

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.732/2016

Reserved on: 12.09.2016
Pronounced on: 07.10.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ajoy Karmokar, Age 50 Years,
S/o late Sh. S.C. Karmokar
Designation: Assistant Accounts Officer
R/o S-18, Rajiv Nagar,
Shankar Nagar, Raipur
(Chhatisgarh)

Also at

R/o 117, Q. Extension,
Uttam Nagar,
New Delhi- 110 059.

...Applicant

(By Advocate: Mr. Ajay Veer Singh Jain with Ms. Divya
Garg, Mr. Atul Aggarwal & Mr. Varun Rathi)

Versus

1. Union of India through
Secretary,
Ministry of Finance,
Government of India.
2. The Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
7th Floor, Lok Nayak Bhawan.
3. The Secretary,
Ministry of Urban Development,
F-Wing, 2nd Floor, Nirman Bhawan,
New Delhi.
4. O/O Principal Chief Controller of Accounts,
Principal Accounts Office (Admn.)
Ministry of Home Affairs,
C-1 Hutments, Dalhousie Road,
New Delhi – 110 001.

...Respondents

(By Advocate: Mr. Hanu Bhaskar)

O R D E R**By Dr. B.K. Sinha, Member (A)**

The applicant has filed the instant OA under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the impugned transfer order dated 17.08.2015 (Annexure A-7) transferring him from Ministry of Urban Development [MoUD], PAO (NDZ) to Ministry of Home Affairs [MHA], Raipur, Chattisgarh.

2. The case of the applicant, briefly stated, is that he was posted in Ministry of Urban Development, PAO (NDZ) in May, 2009, and on completion of three years of service, he was posted to Electric Division 8, CPWD Vidyut Bhawan, New Delhi on 29.12.2014. Thereafter, the applicant was appointed as Member of a Committee under the Chairmanship of one Satyendra Kumar, Assistant Controller of Accounts, MoUD vide letter dated 19.06.2015 to investigate certain irregularities in purchases and payments made during the financial year 2012-13 and 2013-14 in the Principal Accounts Office, MoUD. On 06.07.2015, the applicant submitted a final special audit report which was signed by the Chairman of the Committee. It is the allegation of the applicant that the Chairman asked him to change the last paragraph of the audit report which he declined as it involved transactions of Rs.78,500/-,

Rs.69,850/- and Rs.22,247/- which had been made in violation of GFR, and therefore, the Chairman set a vendetta against him. It was in pursuit of this that the said Chairman, though the applicant was not reporting directly to him, called an explanation from the applicant for unauthorized absence vide the Memo dated 13.07.2015 (page 35 of the paper book) followed by a reminder. The Chairman was not competent to have written this letter. The applicant alleges that he was verbally cautioned by the Chairman of the Committee and warned of the consequences.

3. The applicant submits that a general transfer list was issued on 13.08.2015 transferring a total number of 157 officers. Subsequently, another transfer was undertaken of 14 officers vide order dated 17.08.2015. The applicant on the other hand was singly transferred by means of a separate order dated 17.08.2015. The applicant learnt otherwise, on enquiries, that he has been transferred on the basis of a vague complaint made by one Madhu Sharma on 20.07.2015 by means of an e-mail that the applicant asked her not to quantify the major audit finding. The applicant submits that no evidence had been adduced by the said Madhu Sharma to that effect. It is the case of the applicant that his transfer to Raipur, as would transpire from perusal

of the reply obtained under RTI, was punitive in nature issued in violation of principles of natural justice as no chargesheet had been served upon him. The applicant has also alleged mala fide against the respondents but without impleading any person in individual capacity. The very fact that it is a punitive transfer order serves to pass a shadow upon the career of the applicant.

4. The learned counsel for the applicant was at pains to point out that the policy of transfer/posting of Group-B gazetted officers of Central Civil Accounts Service issued vide OM dated 30.10.2015 had been totally violated (page 29) . The applicant further submits that the policy provides for transfer by CSB on the basis of a list to be prepared and drawn up in public domain. For the sake of clarity, we extract the relevant portion of the policy whereupon all the officers have to be necessarily taken, which reads as under:-

“(iii) The likely anticipated vacancy position in the grade of AAO & PAO arising out of retirement, promotion, etc will be drawn up and put in public domain. This exercise would be done in the case of AAOs immediately after the declaration of AAO (Civil) Examination results, and in the case of PAOs by 1st March each year. Options for choice of stations in the prescribed proforma will be required to be filled in by the officers and submitted not later than 30 days from the notification of the vacancy position in public domain.

