

Central Administrative Tribunal
Principal Bench

O.A. No.419/2003

New Delhi this the 14th day of August, 2003

Hon'ble Shri V.K. Majotra, Member (A)

Shri S.S. Hasan, CTO
810, Minto Road Hostel,
New Delhi.

-Applicant

(By Advocate: N. Safaya)

Versus

1. Union of India through
The Secretary
Ministry of Textiles,
Udyog Bhawan,
New Delhi.
2. The Development Commissioner (Handicrafts)
West Block No.7,
R.K. Puram,
New Delhi.
3. Dy. Director (A&E)
West Block No.7
O/o DC (Handicrafts)
R.K. Puram, New Delhi.
4. Shri Ashok Shah,
Deputy Director (Vigilance)
O/o DC (Handicrafts)
West Block No.7,
R.K. Puram, New Delhi.

-Respondents

(By Advocate: Shri K.R. Sachdeva)

O R D E R

Through this OA, applicant has assailed Annexure-A dated 18.2.2003 whereby he has been transferred in public interest as CTO alongwith the post, with immediate effect from New Delhi to Dehradoon. He also stands relieved from the present duties w.e.f. 18.2.2003 itself. It has been alleged that this transfer is punitive, malafide, arbitrary, unfair, illegal and against the rules.

2. Learned counsel of the applicant contended as follows:-

- i) The impugned order reveals that applicant had been transferred with reference to a Vigilance Note dated 18.2.2003. As such, the transfer is punitive and not in public interest. On a vigilance complaint, punishment after an enquiry is alright but it cannot lead to transfer of a person without concluding an enquiry.
- ii) Malafides of the respondents are clear because after applicant's transfer, three enquiries have been instituted against him. One such charge sheet was issued on the date of his transfer itself.
- iii) A few days before the impugned order, applicant had been transferred to another section (Export Section) vide order dated 7.2.2003 (Annexure A-1) where he joined on 17.2.2003. Impugned transfer order has been made to harass the applicant.
- iv) Applicant is the General Secretary of the recognised Association of the employees of the Department. He has been engaging in Trade Union activities for which he is being victimised and has been removed from the scene to prevent him from pursuing the demands of

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the Members of the Association. Learned counsel relied on MHA OM dated 8.4.1969 (Annexure-13) stating that a General Secretary and other Union Executives have to be transferred to the Headquarters from field duties but applicant has been transferred to Headquarters from the field against these instructions.

v) By Annexure A-4 dated June 3, 2002, among 37 persons, applicant's name was also included for regularisation of ad hoc services of the Carpet Training Officers. However, Annexure A-5 dated 9.8.2002, ad hoc services [of 14 persons were regularised leaving out the applicant among others.

vi) Respondents have violated the transfer policy by removing the applicant within three years of previous posting while several others, as stated in Paragraph-4.20, are posted at the same station for 22 to 26 years.

3. On the other hand learned counsel of the respondents stated that transfer is an incident of service and in applicant's transfer respondents have not violated any rules or guidelines and there has been no malafide in transferring the applicant out of Delhi. The charge sheets against the applicant have nothing to do with applicant's transfer. He has joined at the new place of posting without any

reservation from where he has been suspended w.e.f. 14.5.2003. Respondents have also produced relevant records regarding applicant's transfer and suspension which have been perused by the court.

4. From the records, it is clear that respondents have held a preliminary enquiry through a Committee of senior officers which has, *prima-facie*, found that applicant had visited foreign countries during March-April 2001 without any formal approval of the competent authority and had remained unauthorisedly absent from duty. No rejoinder has been filed on behalf of the applicant to rebut contentions of the respondents. Applicant has also not established as to what provisions of transfer policy have been violated by the respondents. It has merely been stated on his behalf that he had not completed three years at the previous place of posting, i.e., Delhi. He has himself stated in Paragraph-4.20 of the application that he had been at the Head Office in New Delhi since 1994. Even if some employees are at one place for longer number of years than the applicant, it does not establish that any transfer policy has been violated. Issuance of transfer orders and charge sheet on the same date does not indicate any harassment or malafide on the part of the respondents. Even suspension of the applicant within a few months of his transfer on the basis of disciplinary proceedings against him cannot be objected to. Endorsement of the copy of transfer orders to Vigilance Section may indicate existence of

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a vigilance matter against the applicant. Respondents have brought the records to establish that decision to transfer the applicant has been made taking into consideration certain relevant facts related to enquiry against him. I am quite satisfied with the reasons recorded by the respondents in the transfer of the applicant. Respondents have not violated any rules or guidelines and I have not discovered any malafide behind applicant's transfer from Delhi. He has not been transferred for engaging in Trade Union activities and to harass him. A Union Executive may be brought to the Headquarters as far as possible but if there are administrative reasons for the transfer of such a person from the Headquarters to an out station, provisions of OM dated 8.4.1969 cannot prevent the authorities from transferring a Union Executive from the Headquarters.

5. In the totality of circumstances as discussed above and finding no infirmity in the transfer orders of the applicant, this OA must fail and is dismissed accordingly. No costs.

V.K. Majotra
(V.K. Majotra)
Member (A) ~~

cc.