

Balbir Singh Vs Central Bureau Of Investigation And Ors

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Oct. 8, 2018

Hon'ble Judges: V. Ajay Kumar, J; A.K. Bishnoi, Member (A)

Bench: Division Bench

Advocate: Ajesh Luthra, Hanu Bhaskar

Final Decision: Dismissed

Judgement

Ā,

V. Ajay Kumar, Member, J

1. The applicant, an Inspector in the respondent-Central Bureau of Investigation (CBI) and working at New Delhi, filed the OA questioning the

Annexure A-1 Office Order No.954/2016 dated 25.06.2016, whereunder he was transferred from New Delhi to Bhubaneswar.

2. This Tribunal on 12.07.2016, while issuing notices in the OA, directed the respondents that the applicant shall not be relieved, until further orders

and by virtue of the said interim order, the applicant has been continuing at Delhi, till date.

3. Heard Shri Ajesh Luthra, learned counsel for the applicant and Shri Hanu Bhaskar, learned counsel for the respondents and perused the pleadings

on record.

4. Shri Ajesh Luthra, the learned counsel appearing for the applicant while admitting that the transfer of a public servant is an incidence of service and

that no public servant can insist that he should be posted in a particular place and for a particular period, however, submits that if the transfer order is

a result of colourable exercise of power and passed in lieu of punishment and with mala fide intention and in violation of the transfer policy guidelines,

the same is liable to be interfered with, by courts, in exercise of their power of judicial review.

5. The learned counsel further submits that though the impugned transfer order dated 25.06.2016 states that the same was passed on administrative

grounds, but the respondents in their reply to the OA categorically admitted that the transfer of the applicant was made basing on an alleged adverse

administrative report against the applicant. He further submits that as per the Annexure A-6 Transfer Policy of CBI, the normal tenure shall be 7

years in a particular Branch or 14 years at a particular Station, whichever is less and since the applicant joined at Delhi on 03.06.2013, he has not

completed the minimum tenure period of 7 years in the present Branch or 14 years in the present Station and hence the impugned transfer order is

violative of the said Transfer Policy.

6. The learned counsel placed reliance on the judgment of the Hon'ble Apex Court in Somesh Tiwari Vs. Union of India and Others, AIR 2009

SC 139, and on judgment of the Hon'ble High Court of Tamil Nadu in Dr. P. Santhi Vs. Government of Tamil Nadu W.P. No.31396/2014 dated

02.03.2015 and on the judgment of this Tribunal in OA No.444/2003 dated 26.04.2004 in K.R. Prasad Vs. Union of India and Others, in support of his

submissions.

7. Per contra, Shri Hanu Bhaskar, learned counsel appearing for the respondents would submit that once it is admitted that the transfer of a

Government servant is an incidence of service and no Government servant can insist that he should be continued in a specific place of his choice, the

impugned transfer order issued on administrative grounds, cannot be interfered with.

8. The learned counsel while admitting that the impugned transfer of the applicant was affected in view of the administrative ground and cannot be

termed as the same was issued in lieu of punishment or with any mala fide intention. He further submits that no officer is impleaded by his name and

that no personal mala fides were attributed and hence, the submissions of the applicant's counsel with regard to mala fides have to be rejected.

9. The learned counsel also submits that the period of tenure mentioned in the Transfer Policy is of the maximum limit but it cannot be said that no

employee can be transferred unless he completes the full period of the said tenure. He also submits that, even otherwise, the Transfer Policy

guidelines cannot be equated with any statutory provision and even if there is any violation of the same, it would not be a ground for interfering with

the transfer order, unless the same was proved to be done with any mala fide intention.

10. The learned counsel placed reliance on the judgment of the Hon'ble Apex Court in State of U.P. Vs. Gobardhan Lal (2004) 11 SCC 402 and

in Jayant Kumar Vs. Central Bureau of Investigation and Others OA No.2251/2017 dated 20.08.2018 of this Tribunal in support of his submissions.

11. In Rajendra Singh & Others v. State of UP & Others, (2009) 15 SCC 178, the Hon'ble Apex Court held as under:

“6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the

other. He is liable to be transferred in the administrative exigencies from one place 5 OA No.2203/2016 to the other. Transfer of an employee is not

only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to

the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should

continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory

provisions or suffers from mala fides. In the case of Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors. AIR 1991 SC 532, this Court held :

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the

transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post

has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the

competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts

ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to

interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration

which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

8. In N.K. Singh v. Union of India & Ors. (1994) 6 SCC 199,8 this Court reiterated that the scope of judicial review in matters of transfer of a

Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the

grounds of mala fides or violation of any specific provision.

12. In Gobardhan Lal (supra), it was held as under:-

“7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue

in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as

an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order

of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an

authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of

grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to

the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the

competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long

as the official status is not affected adversely and there is no infringement of any career prospects such as seniority, scale of pay and secured

emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be

interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation

of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are

Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This

is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State

and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to

be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no

interference could ordinarily be made with an order of transfer.

13. In *Somesh Tiwari* (supra), the Hon'ble Apex Court held as under:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident

of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one

malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor

germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous

complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that

the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be

set aside being wholly illegal.

14. The applicant failed to prove any mala fides either in law or on facts. As rightly submitted by the learned counsel for the respondents that,

transferring an employee, against whom, an administrative adverse report was received, cannot be stated that the transfer was a mala fide transfer,

and on the other hand, it is to be treated as a transfer on administrative grounds, as was done in the present case.

15. A Coordinate Bench of this Tribunal in Jayant Kashmiri (supra), considered identical submissions and dismissed the OA, rejecting the contention

of the applicant therein that he was transferred, as he was punished by imposing the penalty of Censure.

16. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed and the interim

order dated 12.07.2016 is vacated. No costs.