(iv) Options of officers must be supported with an Undertaking that they are also willing to be posted to stations other than their choice of stations, should their requests not be acceded to due to administrative exigencies, or non-fulfilment of any conditions mentioned in the transfer policy.”

5. The learned counsel for the applicant further submits that where it is not possible to convene a meeting of the CSB in a short notice, the appropriate authority could transfer any officer coming under cloud then he or she would be likely to be transferred in public interest. We extract the relevant portion as under:-

“(vii) The approving authority is empowered to issue transfer/ posting orders directly on a case to case basis under emergent conditions, where a meeting of the CSB cannot be convened at short notice for reasons to be recorded. This will however be exercised in exceptional circumstances, and not as a norm.

“(viii) In case any official comes under a cloud from the vigilance angle, or is subjected to a verifiable complaint, abuse of authority, misconduct or indulges in any other act unbecoming of a government servant, then he/she is liable to be transferred in public interest.”

6. The learned counsel for the applicant further submitted that the tenure rules also stand violated as it provides in terms (x) and (xi) of the transfer policy as under:-

“(x) Normally on rotational transfers, the tenure in a Ministry/ Station would be four years and the tenure of officers posted in CGA’s office will be five years in the case of Administration Section, Examination Section, Gr.A Section, Gr.B and Vigilance Section. In respect of other sections in O/O CGA the tenure will be seven years. The service period as AAO & PAO/SR.AO in O/O CGA will be computed together for reckoning five and seven years respectively, if the officer is retained on his promotion as PAO.

“(xi) On completion of tenure in a Ministry/ Station officers are liable for transfer either within the same station or outside depending on feasibility of swapping positions amongst serving officers subject to administrative convenience.”

Rule (xv) also provides for representation against the order of transfer to be disposed of within 15 days. The applicant

submits that his representation is still pending. We have also perused the representation of the applicant dated 24.08.2015 wherein, apart from his wife, he has raised grounds of his unmarried dependent sister (aged 48 years), a daughter (aged 10 years) who need to be looked after, financial difficulties caused for maintaining two establishments, and that his juniors have been retained while he has been transferred out. The learned counsel for the applicant has, therefore, strongly pleaded for the following relief being granted:-

“(1) Direct the respondent to transfer the applicant from Raipur to Delhi to the applicant, which they are entitled for;

(2) Award compensation to be given to the applicant by respondents for the hardship and mental harassment caused to the applicants due to the deliberate and wilful actions of respondents since long time;

(3) Award costs of the litigation in favour of the applicant and against the respondents;

(4) Pass such other and further order(s)/direction(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice.”

7. The respondents have filed their counter affidavit rebutting the averments of the applicant raised in the OA. The respondents have totally denied the allegation of malafide and submitted that no officer has been impleaded as a respondent to reply the allegation of mala fide in his personal capacity. The respondents have relied upon the decision in **State of M.P. & Anr. Vs. S.S. Kourav & Ors.**

[1995 (3) SCC 20]. The respondents have since denied infringement of any legal right of the applicant and, hence, submitted that the question of violation of principles of natural justices does not arise at all. The respondents have also submitted that one Ashok Kumar, similarly situated officer working under the jurisdiction of the respondents challenged his transfer from the Ministry of Urban Development, Karnal to Ministry of Home Affairs, Dadra & Nagar Haveli by filing OA No.3563/2015 which was considered by the Tribunal and dismissed the same vide order dated 15.03.2016. The respondents submit that the applicant is trying to establish a case as if he has been penalized for some his actions. However, the fact remains that he had remained stationed at Delhi for more than six years and, therefore, has no vested right to remain posted at Delhi throughout this life. The respondents have also referred to the case of **Shilpi Bose versus State of Bihar** [AIR 1991 (SC) 532], the Hon'ble Supreme Court held as under:-

“4.In our opinion, the Courts should not interfere with a transfer order which is 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 mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to 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.”

8. The respondents further submit that the Transfer/Posting Policy, having been issued on 30.10.2015 i.e. after the transfer of the applicant, is not applicable to the facts of the case in hand, and the question of violation of transfer policy hence does not arise. The respondents have also flatly denied the transfer order being punitive in nature as officers of the cadre have all India service liability for which no show cause notice or any warning letter is required to be issued. The learned counsel for the respondents further submits that the transfer of the applicant has been done in normal course and the applicant cannot rely upon extracts of notings on files here and there. The respondents further submit that the case of juniors to the applicant remaining at the same station does not constitute malafide which in any case is not sustainable.

