahesh Machav Gcsavi, AIR 1987 SC 294 held that "It was somewhat unfortunate that allegations of malafides 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".

14. Malafides can be established either by direct evidence or by the circumstances of each and every case. No doubt inference of malafide can be drawn by taking into account the attendant circumstances but such inference must be based on factual matrix as laid down in M. Shankarnarayana Vs. State of Karnataka, AIR 1993 SC 763, the Hon'ble Supreme Court held that "It may be permissible in an appropriate case to draw a reasonable inference of malafide 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 or conjecture."

15. The question raised whether the applicant could establish the element of malafide against respondent No.3. There is only an averment of the applicant alleging malafide against respondent No.3 which respondent No.3 has denied in so many words by filing additional affidavit. No other evidence is there on record so as to say that the impugned order of transfer is nothing but the out come of the malafide attitude of respondent No.3. No inference of malafide can be drawn on the basis of the averments made by the parties and facts and circumstances of this case. In public service transfer is an incidence of service, but it cannot be said to be

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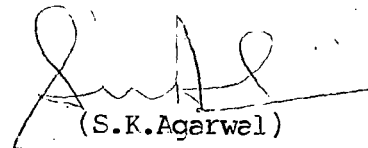
condition of service either expressed or implied unless it works out to be punitive. The department is the best judge to decide how to distribute and utilise the services of its employees.

16. In the instant case, I do not find any basis to interfere with the impugned order of transfer on the ground of malafides as alleged by the applicant. However, on the allegation of the applicant, the departmental authorities must take a serious note and if necessary, may enquire into the allegations made by the applicant.

17. In view of the foregoing discussions, no interference in the impugned order of transfer is called for.

18. M.A No.135/2000 has filed before this Tribunal after hearing the arguments in the O.A stating that vide order dated 15.3.2000, the applicant was transferred to Delhi and he is willing to go on transfer to Delhi. The applicant filed a copy of the order of transfer alongwith the M.A. Reply to the M.A was also filed by the respondents stating that the transfer order dated 15.3.2000 qua the applicant has been cancelled vide order dated 7.4.2000. In this connection, it would be pertinent to mention that This O.A was not admitted till the order dated 15.3.2000 was issued by the respondents to transfer the applicant to Delhi. Therefore, the transfer of the applicant to Delhi during the pendency of the O.A does not become nonest as the O.A was not admitted on the date on which the order of transfer was passed, in view of the provisions given under Sec.19(4) of the Administrative Tribunals Act, 1985. Since the applicant has expressed his willingness before this Tribunal to go on transfer to Delhi, therefore, the respondents are directed to consider the case of the applicant sympathetically for his transfer to Delhi.

19. With the above directions, the O.A and M.A No.135/2000 is disposed of accordingly with no order as to costs. The interim direction already issued on 17.11.99 stands vacated.


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