

Central Administrative Tribunal
Principal Bench

O.A.No.849/2003

Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 18th day of September, 2003

Shri K.S.Gautam
Deputy Director (Plant Pathology)
Central Insecticides Laboratory
Directorate of Plant Protection
Quarantine & Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
Government of India
NH IV, Faridabad - 121 001.
Haryana. ... Applicant

(By Advocate: Sh. H.K.Gangwani, proxy of Smt. Lata Gangwani)

Vs.

1. Union of India through
The Secretary
Department of Agriculture & Cooperation
Ministry of Agriculture
Government of India
Krishi Bhavan
New Delhi - 110 001.
2. The Plant Protection Adviser
to the Government of India
Directorate of Plant Protection
Quarantine & Storage
Ministry of Agriculture
Government of India
N H IV, Faridabad - 121 001
Haryana.
3. Shri S.P. Kulshreshtha
Deputy Director (PP)
RPQS, Mumbai
(service through Respondent No.2)
4. Shri D.D.K.Sharma
SSo (Bio)
CIL, Faridabad
(service through Respondent No.2)... . . Respondents

(By Advocate: Sh. D.S.Mahendru)

O R D E R

By Shri Shanker Raju, Member (J):

Applicant impugns respondents' order dated 21.6.2002 transferring him from PSQS, Mumbai to CIL, Faridabad as well order dated 24.1.2003 passed in

representation on his request for cancellation of transfer. Quashing of the above orders has been sought.

2. Applicant, who is working as Deputy Director (Plant Pathology) and had completed 28 years of service, during this tenure, had been posted altogether to non-sensitive posts and underwent nine transfers.

3. While posted as Deputy Director (PP), in the Headquarters of Directorate of Plant Production, Faridabad in August, 2001, applicant was transferred to the Regional Plant Quarantine Station, Mumbai against vacant post of Deputy Director (Plant Pathology). Applicant joined Mumbai in August, 2001.

4. At Mumbai, applicant was allotted Government accommodation at Belapur, which was far off from his working place necessitating him to make an application for change of accommodation, which is still pending.

5. Due to illness of applicant's daughter, the entire family was shifted from Faridabad to Mumbai in March, 2002, where the daughter has been undergoing treatment.

6. Merely after ten months tenure at RPQS, Mumbai, applicant was transferred to Faridabad and one Shri D.D.K.Sharma, Senior Scientific Officer

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(Bioassay) on being redesignated as Deputy Director (Plant Pathology) was posted at Mumbai in place of the applicant.

7. Applicant preferred a representation. As no orders have been passed on it, applicant filed OA 2956/2002 before this Court. By an order dated 18.11.2002, respondents have been directed to dispose of the pending representation of the applicant.

8. By an order dated 24.1.2003, request of the applicant was rejected, giving rise to the present OA.

9. Shri H.K.Gangwani, learned counsel for applicant, by referring to the transfer policy, laid down by the respondents, and adhering to Clause-4 contends that those who are posted in sensitive post shall be transferred to non-sensitive post on completion of five years or more and others will be transferred after a period of seven years.

10. As the applicant has been transferred, only after ten months, order is in violation. It is further stated by Shri Gangwani relying upon the following decisions, that though the transfer order appears to be routine transfer but is mala fide, based on extraneous consideration. Transfer is based on alleged misconduct of the applicant of alleged poor performance which has not been borne out from the records. During this interregnum, when the applicant was in Mumbai, his ACRs remained excellent. Regarding quality of work no memo., advisory note or warning has

been issued. Only with a view to avoid vigilance inquiry and to by-pass it, a short cut method has been adopted which is per se illegal:

- 1) Sh. K.K.Jindal v. Union of India & Others, 1988(7) ATC 253.
- 2) Sh. S.R.Ramswamy v. Union of India, 1990(12) ATC 461.
- 3) Darshan Singh v. Union of India, 1989 (9) ATC 254.
- 4) Sh. S.D.singh v. Union of India, 1989 (9) ATC 563.
- 5) R.S.Nair v. Union of India, 1993 (24) ATC 308.
- 6) A.D.Dhande v. State of Maharashtra, 1997 (6) SCC 169.

11. Another contention putforth is by alleging mala fides against Respondents No.3 and 4. According to the applicant, the transfer has been issued, on extraneous reasons to favour S.P.Kulshreshtha, DD(PP), who was earlier shifted from the sensitive PQ Scheme to non-sensitive IPM Scheme, and was posted at Faridabad. As one of the relative of Shri Kulshreshtha was working as PS to the Agricultural Minister, Shri Kulshreshtha was again shifted back to PQ Scheme and posted at NPQS at New Delhi. Shri Kulshreshtha could not succeed earlier immediately on joining of Shri Prabhat Kumar, a close relative managed his posting with the help of Shri Prabhat Kumar. Since Shri Kulshreshtha who was all along interested to be posted at RPQS, Mumbai managed to be posted there within a short period of ten months.