9. The applicant as filed a rejoinder application reiterating the points raised by him and assailing that the legal rights of the applicant have been violated as there was infringement of principles of natural justice (*audi alteram partem*) as the applicant had been condemned unheard. The learned counsel for the applicant stated during the course of

arguments that there were no allegations levelled against the applicant.

10. We have carefully gone through the pleadings of rival parties, as also the documents adduced and law cited. We have also patiently heard the oral arguments so advanced by the respective counsel for both the parties. We are called upon to decide the following issues in this case:-

1. *Whether there is any mala fide involved in the action of the respondents?*
2. *Whether the transfer of the applicant is hit by infirmity of failure to follow policy and rules of natural justice?*
3. *What relief, if any, could be granted to the applicant?*

11. In the very beginning, we have stated that the applicant has not impleaded any person as respondent in his/her personal capacity so there is none before us to answer the allegation of *mala fide*. Since the applicant has specified the charges against the said Satyender Kumar, one feels that he could have been impleaded as party in individual capacity to reply to the charges levelled against him. In absence of such impleadment, we are unable to examine the issue of *mala fide*. It could also be stated in the same breath that *mala fide* is very easy to allege but difficult to prove as the onus to

prove *mala fide* lies on the one who alleges it. In this regard, Hon'ble Supreme Court in **State of Punjab & Anr. Vs. Gurdial Singh & Ors.**, [1980 (2) SCC 471], the Hon'ble Supreme Court has held as under:-

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power- sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat.... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

The above decision has been relied upon by this Tribunal in **T.M. Sampath Vs. Union of India**, [OA No. 188/2012 decided on 30.08.2013] and **Naresh Wadhwa Vs. Union of India** [OA No. 810/2013 decided on 29.10.2013].

12. Having regard to the above decisions and the averment of the applicant that no complaint had been there against him, we are of the considered view that his half of the premises of the argument that he had been punished against the rules of natural justice falls flat. To the contrary, we find that apart from alleging *mala fide* in general terms, neither the individual concerned, against whom mala fide has been alleged, has been impleaded as party respondent to rebut or reply nor any evidence has been forthcoming in this regard, which further weakens the case of the applicant. Hence, this issue is decided against the applicant and in favour of the respondents.

13. In relation to the second issue, it suffices to say that the transfer policy on which the entire edifice of the arguments of the applicant had been built is not applicable having been issued post transfer of the applicant. Hence, there could be no violation of these rules and it cannot be used as a valid argument. It is also to be seen that the question of *audi alteram partem* would only arise when some rights of the applicant are getting violated. It also suffices to say that no right of the applicant appears to be getting violated as he does not have a vested right to remain posted on a particular post throughout his career. We have taken note of the fact that admittedly the applicant has already

remained at one station for more than six years, the question of his pre-determined transfer does not arise at all.

14. Here, we have also taken note of the decision rendered by this Tribunal in **Ashok Kumar's** case (Supra) where the applicant had been transferred from Ministry of Urban Development, Karnal and posted to Ministry of Home Affairs, Dadra & Nagar Haveli against an existing vacancy. The arguments raised by the applicant in that case are more or less similar to the facts of the instant case. In this regard, we note that the Tribunal in that case took note of several judgments, one of which is **Union of India V. S.L. Abbas** [1993 (4) SCC 357] wherein at page 359, para 7, the Hon'ble Supreme Court held as under:-

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.”

It has also relied upon a three-Judge Bench decision in **Major General J.K. Bansal Vs. Union of India & Ors.** [2005 (7) SCC 227], wherein the Supreme Court has also adopted the aforesaid view.

In **State of M.P. & Anr. Vs. S.S. Kourav & Ors.** (supra),

the Hon'ble Supreme Court observed as under:-

"4. ...The Courts or Tribunals are not appellate forums to decide on transfer 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"

Again the Hon'ble Supreme Court in **State of U.P. Vs.**

Gobardhan Lal [2004 (11) SCC 402], has observed thus:-

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power off violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievances sought to be made. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated

by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

15. The Coordinate Bench of this Tribunal in the case of Ashok Kumar (supra) further relied upon the decisions in **State of U.P. and another Vs. Siya Ram and Another** [2004 (7) SCC 405]; **Rajendra Singh and Others Vs. State of Uttar Pradesh & Ors.** [2009 (15) SCC 178] and **State of Haryana & Ors. Vs. Kashmir Singh and Another** [2010 (13) SCC 306], wherein administrative exigencies have been given a priority in the matter of transfer.

