
(2020) 10 CAT CK 0036

In the Central Administrative Tribunal

Case No : Original Application No. 1254 Of 2020

Ajay Kumar Bassi

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Delhi Special Police Establishment (DSPE) Act, 1946 — Section 4A(1)
Constitution Of India, 1950 — Article 32

Citation : (2020) 10 CAT CK 0036

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant initially joined the Intelligence Bureau in the year 1986. He came on deputation to CBI in 1999 and in the year 20016 he was absorbed therein as Deputy Superintendent of Police. He worked at various placed and on 21.08.2017 he joined the establishment at Delhi. Through an order dated 24.10.2018 he was transferred to Port Blair. Substantial litigation ensued as regards the matters pertaining to CBI at that stage. On 09.01.2019 the order of transfer dated 24.10.2018 was withdrawn. Another order was passed on 10.01.2019 declaring the order dated 09.01.2019, as non-est. This OA is filed challenging the orders dated 24.10.2018 and 11.01.2019.

2. The applicant contends that he was transferred on 24.10.2018 by the In charge Director of CBI only because of the fact that he conducted investigation against the then Additional Director of CBI Sri Rakesh Asthana, on a direction issued by the then Director of CBI Sri Alok Kumar Verma. He contends that Writ Petition (C) No.1309/2018 was filed by the then Director of CBI before the Hon'ble Supreme Court challenging the various orders passed against him and

since the order of transfer dated 24.10.2018 is a sequel to that, he filed I.A.No.157831/2018 in that Writ Petition. It is stated that the Hon'ble Supreme Court disposed of the Writ Petition on 08.01.2019 with some directions and thereafter he made a representation to the Director on 09.01.2019 and an order was passed on the same day withdrawing the order of transfer and despite that, the In charge Director who assumed power on 10.01.2019 has declared the order dated 09.01.2019 as non-est. It is stated that though he filed a Writ Petition in the Hon'ble Delhi High Court, he has withdrawn it on the objections raised by the respondents. The applicant contends that the entire exercise of transferring him to Port Blair is motivated and it is only on account of his acting as an investigating officer in an FIR. Several other grounds are raised by him in the OA.

3. The respondents filed a reply, opposing the OA. They submit that as many as 15 officials of the CBI were transferred at the relevant point of time and while 14 out of them joined the places without any demur, the applicant did not join and had initiated the proceedings before various courts. They contend that the transfer is an incidence of service and the applicant cannot take exception to the impugned orders. By referring to the order passed by the Hon'ble Supreme Court, the respondents contend that the specific challenge made by the applicant in the Writ Petition was not entertained and though the Hon'ble Supreme Court left it open to the applicant to approach the appropriate forum, he filed a representation before the then Director of CBI who held the office just for one day after orders of the Hon'ble Supreme Court that too with several restrictions, and then latter has chosen to withdraw the order of transfer hastily. It is stated that shortly thereafter, the order dated 11.01.2019 was issued. The respondents further contend that the applicant was issued a charge memo on account of his failing or refusing to join to the place to which he was posted even after lapse of more than one years.

4. The applicant filed a rejoinder denying the various contentions raised in the reply filed by the respondents.

5. Sri Ajesh Luthra, learned counsel for the applicant submits that the order of transfer dated 24.10.2018 was passed only because the applicant acted as an Investigating Officer in FIR against the Additional Director. He contends that the transfer was part of the shakeup of the entire organization and that has resulted in filing of a Writ Petition before the Hon'ble Supreme Court. Learned counsel submits that the applicant filed an IA in Writ Petition No.1302/2018 and in that view of the matter he did not join the place to which he was transferred. It is also pleaded that soon after the judgement of the Hon'ble Supreme Court, the applicant filed a representation before the Director of CBI, and the order of transfer was withdrawn on 09.01.2019, but within two days thereafter another order was passed on 11.01.2019 by the Incharge Director treating the order dated 09.01.2019 as non-est. He submits that the applicant filed a Writ Petition (C) No.70/2017 before the Hon'ble High Court of Delhi and since the respondents

raised an objection as to maintainability, he filed the present OA.

