

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00921/2019

AND

ORIGINAL APPLICATION NO.170/00969/2019

DATED THIS THE 30TH DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

ORIGINAL APPLICATION NO.170/00921/2019

Sri. Iada Martin Marbaniang I.P.S.
Aged about 38 years,
S/o. Martin Lying,
S.P's. Bungalow,
D.A.R. Headquarters Road,
Kalaburagi district-585 105
Working as Superintendent of Police,
Kalaburagi District

.....Applicant

(By Advocate Shri Shishira Amarnath)

Vs.

1. The Union of India
Represented by its Home Secretary,
Ministry of Home Affairs, North Block,
Police-I Division, (IPS-Section),
New Delhi-110 001.

2. The State of Karnataka
Represented by Principal Secretary,
Vidhana Soudha,
Bengaluru-560 001.

3. The Office of Director General
And Inspector General of Police,
No. 2, Nrupatunga Road,
Bengaluru 560 001

4. Patil Vinayak Vasant Rao,
Superintend of Police,
Uttar Kannada District,
Karawar 581 301

.....Respondents

(By Shri V.N. Holla, Counsel for Respondent No. 1 and
By Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 2 to 4)

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(By Advocate Smt. Leela P. Devadiga)

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New Delhi-110 001.

2. The State of Karnataka
Represented by its Secretariat,
Vidhana Soudha,
Bengaluru-560 001.

3. The Under Secretary to Govt. of Karnataka
Department of Personnel &
Administrative Reforms (Services-4),
Vidhana Soudha,
Bengaluru - 560 001

.....Respondents

(By Shri V.N. Holla, Counsel for Respondent No. 1 and
Shri R.B. Sathyanarayana Singh, Counsel for Respondent No. 2 & 3)

ORDER

DR. K.B. SURESH, MEMBER (J):

We heard both these matters together on consent of both the parties. We will take by common consent OA No. 969/2019 as the leading case. The issue in a nutshell is very simple. We had taken up this matter on 05.09.2019 and passed the following interim order:

“The office had raised an objection that this might be hit by the principles of resjudicata. At this time, Sri Satyanarayana Singh, the Learned Government Advocate submits that in compliance with the interim order passed in OA.No.921/2019, they have given the applicant a posting as Superintendent of Police in CID, Bangalore. We quote from the order we passed on 21.08.2019 in OA.No.921/2019:

“Heard. The applicant submits that he had been prematurely transferred and the party respondent Shri Patil Vinayak Vasant Rao has taken charge as new Superintendent of Police at Kalburgi. Applicant seeks an interim order. Since the nature of interim order sought for is a mandatory order under order 39 of CPC, without hearing the other side, that cannot be given.

Therefore, issue notice to the respondents by dasti. Applicant to take out notice and have it served on the respondents within 7 days next and produce appropriate evidence for having done so. Respondents to file a short reply on the question of interim relief sought for by the applicant within 2 weeks next.

At this point, Shri Ponnanna, learned Senior counsel appears and submits that whatever be the merit of it, there is a glaring illegality in the transfer order and therefore, without going into the ground level reality, the order may be stayed, for it to be properly adjudicated after return of notice.

We find no objection in it. For this technical reason, the transfer order will remain stayed, even though the ground level reality will remain as it is, as the other party has already taken charge. But if, in the meanwhile, the applicant finds a favourable posting to him, he may accept that also, for which also we have no objection.

Post the matter for hearing and disposal on 05.09.2019, by which time the State should file its response. Applicant will issue an additional notice to the learned Advocate General of Karnataka and learned Government advocate Shri Sathyanarayana Singh.”

At the time of passing this interim order, we were persuaded by the Learned Counsel for the applicant that some illegality might have crept into the order as it may seem to violate some provisions of the Police Act. Therefore, in order to provide the ground and fora for examining this matter, we said that the transfer will remain stayed. Whereas the actual ground reality will not be affected as the other party has already taken charge and the applicant had handed over the charge also. This was intended to be an academic exercise of examining whether in general, the executive government will have the power to transfer and then to what extent.

At this point of time, therefore, we deem it necessary to think that the new posting order granted by the Government should be acceded to and complied with by the applicant as a disciplined servant and especially so in the Police service. Discipline and cardinal treat is required under the very same Karnataka Police Act. But at the same time, we uphold our resolve and settle it once for all after giving an opportunity of being heard to both sides.

Therefore, issue notice to the respondents by dasti. Applicant will serve an additional notice on the Learned Advocate General of Karnataka Government and the Learned Government Counsel Shri Satyanarayana Singh. Let them file reply as early as possible and in any case within two(2) weeks. We grant two(2) weeks’ time for reply and one(1) week time to the applicant to file rejoinder. Post the matter for hearing on 19.09.2019.”

