

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-2977/2013
With
OA-2978/2013**

Reserved on : 16.11.2015.

Pronounced on : 24.11.2015.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

OA-2977/2013

Sh. Vinod Kr. Dhama,
S/o Sh. Mangey Ram Dhama,
Vill. P.O. Khekra, Patti Rampur,
Distt. Bhagpat, UP.

..... Applicant

(through Sh. K.C. Mittal, Advocate)

OA-2978/2013

Sh. Satender Pal,
S/o Sh. Badan Singh,
H.No. H-404, Nanak Pura,
New Delhi.

.... Applicant

(through Sh. K.C. Mittal, Advocate)

Versus

Union of India through

1.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 in both OAs.

(through Sh. Rajinder Nischal, Advocate)

ORDER**Mr. Shekhar Agarwal, Member (A)**

The issue involved in these two OAs is the same. Hence, they were heard together and are now being disposed of by this common order. For the sake of convenience, facts of OA-2978/2013 (Satender Pal Vs. UOI & Anr.) are being discussed.

2. The applicant was a Constable in BSF when he came on deputation to Intelligence Bureau (IB) as Security Assistant on 14.12.1995. On 02.05.1997 he got promoted as JIO-II. Even after completion of 05 years of deputation his formal order of absorption were not being issued. The applicant then filed OA-3202/2001 before this Tribunal, which was decided on 16.01.2003. The applicant was thereafter making representations for grant of JIO-II rank w.e.f. 02.05.1997. Separately, on 06.03.2013 the respondents transferred the applicant to Ranchi. On 13.03.2013 the applicant submitted a representation requesting cancellation of his transfer order. This was rejected by the respondents on 14.06.2013. However, on 31.07.2013 the respondents modified his transfer order and posted him to SIB Itanagar. He has then approached the Tribunal seeking the following relief:-

“(a) Frame comprehensive transparent policy for transfer of the employees, rather than acting on the whims and fancies.

(b) Set aside the impugned transfer order No. 4/C-4/2013(4)-845 dated 06.03.2013 transferring of the applicant from Delhi to Itanagar; and

(c) Pass such other proper relief/relief as this Hon'ble Tribunal may deem fit and proper.”

3. On 04.10.2013 this Tribunal by means of an interim order directed the respondents not to relieve the applicant till the next date of hearing. The interim relief granted has been continued from time to time.

4. The contention of the applicant is that the action of the respondents was arbitrary, illegal and violative of Article 14 of Constitution of India. He has submitted that the respondents were victimizing him and not granting him promotion from due date though they have done so in similar cases. His further contention is that since he was representing for ante dating his date of absorption as well as promotion, and had also approached this Tribunal for relief, the respondents got annoyed and in order to victimise him, mala fide transferred him out of Delhi. This is despite the fact that there were large numbers of employees who have been working in Delhi for more than 30 years. He has submitted that the respondents obviously do not have any transparent transfer policy and have been resorting to transfer the employees in an arbitrary manner.

5. In their reply the respondents have stated that the applicant was absorbed only w.e.f. 31.12.2009. This was because his parent department BSF did not give NOC for his absorption from any earlier date despite sincere efforts being made by the respondent department. Further, they have stated that ever since he joined IB he has been engaged in miscellaneous work like diary, dispatch, dak distribution etc. and has no work knowledge of IB's functioning i.e. intelligence generation, reporting writing etc. After due deliberation the respondents decided to post officials such as him for field work so that they could gain knowledge of IB's prime functioning. The applicant has already spent 18 years in Delhi and his transfer has no link to Court cases filed by him.

6. We have heard both sides and perused the material placed on record. With his rejoinder, the applicant has made available copies of file notings of the respondents. These are available at pages 95 to 100 of the paper-book. The applicant submitted that he had obtained these filing notings through RTI. The

respondents did not dispute the genuineness of the same. A perusal of these notings would reveal that the respondents have been following a policy of transferring those employees who have approached the Courts for any relief.

This is evident from the following notings:-

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4. It may be mentioned here that he was transferred to SIB Itanagar on Admn. Ground on the basis of court cases. Prior to that we have obtained a list from G-1 Branch **(F/X)** of absorbees (20), who have been absorbed in IB through court cases for consideration of their transfer out of IB Hqrs. Out of 20, 14 officials **(F/A)** have been transferred in AGT-13, since the remaining 6 officials were already transferred from their respective SIB/IB Hqrs.,**(F/B)**.

It has now come to notice that Sl. No.16 of the list **(F/X)** is Shri Anil Kumar **G** instead of Shri Anil Kumar as clarified by G-1 Branch **(F/Y)**. Both were inducted in IB from BSF, Shri Anil Kumar G had already been transferred from IB Hqrs. to SIB Trivandrum. Therefore, we may, if approved, cancel the transfer order of Shri Anil Kumar (PIS No. 107826) to SIB Itanagar since he has not been absorbed on court case basis as informed by G-1 Branch **(F/X)**.

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In view of the position, if approved, we may cancel the transfer order of Shri Anil Kumar, JIO-II/G, C-II (B), who was not absorbed on the basis of court case and has been erroneously transferred to SIB Itanagar in AGT-2013.

For kind consideration and orders please.

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Sh. Anil Kumar JIOII/G, C-II Br. Who has been transferred to Itanagar inadvertently on the ground of his absorption on the basis of court case, has requested for cancellation of his transfer orders. In fact, another Shri Anil Kumar G, JIO-II/G of the same branch was absorbed on the basis of court case.

In view of the position if approved, we may cancel the transfer orders of Shri Anil Kumar, JIOII/G from the Hqrs to Itanagar.”

7. In our opinion, such a transfer policy is highly condemnable. It is the right of an employee to approach the Courts for redressal of any perceived

grievance. Merely because an employee has approached the Court, he cannot be victimized. Such a transfer policy is, therefore, unacceptable. It also belies the claim of the respondents that the applicant had been transferred to enable him to gather knowledge of working in the field.

8. The respondents relied on the judgment of Hon'ble Supreme Court in the case of **Airport Authority of India Vs. Rajeev Ratan Pandey and Ors.**, JT 2009(10)SC 472 in which it has been held that the Courts should not interfere in matters of transfer until and unless it is found that the transfers were a result of mala fide exercise of power. Moreover, the burden of proving such mala-fide was to be on the person levelling such allegation. The respondents have also relied on the judgment of this Tribunal in OA-1542/2006 (**G.K. Raju Vs. UOI & Ors.**) dated 06.12.2006 in which it has been observed that a Court/Tribunal can interfere in transfer/posting orders only when it contravenes the statutory provisions or suffers from mala fide or has been issued by an incompetent authority. The respondents have further relied on judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. S.L. Abbas**, (1993) 4 SCC 357 in which it has been held that the President has a right to transfer a government servant from one post to another and such order is vitiated only if it is violative of statutory provisions or has been issued as a result of mala fide. On the other hand, the applicant has relied on the judgment of Hon'ble Supreme Court in the case of **State of U.P. & Ors. Vs. Gobardhan Lal**, AIR 2004 SC 2165 in which it has been held that transfer orders should not be interfered with lightly or in a routine manner until and unless it is established that such an order is an outcome of mala fide exercise of power or violative of statutory provisions.

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.

10. Similarly, we quash the impugned transfer order No. 4/C4/2013(4)-845 dated 06.03.2013 of applicant in OA-2977/2013. A copy of this order be placed in both the OA files.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/