6. Learned counsel submits that though the order dated 24.10.2018 mentions that it is issued in public interest, there is nothing of that sort and the expression is used only to cover up the lapses or illegality. He has also argued that if one takes into account, the tenor of the pleadings of the respondents before the Hon'ble Supreme Court and the Hon'ble High Court or the factum of the issuance of the charge memo it becomes there that exists an institutional bias against the applicant. He placed reliance upon the judgement of Hon'ble Supreme Court in *Somesh Tiwari Vs. Union of India*.

7. Sri Hanu Bhaskar, learned counsel for the respondents submits that the transfer of the applicant was in public interest and part of an exercise wherein 15 officials were transferred and instead of joining at the place to which he was transferred, the applicant remained without discharging the duties for more than 1 ½ year. He submits that though the applicant filed IA in the Writ Petition that was pending before the Hon'ble Supreme Court, neither the interim order was passed in his favour nor any relief was granted at the final stage. He contends that though the specific direction to the applicant was to approach the competent court of law, he has chosen to approach the outgoing Director and thereafter filed a Writ Petition before High Court, knowing fully well that the jurisdiction to decide the disputes of that nature lies with the Central Administrative Tribunal. He contends that once the transfer was purely in public interest, the grounds that are pressed to service to challenge the ordinary transfers are not available to the applicant.

8. The facts that gave rise to the filing of the OA, are furnished in brief, in the preceding paragraphs. Some extraordinary developments have taken place in the CBI in the year 2018. The Director of CBI initiated steps against the Additional Director, so much so, that an FIR was also registered. The applicant herein was entrusted with the investigation. The Government and CVC stepped in to do some damage control and passed several orders. The Director challenged the orders passed by the CVC and the Government, before the Hon'ble Supreme Court by filing Writ Petition (C) No. 1309/2018.

9. Almost at the same time 15 officers of CBI including the applicant herein were transferred. The order of transfer passed against the applicant reads as under :-

"Shri A.K.Bassi, Dy.SP, CBI, AC-III, New Delhi is transferred and posted as Dy.SP. CBI, ACB, Port Blair in public interest with immediate effect, and accordingly he stands relieved w.e.f. 24.10.2018 (F/N). He is further directed to join his new place of posting with immediate effect in public interest."

10. The applicant thought it fit to challenge the order of transfer in the Hon'ble Supreme Court itself, by filing an IA in W.P.(C)No.1309/2018. Through its judgement dated 08.01.2019, the Hon'ble Supreme Court disposed of the Writ Petition by issuing several directions. Paras -39,40, 41 and 42 of the judgement are relevant, in fact they are extracted by the applicant in his OA itself. They

read as under :

39. Consequently, in the light of our views as expressed above we set aside the following orders dated 23rd October, 2018:

(i) of the CVC divesting the powers, functions, duties, supervisory role, etc. of Shri Alok Kumar Verma as Director, CBI

(ii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training divesting Shri Alok Kumar Verma, Director, CBI of his functions, powers, duties and supervisory role with immediate effect and until further orders.

(iii) of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training by which one Shri M. Nageshwar Rao, IPS, Joint Director, CBI has been asked to look after the duties and functions of Director, CBI with immediate effect.

40. Our interference, as above, will now require the matter to be considered by the Committee under Section 4A(1) of the DSPE Act, 1946 which may be so done at the earliest and, in any case, within a week from the date of this order. A meeting of the Committee may be accordingly convened by the competent authority.

41. As the issue of divestment of power and authority of the Director, CBI is still open for consideration by the Committee and our interference with the impugned orders has been on the ground indicated above, we deem it proper to direct that the petitioner Shri Alok Kumar Verma, Director, CBI, upon reinstatement, will cease and desist from taking any major policy decisions till the decision of the Committee permitting such actions and decisions becomes available within the time frame indicated. We further make it explicit that the role of the Petitioner Shri Alok Kumar Verma as the Director, CBI during the interregnum and in terms of this order will be confined only to the exercise of the ongoing routine functions without any fresh initiative, having no major policy or institutional implications.