2. We had later on taken up the matter on 19.09.2019 when it could not be dealt with as it was only a Single Member sitting.

3. Thereafter the matter was again taken up on 26.09.2019 and we had passed the following order:

“We have taken up the matter today. Shri Ponnanna, learned counsel for the applicant, seeks one day’s time to produce the copy of the Hon’ble High Court order. Shri V.N. Holla, learned counsel for R1, is directed to get instructions from the Home Ministry who is the Cadre Controlling Authority and file a statement tomorrow itself. At this point of time, Shri V.N. Holla raises an objection that he has not been given a copy of the OA and therefore seeks some time to study it. Allowed. Shri Ponnanna will give one extra copy to Shri V.N. Holla and Shri V.N. Holla will positively file a response on Monday. The State Government also to file a more detailed response by then. Post on 01.10.2019.

A copy of this order to be given to both parties.”

4. But, in the meanwhile, applicant seems to have approached the Hon’ble High Court of Karnataka in Writ Petition No. 42778/2019 which was disposed of vide order dated 25.09.2019, which we quote:

“THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD:30.8.2019 ISSUED BY R-3, A COPY OF WHICH IS PRODUCED AT ANNEXURE-A5, SO AS TO IT RELATES TO PETITIONER HEREIN AS BEING ILLEGAL, AB INITIO VOID. QUASH THE INTERIM ORDER DTD:5.9.2019 IN ORIGINAL NO.969/2019 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE A COPY OF WHICH IS PRODUCED AT ANNEXURE-A TO THE EXTENT IT RELATES TO REJECTION OF INTERIM RELIEF SOUGHT BY THE PETITIONER AND DULY GRANT THE INTERIM RELIEF AS PRAYED FOR DIRECT THE RESPONDENTS NOT TO TRANSFER THE PETITIONER TILL THE STATUTORY PERIOD OF ONE YEAR IS COMPLETED EXCEPT IN ACCORDANCE WITH LAW.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **NARAYANA SWAMY J.**, MADE THE FOLLOWING:

ORDER

The petitioner was transferred as Superintendent of Police, Kalaburagi by order dated 20th February 2019. When he was thus discharging his duties, again he has been transferred on 19th August, 2019 without showing any posting. Transfer was challenged before the Central Administrative Tribunal on many grounds including the ground of premature transfer. The Central Administrative Tribunal has granted interim order on 21st August, 2019 as regards transferring of Petitioner from Kalaburagi without any posting. On issuance of notice, the respondent-State of Karnataka appeared before the Central Administrative Tribunal and sought time to file objections. When during the course of operation of Interim Order, the respondent again gave a posting to the Petitioner as Superintendent of Police, CID. The said order also has been challenged by filing fresh application in OA No.969 of 2019 before the Central Administrative Tribunal and notice has been ordered and the prayer made for interim order has been rejected. Against the same, this petition is filed.

2. The learned Senior counsel appearing for the petitioner submits that the impugned action of the Respondent in transferring him to CID is arbitrary and colourable exercise of power when an interim order is operating against the respondent and that when both the parties are before the Central Administrative Tribunal, the transfer order should not have been issued only to defeat the claim made by the petitioner before the Central Administrative Tribunal.

3. The learned Advocate for the Respondent-State submits that the Central Administrative Tribunal itself has made observation that "CAT has no objection, in case, if the petitioner have been given any other posting", and the said liberty has been utilised by the respondent in transferring him to CID. Hence there is no error in the order passed by the Central Administrative Tribunal.

4. We have heard the learned counsel for the parties. Without going into merits of the case, when the proceedings is before the Central Administrative Tribunal, as it is submitted by the learned Senior Counsel that the matter is coming up tomorrow, we have gone through the other materials placed before us. It is not in dispute that the petitioner, there is an interim of stay to the order of transfer from Kalaburagi to the place without giving posting. When an interim order is in operation, for all purposes, the parties before the Tribunal should have waited till the order is passed by the Central Administrative Tribunal. Instead of waiting, the respondent,

in order to defeat the purpose of application before the Central Administrative Tribunal, has transferred the petitioner by giving posting as Superintendent of Police, CID, which is nothing but arbitrary and colourable exercise of power. When the court, including the Central Administrative Tribunal, has granted interim order, that is an order and parties to the proceedings should await for the order without indulging themselves in these type of activities only to defeat the judicial proceedings and pronouncement.