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12. It is further alleged that Sh.

D.D.K.Sharma, SSO (Bio) was wrongly redesignated as DD(PP) and was retained at New Delhi. In fact, as per the normal procedure, applicant should have been transferred to NPQS, New Delhi vice Shri Kulshreshtha. This has been done with the connivance of the then Director to favour Sh. Sharma.

13. It is stated by Shri Gangwani that despite service, private respondents have not filed their replies and as such the allegations made against them by the applicant and the mala fides alleged are deemed to have been admitted.

14. On the other hand, respondents' counsel Shri D.S.Mahendru, contested OA and vehemently opposed the contentions. According to him, applicant in Group 'A' service has an all-India transfer liability. Transfer being an incident and condition of service, cannot be over ridden by the personal difficulties or inconvenience.

15. In so far as redesignation of Shri D.D.K.Sharma, it is stated that the same has been in view of the recommendations of Fifth Central Pay Commission in Para 56.21 creating a new cadre of Weed Scunhst which was accepted by the Department of Agriculture and Cooperation.

16. In so far as the contention of allocation of work under one Scheme with that of discipline of the officer it is contended that the applicant has misled the Court.

17. It is stated that the transfer is in public interest and also in administrative exigency. Apart from the tenure laid down in sensitive and non-sensitive posts, subject to administrative exigency as per Clause-11 of the transfer policy ibid, the transfer can be resorted to but normally in adjoining zones.

18. Learned counsel further states that at RPQS, Mumbai, applicant has been dealing with public in reference to Export and Import Plant material requiring clearance from quarantine angle. In order to implement the provisions of PFS or the policy of the Government, the nature of work not only involves public interest but also national interest for the benefit of the Indian Farmers for their improvement in agricultural produce. Ever since the applicant was posted at RPQS, Mumbai his work and conduct was not found compatible with that of his duties and responsibilities. Accordingly, in public interest and also from preventive vigilance angle, applicant was shifted from Mumbai to Faridabad. As the national interest could not have awaited normal procedure of holding an administrative inquiry and issuing show cause notice to the applicant which is a time consuming process.

19. Shri Mahendru further states that the posting and transfer is the prerogative of the competent authority who is within his ambit to utilise his services according to the competence and efficiency of an individual officer. As the decision

has been taken in public interest, the mala fides which could not be established, cannot vitiate the action of the respondents.

20. In the rejoinder, applicant reiterated his pleas taken in the OA.

21. I have carefully considered the rival contentions of the parties and perused the material on record. Though it is settled position of law that a transfer in public interest and administrative exigency is not amenable for interference in a judicial review. However, if transfer is based on mala fides, punitive or motivated and based on extraneous reasons, and also without competence and in violation of Rules, is liable to be interfered with. It is also equally settled position of law that posting of a person, who is having all-India liability, is a prerogative of the competent authority. One has no right of choicest posting.

22. There cannot be a denial that wheels of administration should be allowed to run smoothly and the Courts are not empowered to sit as an appellate authority in the matter of transfers.

23. However, the Apex Court in E.P.Royappa v. State of Tamil Nadu, AIR 1974 SC 555 observed as under:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best

judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers cannot but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

24. In D.Varadha Rao v. State of Karnataka & Others, AIR 1986 SC 1955, the Apex Court held as follows:

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to inumerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer."

25. Apex Court in CA No.1095-1096/2001, decided on 11.9.2001 in National Hydroelectric Power Corporation Limited v. Shri Bhagwan and Others, held as follows:

"It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunal cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned."

26. Keeping in view of the ratio desendi of the above, on application to the facts and circumstances of the present case, as held by the Apex Court in Rajender Roy v. Union of India, AIR 1993 SC 1236 that in case mala fides are alleged against the respondents in absence of the impugned order of transfer, a firm foundation to substantiate the case of malice is to be established. Insinuation and vague suggestion, would not draw any inference of mala fide.

27. Applicant undisputedly had remained posted in non-sensitive assignments under the Scheme for 28 years and had undergone nine transfers.

28. In the Directorate of PPQ&S and its sub-offices, as no transfer policy existed, keeping in view the directive to prevent possibility of corruption in Government Department issued by CVC, vide OM dated 12.3.1999, a need was felt to frame a transfer policy. On examination, Directorate of PPQS framed the policy which was followed in six zones under its jurisdiction.

