

**Central Administrative Tribunal
Principal Bench**

OA No.1229/2017

New Delhi, this the 11th day of April, 2017

HON'BLE MR. P.K. BASU, MEMBER (A)

Vinod Kumar Dham (Age 52 years) (Group-C)
(JIO-II/G)

S/o Late Shri Mange Ram
Village and PO : Khekra, Pati Rampur,
Opp. Police Station Khekra,
Baghpat, U.P. .. Applicant

(By Advocate : Shri K. C. Mittal, Sr. Advocate with
Ms. Ruchika Mittal)

Versus

1. Union of India through
The Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi. .. Respondents

(By Advocate : Shri Hanu Bhaskar)

ORDER (ORAL)

The applicant had joined the Intelligence Bureau on 08.11.1996. Before that date, for about 10 years he was Constable in BSF. He was absorbed in the Intelligence Bureau, after completion of his deputation period. He had been transferred out for the first time on 06.03.2013, which order was challenged by him

in O.A. No.2977/2013, which was disposed of by this Tribunal vide order dated 24.11.2015 by the following order:

“9. We have considered the aforesaid citations. After perusing the office notings, we are of the opinion that the applicant has been able to establish that the respondents do not have any transparent transfer policy. They have been transferring employees who have approached Court/Tribunal for redressal of different grievances. Such transfer is result of mala fide and abuse of power and cannot be sustained. We, therefore, allow this O.A. and set aside the impugned transfer order dated 06.03.2013. We further direct the respondents to abandon such a transfer policy forthwith and frame a comprehensive transparent transfer policy. No costs.”

2. Learned counsel for the respondents filed RA No.89/2016 against this order of the Tribunal, which was dismissed vide order dated 26.04.2016.
3. The respondents thereafter filed WPC No. 11935/2016 before the Hon’ble High Court. On 21.12.2016, the Hon’ble High Court passed the following order:

“The petitioners will produce before us the original file relating to transfer of the respondent.

Counsel for the petitioner submits that there is, in fact, a policy of transfer. We notice that the transfer order in the present case was passed on 6th March, 2013. The said order was stayed in O.A No. 2977/2013 & 2978/2013.

Counsel for the petitioner also submits that he apprehends that any transfer order now passed after 3-4 years may be again challenged by the respondent. The respondent, it is pointed out, has been posted in Delhi for more than 20 years.

Issue notice to the respondent returnable on 15th March, 2017.”

4. The matter came up before the Hon'ble High Court again on 15.03.2017, on which date the respondents wished to withdraw the writ petition and, in view of the statement of the respondents, the writ petition was dismissed as withdrawn.

5. It is the contention of the learned counsel for the applicant that there was a specific direction of the Tribunal in order dated 24.11.2015 to frame a comprehensive transfer policy. Thereafter, as stated above, the matter was before the Hon'ble High Court and, finally, the Hon'ble High Court dismissed the writ petition as withdrawn on 15.03.2017 and immediately thereafter, on 22.03.2017, a fresh transfer/impugned order has been issued posting the applicant at Nagpur.

6. Further, learned counsel for the applicant states that the Tribunal in its order dated 24.11.2015 had observed that such transfer is a result of mala fide and abuse of power and cannot be sustained and, therefore, had given a direction to abandon such a transfer policy forthwith and frame a comprehensive transparent transfer policy, which direction of the Tribunal was upheld right upto the Hon'ble High Court, with review application being dismissed in between. Hence, according to the applicant, the action of the respondents in issuing the transfer order dated 22.03.2017 is absolute abuse of power and also disobedience of the Tribunal's

earlier order dated 24.11.2015, as upheld by the Hon'ble High Court.