5. Taking note of this, we hold that the respondent-State has acted contrary to the Interim Order passed by the Central Administrative Tribunal and in the ends of justice, it is to be directed to both the parties to await for orders that is to be passed in the pending Application. Hence, we pass the following:

ORDER

Transfer of posting of the petitioner to CID by order dated 30th August, 2019 is set aside and, the parties are directed to await the order in the Application pending before the Central Administrative Tribunal.

6. With the said observation, petition stands disposed of.”

5. Thereafter the matter was taken up on 01.10.2019 when we passed the following order:

“Shri V.N Holla, Senior Panel Counsel, files reply for the Union government. Shri Ponnanna, learned senior counsel, produces a copy of the Hon'ble High Court order in Writ Petition No. 42778/2019 dated 25.09.2019. Shri Sathyanarayana Singh, learned counsel for the State Government, prays for a hearing on 03.10.2019 on the ground that the learned Advocate General would like to appear in the matter. On the consent of all the parties, both OA No. 969/2019 and OA No. 921/2019 will be taken up together. Post on 03.10.2019 for hearing and disposal.”

6. Thereafter the matter was heard on 03.10.2019 and orders were reserved.

7. The legal matrix in the case appears to be this:

In **State of Madhya Pradesh and Another vs. S.S. Kaurav and Others**, 1995 (1) S.C. Services Law Judgements 350, Hon'ble Supreme Court held :

“The court or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administration system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without factual background foundation.”

The Hon'ble Apex Court in the case of **National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash**, 2001 (2) S.C Services Law Judgements 396, held :

“No Government servant or employee of Public Undertaking has any right to be posted forever at any one particular place. Transfer of an employee appointed against a transferrable post is not only an incident of an order of transfer unless such an order is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer. In fact High Court was not right in quashing the transfer order on the ground that it is against the seniority rules.”

In **Shri N.K. Singh vs. Union of India**, (1994) 6 SCC 98, the

Hon'ble Apex Court stated that :

“6. The scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision...”

In **Government of Andhra Pradesh vs. G. Venkata Ratnam**,

(2008) 2 SCC (L&S) 900, Hon'ble Apex Court held:

“The Hon'ble High Court was guided by its own notion of what would be in the Department's overall interest, and where respondent would be more suited. This was not accepted by the Hon'ble Supreme Court. It held that respondents could not be allowed to choose his own place of posting. The Hon'ble Supreme Court allowing the appeal held that "the High Court judgment is

wholly untenable and rather unusual and strange. The judgment was apparently delivered in anger which might have been caused by the Government Pleader or the Director (the second respondent before the High Court). The Court not only lost judicial poise and restraint but also arrived at completely unfounded conclusions. The High court seems to have been completely taken in by ipse dixit of the respondent and his tall claims about his own ability, and virtually allowed him to choose his own place of posting. It is surprising that High Court castigated the respondent's transfer as lacking bona fides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as mala fide”.

8. But then there seems to be an exception in this matter. The DoPT had issued clear guidelines on caregivers and their transfer which will be applicable to all government servants. The applicant has a child who is studying and has a problem with its eye. On the twin grounds of mid-academic transfer prohibited by the pronouncements of the Hon'ble Apex Court and the illness of its child, applicant cannot be transferred at this juncture. In similar cases we have ordered retention till 31st of March but we find from the records that if applicant is given time till 30th of April he would have completed one year of his posting which will have some effect on his future career. Therefore, we direct that the party respondent be posted elsewhere immediately by the government and the applicant will be accommodated at Gulbarga itself till 30th of April, 2020 following which the government can pass appropriate order in accordance with law.

9. We direct the respondents to allow applicant to immediately take charge at Gulbarga following our earlier interim order and it will be as if he was all along continuing at Gulbarga.

10. The OAs are allowed to this extent. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00921/2019

Annexure-A1: Copy of the Notification dated 20.02.2019
Annexure-A2: Copy of the charge transfer certificate dated 24.02.2019
Annexure-A3: Copy of the impugned order dated 19.08.2019
Annexure-A4: Copy of the movement order dated 19.08.2019

Annexures referred to by the applicant in OA No.170/00969/2019

Annexure-A1: Copy of the Notification dated 20.02.2019
Annexure-A2: Copy of the charge transfer certificate dated 24.02.2019
Annexure-A3: Copy of the order dated 19.08.2019 passed by the 3rd respondent
Annexure-A4: Copy of the interim order passed by this Tribunal
Annexure-A5: Copy of the order dated 30.08.2019

Annexures with reply statement

Annexure-R1: Copy of the Indian Police Service (Cadre) Rules, 1954

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