29. As per Clause-4 of the transfer guide-lines, officers who are working on sensitive post, and has completed five years or more, shall have to be transferred to a non-sensitive post. In other cases, transfer would be effected after a period of seven years.

30. Clause-11 of the guide-lines provides that subject to administrative exigency, transfer should normally be to the adjoining zones. However, this privilege would not be ordinarily available to Group 'A' employees.

31. Applicant, who was working at DD(PP), Faridabad was transferred to RPQS, Mumbai on 2.8.2001. The entire family shifted in March, 2002. The only ground which has come forth in the order passed on representation as well as reply of the respondents that during the posting at RPQS applicant's work and conduct was not found satisfactory. On examination he was not found desirable in public as well as national interest and also on account of preventive vigilance angle, he was transferred.

32. As the inquiry could have consumed time in administrative exigency, the same has not been resorted to. Applicant to this responded by contending that during the aforesaid period, his performance remained excellent. In so far as the allegations of deterioration in quality of work is concerned, in absence of any material to support, i.e., advisory memo or warning, the same are bare allegations, being unfounded to avoid an inquiry, on punitive basis, as a short cut, transfer has been resorted to.

32(A). Though I am aware of Tribunal's jurisdiction, in the transfer matters, but Apex Court in Royappa's case supra clearly held that the exercise of power of the transfer should be reasonable and bonafide. If the same is based on extraneous consideration for achieving alien motive, the same would be colourable exercise.

33. Frequent transfers without reasons, cannot be justified and would amount to a mala fide act. The mala fides are to be inferred if the transfer is not in professed performance but for other purposes to accommodate another person for undisclosed reasons.

34. The contention putforth by the respondents that national as well as public interest warranted transfer of the applicant as the conduct and the work of the applicant was not found compatible issuing of show cause and taking up normal procedure of holding inquiry would time consuming process has

not been followed. No records have been produced to show that the performance of the applicant as alleged has been so deteriorating as to be against public interest and interest of the farmers.

35. In absence of any material to substantiate, mere averments would not be sufficient to infer the above. It was incumbent upon the respondents to have initiated due process, in case any alleged misconduct was found attributable to the applicant. Curtailing due process of law prejudices the applicant who has a right to show cause in consonance with the fair play and principles of natural justice, is an ample proof of resort to punitive measures to transfer the applicant.

36. In absence of any material the extraneous matter which has no foundation has been taken into consideration. Transfer cannot be said to in normal course either in public interest or administrative exigency.

37. As regards the policy is concerned, an officer who has been transferred to a sensitive post has a tenure of 5 years or more, curtailing short the above period is in violation of the mandatory guide-lines which are strictly followed by the Directorate. In absence of any administrative exigency, and the proof to it, transfer is not sustainable in law.

38. I also find that in the transfer order though the public interest has been mentioned, but mere recital would not be enough unless the administrative exigency and such interest is established by the respondents. Particularly, when mala fides are alleged, which can be personal or legal as well. If the norms are not followed there a reasonable presumption of legal mala fides can be inferred. In absence of any valid justification, are legally proved.

39. It is settled position of law that once specific mala fides are alleged against a person who has been impleaded as party to the proceedings, in absence of any reply despite sufficient service and notice, rebutting it are deemed to be admitted.

40. I do not subscribe to the objection of applicant as to upgradation of Shri D.D.K.Sharma as DD, but find that one Shri S.P.Kulshreshtha who was shifted from sensitive PQ Scheme to non-sensitive IPM Scheme at Faridabad, on joining of Shri Prabhat Kumar, a close relative as PS to Agriculture Minister, was shifted back to PQ Scheme in contravention of the policy before the tenure and was there upon posted within a period of ten months in place of applicant at Mumbai.

41. The aforesaid allegations though specifically raised, has not been controverted by the private respondents as well as the official respondents. Accordingly, deemed to be admitted. As a result, the mala fides alleged against the

respondents in transfer of the applicant are established. This vitiates the transfer order. This is in consonance of the decision of Apex Court in Rajendra Roy's case supra.

42. In the result, as the transfer has been resorted to as a colourable exercise without any material of poor performance of the applicant with an oblique motive to transfer Shri Kulshreshtha at Mumbai and to bring back applicant at Faridabad, is against rule of law and good administration.

43. The action on the part of the respondents is neither justifiable nor fair. I also find that in the past, the applicant had been subjected to nine transfers on non-sensitive assignments which itself proves the conduct of the respondents.

44. In the result, for the foregoing reasons, as the transfer is based on mala fides and in violation of the policy guide-lines arrived at as a punitive measure, cannot be sustained in law. OA is allowed. Impugned orders are quashed and set-aside. Applicant shall be entitled to all consequential benefits.

S. Raju

(Shanker Raju)
Member (J)