7. The learned counsel for the applicant also drew my attention to para 4.9 of the O.A. in which a list of 22 officials has been placed and it is stated that none of these officials, who have been posted in Delhi for more than 20 years, have been moved out. It is further stated that 6 officials' named in para 4.10, who had been transferred, have not been relieved. Lastly, it is also stated that para 3 of memorandum dated 18.10.2016 pertaining to Annual General Transfers, 2017 provides as follows:

“3. The officials/officers completing minimum effective tenure as on March 31, 2017 may submit the request indicating three options for them place of posting in order of preference Retention/willingness to continue at the present place of posting could be indicated as an option. The effort will be made to accommodate officials/officers to their opted places in order of preference given by them. However, the administrative constraints including non-existence of vacancies and nil requirement situations may act as limiting factors.”

8. It is stated that the respondents have not even followed their own memorandum that when an official completes minimum effective tenure as on 31.03.2017, the applicant has to make a request for transfer giving three options. It is the case of the applicant that he has made no such request. Despite this fact the transfer has been made.

9. Heard the learned counsel for both sides at length and perused the various documents/ orders annexed with the O.A.

10. The applicant had been a BSF Constable. He joined the Intelligence Bureau and got absorbed there. When he was transferred vide order dated 06.03.2013, he approached the Tribunal and the Tribunal was pleased to quash the transfer order on the ground that the transfer was a result of mala fide and abuse of power and further directed the respondents to frame a comprehensive transfer policy. As a result, the applicant has continued for four more years at Delhi. From the list of the dates and from the O.A., it is clear that the applicant has been in Delhi ever since his appointment on 08.11.1996 in the Intelligence Bureau. It need not to be emphasised that the Intelligence Bureau is a highly specialised organisation and transfer of Intelligence Bureau personnel from one station to another is a requirement of the service for the reasons, which I need not have to elaborate in this order.

11. The applicant is arguing that even after 21 years in the Intelligence Bureau in Delhi, the authorities have no competency to transfer him at any other station in India. In this case, he has been transferred in Nagpur, which is not a difficult station to work in. Even then, he refuses to obey the transfer order. In my view, the

order passed in O.A. No. 2977/2013 was in respect of transfer order dated 06.03.2013 and has no application whatsoever in the present case. It is a pity that a person, who is working in such a sensitive organisation, refuses to comply with the legitimate transfer order despite 21 years long stay at such a prime place of the country. There is no stay operating against the respondents by the Hon'ble High Court.

12. Regarding the list of 22 officials that has been filed along with the O.A., I find that there are no specific details and history of postings about these 22 officials and it is not possible for us to go into the details of each and every case of transfers done by the Intelligence Bureau. Moreover, since the applicant has alleged discrimination against the respondents vis-à-vis these officials, it becomes necessary that these officials be also made party, which has not been done.

13. Lastly, even if, there has been mistake regarding these 22 officials, negative equality cannot be a ground for relief claimed by the applicant. Similar is the argument with regard to the six officials named in para 4.10 and, therefore, both these arguments are rejected.

14. As regards Memorandum dated 18.10.2016, para 2 of the memorandum states as follows:

“The exercise of AGT aim to:

- i) ensure even distribution of the strength in different ranks in SIBx/Units
- ii) accommodate officials/officers to the place of their choice, taking into consideration the vacancy, requirement and requests of other officers.”

15. In fact, the intent of this memorandum is to give an opportunity to the personnel of Intelligence Bureau to be accommodated in one of the three options given by them after they complete minimum tenure after 31.03.2017. The applicant's is a case in which he has been in Delhi for the last 21 years. It was not stated by the learned counsel for the applicant in the O.A. as to when and on which dates, after completion of his tenure in Delhi, the applicant has made any such application with reference to above. Obviously he has not, as, when he was transferred after 17 years, he chose to approach this Tribunal. Therefore, this argument is also rejected.

16. The Hon'ble Supreme Court in **S.C. Saxena Vs. Union of India & Ors.** 2006 SCC (L&S) 1890 has settled the law in transfers as follows :

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made

out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”

17. In view of the facts in this case and the **S.C. Saxena** (supra) judgment, I see no reason at all for stay/quashing of this transfer order and the O.A. is, therefore, dismissed in *limine*. No order as to costs.

(P.K. Basu)
Member(A)

/jyoti/