

Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 4535/2017

New Delhi this the 20th day of December, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

NP Mishra, Group 'A',
S/o Sh. Yogendra Nath Mishra,
R/o A-1/10, 3rd Floor, Chatturpur Extension,
Birla Farm House, New Delhi

Aged about 54 years,
Presently working as Dy. S.P. CBI - Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. Central Bureau of Investigation,
Through its Director,
CGO Complex, Lodhi Road,
New Delhi-110 003
2. The Deputy Director (Personnel)
Central Bureau of Investigation,
CGO Complex, Lodhi Road,
New Delhi-110 003
3. Astt. Director (IPCU),
Central Bureau of Investigation,
S-B, 6th Floor, CGO Complex,
Lodhi Road, New Delhi-110003 - Respondents

(By Advocate: Mr. Hanu Bhaskar)

O R D E R (Oral)

Justice Permod Kohli:

Notice. Mr. Hanu Bhaskar, learned counsel, appears
and accepts notice for the respondents.

2. The applicant has filed this Application challenging the transfer order dated 30.11.2017 (Annexure A/3) as also the relieving order dated 01.12.2017 (Annexure A/2) passed by the respondents. The applicant is posted as Dy. SP, Central Bureau of Investigation at IPCC, New Delhi. Vide Office Order No. 1941/2017, he was transferred to CBI, DSPE, ACB, Visakhapatnam. Three other officers were also transferred by the same order. As a consequence of his transfer, he was relieved vide order dated 01.12.2017 (Annexure A/2). The applicant approached this Tribunal against his transfer by filing OA No. 4276/2017. This OA was disposed of *vide* order dated 06.12.2017 with a direction to the respondents to consider the representation dated 07.12.2017 preferred by the applicant. The said representation of the applicant has been rejected vide another impugned order dated 15.12.2017 (Annexure A/1). It is under these circumstances that the present 2nd OA has been filed.

3. The main contention of Mr. Ajesh Luthra, learned counsel appearing for the applicant, is that the transfer of the applicant is punitive and in support of his contentions, he has referred to the order dated 15.12.2017 wherein following is mentioned:-

“In this representation, Sh. N.P. Mishra has stated that there is no complaint of any nature against his work and conduct at Delhi. However, the Competent Authority has observed that the letter from his immediate controlling officer Deputy Director (Coordination) states to the contrary. It has been further observed that the organization has to consider suitability of an officer for any assignment and all employees of CBI are liable to be transferred in any part of the country as per the organizational requirements.”

4. From the reading of the aforesaid paragraph of the impugned order, we are of the considered opinion that this averment that there is some complaint is in response to the averment made by the applicant in his representation. Insofar as transfer is concerned, the relevant observations are made in the preceding para which reads as under:-

“In his representation, Sh. N.P. Mishra has submitted that he has been transferred as an enquiry is pending against him. After considering the facts in this regard, the Competent Authority is of the view that the contention does not appear to be justified as his transfer order has been done in public interest and not because of any other reason. It has been observed that Shri N.P. Mishra himself has requested in writing for transfer from Interpol Unit and the letter of the Head of Branch, IPCC, reveals that he was not able to contribute effectively at IPCC and therefore, it was necessary to transfer him suitably in public interest to a place where his services could be utilized.”

5. In the above para, it is categorically mentioned that the transfer of the applicant is in public interest and not because of any other reason.

6. Mr. Ajesh Luthra, however, contends that the averment made in the first quoted para is based upon the

complaint which was prior to passing of the transfer order, though nothing is apparent from the above averment. Assuming it be so, merely pendency of the complaint does not mean that every transfer is based upon a complaint. The respondents have specifically mentioned that the transfer of the applicant is in public interest. No material has been placed on record to indicate that the transfer is punitive in nature and it is settled principle of law that the transfer is an exigency in service. No person has a right to remain posted at a particular place or any particular post. It is the prerogative of the employer to post a public servant as may be desired and wherever the services of the officer/official are required. Interference in the matter of transfer is not permissible unless special circumstances exist like transfer is by incompetent authority, transfer is punitive in nature or actuated by malafides. No such circumstances exist. We find no merit in the OA and the same is dismissed.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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