42. Coming to the several IAs filed, we are of the view that the orders of transfer etc. impugned/mentioned in the said IAs are a sequel of the three orders dated 23rd October, 2018 which were specifically impugned in the writ petitions. As we have answered the writ petitions in the manner indicated above, we do not consider it necessary to examine the correctness of the further/consequential orders of transfer etc. and that too on the basis of interlocutory applications filed in pending writ petitions under Article 32 of the Constitution, which stand disposed of by the present order. However, we leave the parties with the remedy of challenging the said consequential orders in an appropriate manner and before the appropriate forum, if so required and so advised.

11. Para - 42 is relevant for the applicant. Their Lordships observed that it is not felt necessary to examine the correctness or otherwise of the order of transfer and it was left open to the parties to challenge the same before the appropriate

forum.

12. What ever may have been the circumstances under which the applicant has chosen to file the IA in the Writ Petition, pending before the Hon'ble Supreme Court, to challenge the order of transfer; once the directions were issued by the Hon'ble Supreme Court as to the method of challenge to the same, he ought to have taken the steps accordingly.

13. Between 08.01.2019, the date on which day the Hon'ble Supreme Court rendered the judgement, and 11.01.2019 certain important developments have taken place. The Director was reinstated by the Hon'ble Supreme Court with various conditions contained in paragraphs 40 and 41 of the judgement. On the next day itself i.e. on 09.01.2019, the applicant made a representation to the then Director. A copy of the same is filed at page-200 of the paper book. It reads as under :

Most respectfully it is submitted that vide HO Office Order No. 386/2018 dated 24.10.2018 issued vide letter No. No.DPPERS.I 12ol8/4425136/02/2OL4-Pers.I(Part-II), I was transferred to CBI ACB, Port Blair. Further, I was relived to join the said place of transfer by CBI AC-III Branch vide Office Order No. 386/2018 dated 24,10.2018.

It is submitted that due to certain personal domestic exigencies, I could not proceed to join my above said place of posting on transfer. An intimation to this effect was also sent to DIG AC-III vide e-mail dated 22.11.2018. The delay in intimating was also regretted in the said e-mail.

It is also most humbly submitted that I have challenged my arbitrary transfer order to Port Blair in the Hon'ble Supreme Court of India and the Apex Court vide its Judgment dated 08.01.2019 passed in Writ Petition (Civil) No. 1309 of 2018 in Shri Alok Kumar Verma Vs Union of India & Anr and Writ Petition (Civil) No. 1315 of 2018 in Common Cause Vs. Union of India & Ors in Para 42 of the Judgment observed that

"Coming to the several IAs filed, we are of the view that the orders of transfers etc. impugned/mentioned in the said IAs are a sequel of the three order dated 23.10.2018 which To >DI were specifically impugned in the writ petitions. The Hon'ble Court leave the parties with the remedy of challenging the said consequential orders in an appropriate manner and before the appropriate forum, if so required and so advised".

In view of the aforesaid Judgment of the Hon'ble Supreme Court of India and my personal domestic compulsions, it is, therefore, requested that my above said transfer order to ACB Port Blair branch may please be cancelled so as to allow me to attend to my family compulsions. I shall be highly thankful to you for this act of kindness.

Yours faithfully,

Sd/-

(Ajay Kumar Bassi)

DSP/CBI

15. Obviously to convince the Director, he wanted to cite a paragraph of the judgement of the Hon'ble Supreme Court. In the name of extracting para-42 of the judgement, he did a calculated manipulation. Only the first sentence of the para extracted by him matches with that of para-42 of the judgement, which we have extracted in the earlier portion of the judgement. He omitted substantial portion which reads as under :

"As we have answered the writ petitions in the manner indicated above, we do not consider it necessary to examine the correctness of the further / consequential orders of transfer, etc, and that too on the basis of interlocutory application filed in pending writ petitions under Article 32 of the Constitution, which stand disposed of by the present order."

