

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 100/2251/2017
MA 100/1456/2018

New Delhi, this the 20th day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Jayant Kashmiri
S/o Late Shri Hriday Nath Michu
R/o 1357, Sector-12
R.K. Puram, New Delhi

....Applicant

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Central Bureau of Investigation
Through its Director,
CGO Complex, Lodhi Road,
New Delhi-110003
2. The Deputy Director (Personnel)
Central Bureau of Investigation
CGO Complex, Lodhi Road,
New Delhi-110003
3. Head of Branch,
ACB, CBI,
B-5, 1st Floor, CBI Hqrs Building
CGO Complex, Lodhi Road,
New Delhi-110003

....Respondents

(Through Shri Hanu Bhaskar, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as Deputy Superintendent of Police (DSP) in the Central Bureau of Investigation (CBI) at New Delhi. On 24.06.2017, the competent authority transferred him to CBI, SCB, Chennai on administrative grounds. Challenging the order of transfer, the applicant filed OA No.2153/2017 before this Tribunal. At the admission stage itself, an order was passed on 3.07.2017, directing the respondents to pass orders on the representation submitted by the applicant. It was also directed that till the disposal of the said representation, the order of transfer shall not be enforced. The applicant submitted a representation and on consideration of the same, the concerned authority passed an order reiterating the earlier order of transfer. The same is challenged in this OA.

2. The applicant contends that his order of transfer is almost punitive in nature and though several other officers are working for a longer time at Delhi, he has been chosen in a discriminatory manner. He has also stated that reasons mentioned in the impugned order cannot stand scrutiny of law.

3. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant faced certain disciplinary

proceedings earlier and on finding that his further stay at Delhi is not conducive to the larger interests of the organization, he has been transferred on administrative grounds.

4. Shri Ajesh Luthra, learned counsel for the applicant submits that the order dated 24.06.2017 was without any reasons and, therefore, pursuant to directions of the Tribunal dated 3.07.2017 in OA 2153/2017, the applicant made a representation to the respondents. It is asserted that reasons furnished in the impugned order are totally unsustainable. Shri Luthra placed reliance on judgment of the Hon'ble Supreme Court in **Somesh Tiwari Vs. Union of India and others**, Civil Appeal No.7303/2008; judgment of the Hon'ble Madras High Court in **Dr. P. Santhi Vs. The Government of Tamilnadu**, W.P. No.31396/2014; and judgment of the Hon'ble High Court of Andhra Pradesh in **Bakarupanda Padmavathi Vs. Bank of India rep. by its Zonal Manager and ors.**, Writ Petition No.24523/2007.

5. Shri Hanu Bhaskar, learned counsel for the respondents vehemently argued that the transfer of the applicant is purely administrative in nature and it cannot be scrutinized, by applying the guidelines issued for routine and ordinary transfers. He submits that the competent authority has applied its mind as regards retention of the applicant, and on finding that the applicant has been in Delhi for nine years and that his conduct is

not conducive to or in the interests of the organization, applicant was transferred.

6. The applicant has challenged the order of transfer on several grounds including the one that it is opposed to the transfer policy or guidelines. The Tribunal's order dated 3.07.2017 did take note of this ground but was not impressed and accordingly refused to set aside the order of transfer. The representation said to have been submitted by the applicant was directed to be considered on merits. It is thereafter, that the order, which is impugned in this OA, has been passed. Leaving aside the preamble of the order, the operative portion thereof reads as under:

"Shri Jayant Kashmiri was appointed in this Bureau as Sub-Inspector w.e.f. 01.07.1986. Subsequently he was promoted as Inspector and Dy.SP.

An RDA for major penalty was initiated against Shri Jayant Kashmiri in the year 2007S and he was awarded penalty of reduction to a lower stage in the time scale of pay by one stage for a period of 02 years without cumulative effect vide order dated 09.10.2013.

Thereafter another RDA for minor penalty was initiated against him in June 2015, which is under process.

In view of above Shri Jayant Kashmiri could not be promoted or granted benefit of MACP for which vigilance clearance is pre-requisite.

As far as the issue of transfer is concerned, it is stated that he has been transferred on administrative ground and the said decision has been arrived at after taking into consideration the sensitivity of the work being performed by him. On the basis of information received against Shri

Jayant Kashmiri his stay at Delhi will not be conducive in the larger interest of the organization.

After considering the representation dated 29.06.2017 and other facts, I am of the opinion that in the administrative interest of the organization, the transfer order of Shri Jayant Kashmiri is justified. The representation is accordingly rejected."

From this, it becomes clear that the respondents felt that having regard to the sensitivity of the work being performed by the applicant, it is not conducive in the larger interest of the organization to retain him at Delhi.

7. Before we discuss merits of the matter, we may make one aspect clear. Transfer of a government servant made on administrative grounds or in public interest cannot be interfered with, unless malafides are alleged and proved. Further, much would depend upon the nature of duties in the organization concerned. In the judgments cited by the learned counsel for the applicant, the petitioners were the employees of Department of Education, Bank and the like. Here we are concerned with a sensitive organization like CBI. The decision as to the desirability or otherwise of retention of a particular employee in the organization needs to be left to the department to decide. Protection of the sensitivity of the activities, such as investigation into matters of national importance, becomes paramount, compared to the interests of employee. Even a doubt about the conduct of employee, in the matters of this

nature, may provide justification to transfer. The plea that disciplinary proceeding can be initiated if the conduct is doubtful, instead of transfer, is not available in such cases. The reason is that the presence of the employee itself may prove to be detrimental.

8. In the instant case, the respondents did not spell out the reasons of transfer of the applicant initially. It is while disposing of the representation, that certain reasons are spelt out. It is not in dispute that the applicant has completed nine years of stay in a Station as against seven years, as per the policy guidelines. The record discloses that the applicant has been punished once and in another set of disciplinary proceedings, he has been 'censured'. In addition to that, doubt is expressed as to his being associated with certain ongoing investigations.

9. The CBI is an agency which inquires into the conduct of, even the highest executives of the country. It is natural that persons vested with such powers are required to be of cleanest record and of utmost integrity. Though the learned counsel for the applicant stated that if there was any objection to the conduct of the applicant, he could have been proceeded against in a separate proceeding or placed under suspension, this is not the stage or forum to express an opinion on such issues. It is the function of CBI to look into it and take a conscious decision in the matter.

10. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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