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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2459/2003

New Delhi, this the 18th day of August, 2004

Hon'ble Shri S.K. Naik, Member(A)

**Rakesh Kumar
Assistant
Ministry of External Affairs
South Block, New Delhi**

.. **Applicant**

(Shri S.N.Anand, Advocate)

versus

1. **Secretary
Ministry of External Affairs
South Block, New Delhi**
2. **Ms. Nelima Mitra
Ambassador, Embassy of India Bogota**
3. **A.K.Agarwal
First Secretary
Embassy of India, Bogota**
4. **Dilbagh Singh, SS(Administration)
Embassy of India, Bogota**
5. **Sandeep Chakravarty
SS, HOC, Embassy of India, Bogota**
6. **Miss Latha Reddy
Joint Secretary(AD)**
7. **P.J.S. Mann, Director(ADP)**
8. **B.Humpul, Under Secretary(PC)**
(R-2 to R-8, through Ministry of External Affairs
South Block, New Delhi .. **Respondents**

(Shri M.K.Bhardwaj, proxy for Shri A.K.Bhardwaj, Advocate)

ORDER

By virtue of the present application, applicant has challenged the relieving order dated 7.7.2003 by which he, while serving in the Embassy of India, Bogota for a tenure of three years, has been recalled. According to the applicant, he joined Bogota w.e.f. 26.6.2002 . Thereafter he was asked to pay Pesos 33,110 towards garbage collection and sewage charges from 16.5.2002 to 8.7.2002 which he was forced to pay. Thereafter, he was served with two OMs asking him to explain as to why bill for payment of condominium charges for the chancery building was not processed. Like this, applicant has alleged that, he was being harassed by all the respondents by issuing memos on trivial issues. He has further alleged that he was manhandled on 31.3.2003 by Respondent No.3 in the presence of others. Thus

instead of taking action against Respondents No.3 and 4, applicant was sought to be recalled under para 8(2) of IFS (PLCA) Rules without giving any cogent and valid reasons in this respect. Applicant made an appeal on 7.7.2003 seeking reasons for his recalling but in vain. Hence this application.

2. Respondents have contested the application. They have stated in their application that soon after his joining at Bogota on 26.6.2002, his senior officers noticed unsatisfactory conduct and output on part of the applicant. He showed no regard for office decorum. He was counseled and given the required support but nothing could change his negative attitude towards work. He willfully defied all reasonable advice and suggestions rendered to him. As he did not heed to verbal instructions, written instructions were also issued. Respondents have annexed copies of several memoranda issued to him in this connection. They contend that when Mission was satisfied that nothing could make the applicant work and behave properly, the matter regarding his recalling was taken up with the Ministry (PC Section). To ensure impartiality and removing likelihood of misuse of authority by officers, all such reports need recommendation of HOM. PC Section referred this case to Vigilance Unit. JS(CNV) was of the opinion that *prima facie* it was a case where possibility of recall should be examined. On the basis of comments of JS(JNV) a Memo was issued by PC Section which was served on the applicant by the Mission on 6.2.2003. Meanwhile, his conduct was getting worse. The Mission vide letter dated 30.1.2003 informed that there was no change in work and conduct of the applicant; he did not work properly and when directed to re-examine the cases, he resorted to writing long unwarranted remarks about the justification for the work. He developed the habit of arguing with his superiors and hurled abuses at his immediate officers in particular and officers in the Ministry and the Govt. of India in general. This resulted in unpleasant atmosphere in the office. CdA vide his letter dated 6.2.2003 reported an incident where the applicant abused and threatened Second Secretary(Admn.) in this letter. Commenting adversely on the acts and performance of the applicant, CdA requested the Ministry to consider premature recalling of the applicant. Respondents have also denied the allegations made by the applicant in his OA. Thus they have justified their action in recalling the applicant from Bogota. Thus, according to the respondents, the present OA is misconceived and be dismissed.

3. I have heard the learned counsel for length and perused the pleadings.

4. Learned counsel for the applicant has vehemently argued to contend that the recalling of the applicant before completion of his normal tenure of three years in a mission abroad is arbitrary, against the rules and punitive in nature. He further alleged that the same has been ordered malafide and the applicant has become a scapegoat in the hands of respondents impleaded by name. He has referred to the

number of small incidents and memos issued to him in this regard details of some of which have already been stated above. He has contended that the tenure of three years in a posting abroad is the legitimate expectation of an employee in the Ministry of External Affairs and the same has been frustrated by the respondents by recalling him prematurely.

5. Counsel for the respondents, as already stated, has denied the allegations in this respect. It has been contended that ever since his joining at Bagota, the applicant started behaving in a manner not befitting the conduct and decorum of an employee and therefore he has to be advised and guided in the matter. However, the applicant did not care to mend his ways. On the other hand, he took the advice and guidance of superiors as an affluent to his self profess right to misbehave with them, thereby lowering the image and prestige of the country in front of other employees. The Mission was forced to recommend his recalling after providing full opportunity to the applicant to improve and further by referring the matter to the independent vigilance set up in MEA and on the basis of their recommendation. Contending that it was not a transfer simplicitor but that of a case of recalling under the Rules, the counsel has drawn my attention to para 8(2)(vii) of the IFS(PLCA) Rules which states that if the Ministry is satisfied that the conduct of an officer posted abroad or of any member of family or any person living with him and under his general control involves a serious breach of the Conduct Rules of his service, the Ministry may compulsorily recall the officer to India. Thus, the learned counsel contends that the order recalling him is neither arbitrary, nor illegal as it has been ordered within the framework of the Rules on the subject.

6. On the point of malafide, respondents have denied the same on the ground that individual officers have nothing personal against the applicant but it was in the nature of their duty as supervising authority to ensure that proper discipline, decorum and efficiency is maintained in a Mission abroad which is the mirror and image of the country. The conduct of the applicant having been assessed and examined at various levels including by the Vigilance Division, it cannot be said that anybody is having personal vengeance against the applicant. It has further been brought to my notice that the applicant in fact had earlier behaved in a similar manner and had to be recalled prematurely from his posting abroad at Milan, where he had joined during June, 1996. He had then also challenged the order of recall and taken the matter right upto the High Court where the petition had been dismissed. The counsel contends that the applicant despite his earlier conduct has been posted at Bagota with the firm hope that he may improve his conduct and behavio but of no avail. Thus the allegation of malafide has to be rejected as baseless.

7. Under the circumstances and in view of the discussions above and also in view of catena of judgements by the courts including the apex court that unless the

transfer is malafide or against the Rules, Tribunal should not interfere therein, I find that recall in the case in hand has been ordered in accordance with the rules to enforce dignity, discipline and decorum in public service which are undisputedly essential to maintain qualitative public service and in the interest of ~~administrative~~ exigency. Thus, I am not inclined to interfere in the matter. The OA is therefore dismissed with no order as to costs.

S.K. Naik

(S.K. Naik)
Member(A)

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