16. He seems to have omitted the above in his representation because, he found it to be not favourable to him. The last sentence of the paragraph 42 of the judgement reads

"However, we leave the parties with the remedy of challenging the said consequential orders in an appropriate forum, if so required and so advised."

17. The applicant replaced the words "However we", with the words the "Hon'ble Court". It was not as if he was explaining the purport of paragraph 42 of the judgement. Thus, he presented a manipulated version of Para 42 of the judgment of the Hon'ble Supreme Court. He does not seem to have realised that no court would call itself, as a "Hon'ble" and he did not pay adequate attention even while substituting his own words.

18. We take serious exception to the conduct of the applicant in this behalf. If this is the level of manipulation by an officer of a reputed organization like CBI, that too in respect of the judgement of the Hon'ble Supreme Court, one can easily understand the gravity of the matter.

19. What is more disturbing is that an officer who headed the reputed organization like CBI has acted upon a representation of that nature, and has chosen to pass order on the same day, with jet speed. The judgement was rendered in the Writ Petition filed by him and he did not choose to verify whether the portion extracted in the representation of the applicant is the same as the one contained in the judgement.

20. We are of the considered view that the order dated 9.01.2019 passed by the then Director of CBI was in the teeth of the directions issued by the Hon'ble Supreme Court in para-41 of the judgement. The officer ought to have paused a bit and kept in mind the paragraphs 41 and 42, instead of taking hasty decisions in creating further complications in the reputed organization. When his entry into

the office that too with so many conditionalities was on 09.01.2019, he was not supposed to bestow his entire attention to the issue of transfer of the applicant. The course of action indicated by the Hon'ble Supreme Court in para-42, ought to have been left to be followed by the aggrieved parties including the applicant. The whole episode is in a very bad taste.

21. The hasty step naturally invited quick reaction, once he was out of office and the In charge Director passed the order dated 11.01.2019. In fact that was warranted to undo the entire illegality, if not mischief.

22. Thereafter, the applicant spent considerable time in the process of filing Writ Petition in the Hon'ble High Court of Delhi and then withdrawing. By the time the OA is filed it was more than 1 ½ years from the date of order of transfer.

23. Reliance is placed upon the judgement of the Hon'ble Supreme Court in Somesh Tiwari. That was a case in which the Deputy Commissioner of Central Excise who was working at Bhopal was transferred to Shillong by alleging that he was propagating caste based identity. He filed an OA before the Jabalpur Bench of the Tribunal challenging the same and that was disposed of with a direction to the respondents to consider his representation. When that was not favourably considered, he filed another OA. During the pendency of that OA, he was transferred from Shillong to Ahmedabad. The Tribunal dismissed the OA. Challenging the order of the subsequent transfer, the officer filed Writ Petition in the Writ Petition the Hon'ble Madhya Pradesh High Court. The Hon'ble High Court took the view that the transfer of the officer was on the allegations that he is acting with caste bias, and it was set aside. However, the officer was denied the salary from the date of initial transfer to the date on which he was to join at Bhopal, as a result of the Writ Petition.

24. The officer approached the Hon'ble Supreme Court complaining of denial of the payment of salary for the concerned period. Their Lordships modified the order of the High Court directing that the period shall be treated as leave, which the officer is entitled to. The judgement dealt with the correctness or otherwise of the denial of salary to the applicant, but not the grounds pertaining to the transfer. In fact their Lordships denounced the conduct of an officer who fails to join. (See para 22 of the judgement).

25. In the instant case, we do not find the circumstances of that nature. The order was passed purely in public interest. If any proof of existence thereof is needed, it can easily be discerned, from the sequence of events mentioned above. The applicant was supposed to keep himself away from the administrative and legal battle between the top officials in the CBI on the one hand and the Government and CVC on the other hand. The more and more he tried to link his transfer to such a legal and administration showdown, it tends to become all the more, in public interest.

26. We do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.