16. In another case **C. Selvathuraiaraj vs. Union of India** [OA No.310/00795/2014 decided on 10.09.2014 by Chennai Bench), the Tribunal has noted as under:-

“13. In Chief Engineer (Per) TNEB vs. K. Raman decided on 4 April 19846, the Hon'ble Madras High Court said as follows:

9. One thing must be stated at the outset. This Court exercising powers under Art. [226](#) of the Constitution is not exercising administrative

supervision of the affairs of the Electricity Board and the Board knows how to administer its affairs. It cannot be gainsaid that transfer is an incidence of service. As the learned Judge himself has rightly put it, if it is a part of the conditions of service, it is not normally open to judicial review. It is equally true that if an order of transfer is maintained with mala fides or violative of certain well accepted norms or penal in nature, the Court can always find out whether such an order or transfer is mala fide, passed with ulterior motive or intended to achieve an object circumventing disciplinary proceedings. What is the punishment which the Electricity Board might have imposed by resorting to disciplinary proceedings, which proceedings are circumvented by passing the order of transfer? As rightly pointed out by the learned Advocate-General transfer is not one of the punishments contemplated under the rules by resorting to disciplinary proceedings. As a matter of fact, in every administration, day in and day out orders of transfer are passed on account of exigencies of administration. As to what such exigency is, we do not think that the authority passing the order must be called upon to explain to this Court. However, that is not to be confused with the situation where the order of transfer is actuated by mala fides. As to what would constitute mala fides we will deal with in the latter part of our Judgment. For aught one knows, allegations or complaints however baseless they may be, may constitute a cause for transfer, sometimes even the foundation for such transfer. After all, what is done by a transfer, which as stated above, is part of a contingency of service? If the administration finds that having regard to the complaints or allegations it is better a particular officer is removed from the particular work spot, transfer is ordered. Beyond that it does not visit the officer concerned with any penalty whatever, penalty not in the sense of disciplinary proceedings but from the point of view of emoluments, rank or status. If that be the position in law, where then is the necessity for the full exposure of the justifying factors for transfer before the Court? For our part, we are unable to see any necessity.

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16. Thus, as a proposition of law, the burden of proving malafide is very heavy on the person who alleges it. Party making such allegations is under a legal obligation

to place specific materials before the Court to substantiate the said allegations. There has to be very strong and convincing evidence to establish the allegations of malafides specifically and definitely alleged in the petition as the same cannot merely be presumed. The Applicant has failed to establish mala fides or ulterior motive on the part of the 3rd Respondent.

17. The Applicant is even questioning the change of work/duty given to him in the same location which does not reflect well on him. He is working in a public utility undertaking and as a responsible public servant, he should be prepared to do any work entrusted to him in administrative exigencies or public interest as long as it is within his capacity and related to his background. He has been retained in the same station for nearly 13 years. The place of his transfer is said to be only 15 kms away from his existing residence. Instead of receiving the transfer order he absented himself and gave a medical certificate. In any case once he has been relieved on 23.05.2014 (regardless of whether he handed over charge or not) the interim order of this Tribunal on 10.06.2014 would be of no avail to him.”

17. Having regard to the above pronouncements of the Hon'ble Supreme Court and of the Tribunal, the second issue is also conclusively decided against the applicant and in favour of the respondents.

18. In conclusion we can only say that the Tribunal is not a superior authority, which sits over the decision of the competent authority as to who would serve where. Its role is very limited and it has to look into the process that has gone into making the transfer and decide that whether it is against some rules or *mala fide* is established. Here in the instant case we have found that there is nothing on record to establish malafide nor has the person against whom allegations have been made has been impleaded as party respondent. Hence, we hold that it is one of such cases

where malafide has been alleged in easy breath but found gasping when required to prove. We also take note of the fact that the question of violation of principles of natural justice does not arise because no right of the applicant has been violated. It is also seen that the Transfer Policy dated 30.10.2015 to which the applicant made a reference was not in existence at the time of his transfer. Moreover, mere notings of the file do not indicate that it was punitive transfer. Otherwise also, the respondent-organization has the right to undertake transfers in administrative exigencies in the scheme of things and public interest which cannot be put to question. Hence, we find no merit in this case and dismiss the same without any order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

/Ahuja/