

\$~66.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

Date of Decision: 06.08.2019

% **W.P.(C) 8473/2019**

L.S. PADMAKUMAR

..... Petitioner

Through: Mr. Shanker Raju, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. Ajay Digpaul, CGSC with
Mr.Sahaj Garg and Mr. Soumava
Karmakar, Advs. for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CM APPL. 34931/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 8473/2019CM APPL. 34930/2019

1. The petitioner assails the order dated 19.07.2019 passed by the learned Chairman of the Central Administrative Tribunal, Principal Bench, New Delhi in P.T. No. 100/114/2019 preferred by the respondents Central Bureau of Investigation & Another against the petitioner herein. The

learned Chairman has allowed the said Transfer Application and transferred the O.A. No. 713/2019 filed by the petitioner herein before the Bangalore Bench of the Tribunal, to the Principal Bench at Delhi. The petitioner was served a charge-sheet on the date of his retirement from service i.e. 31.05.2019. He preferred the Original Application before the Bangalore Bench of the Tribunal assailing the said charge-sheet on the ground that it had been served upon him after he was relieved from his charge, at about 11:30 PM on 31.05.2019. He claimed that since the charge related to an incident which was more than four years old, the same could not be issued in terms of the Rule 9 of the CCS (Pension) Rules.

2. Admittedly, in the Original Application, the petitioner did not seek any interim stay of the charge-sheet or the disciplinary proceedings. Apparently, the Bench which heard the Original Application at Bangalore, by an *ex parte* order, granted stay of the departmental proceedings. It also directed the respondents to deposit the retiral dues of the petitioner in a nationalised bank.

3. The respondents preferred the transfer petition raising two pleas. Firstly, it was pleaded that the Bangalore Bench of the Tribunal did not have the jurisdiction since the petitioner had retired from Delhi and he had retained his official accommodation for a period of six months. Secondly, the respondents also flagged the order passed by the Tribunal granting *ex parte* stay of departmental proceedings, even though, no such relief had been prayed for by the petitioner in the Original Application. While passing the impugned order, the Chairman has observed that so far as the petitioner's

residence is concerned, no view could be taken on that aspect at this early stage. The Chairman took note of the order passed by the Bangalore Bench of the Tribunal and observed that the various factors taken note of in the impugned order warrants that the Original Application be transferred to the Principle Bench. Accordingly, the Original Application was transferred.

4. The submission of Mr. Raju is that the petitioner had shifted to Bangalore and was residing with his son and, therefore, the petitioner could file and maintain the Original Application at Bangalore. In this regard, he has placed reliance on Rule 6 (2) of the Central Administrative Tribunal (Procedure) Rules, 1987. He places reliance on ***Wing Commander Ravi Mani (Retd.) Vs. Union of India & Ors.***, 2013 (6) ILR (Del) 4751, in support of his submission. He submits that the Chairman erred in observing that it was premature to decide whether the petitioner had his permanent residence at Bangalore, or not. Mr. Raju also submits that the petitioner had pointed out before the Chairman that the exparte order passed by the Tribunal on 26.06.2019, inter alia, staying the departmental proceedings had been assailed before the Division Bench of the High Court of Karnataka at Bangalore in W.P. (C.) No. 29576-29577/2019, and the Division Bench vide order dated 16.07.2019 had not interfered with the same. Thus, even the Division Bench of the Karnataka High Court had not found any error in the exparte order dated 26.06.2019 passed by the Bangalore Bench of the Tribunal. He submits that this aspect has not been noticed in the impugned order.

5. Mr. Raju has also sought to place reliance on the decision of a Division Bench of this Court in *State of Gujarat Vs. R. S. Yadav*, 2002 (97) DLT 446, where this Court has held that the power of transfer from one Bench to another is an extraordinary power, and the said power cannot be exercise on the mere *ipse dixit* of the Chairman. The applicant, invoking the said jurisdiction of the Chairman to seek transfer, must make out a strong case therefor, and the Chairman of the Tribunal must satisfy himself about the exigencies of the situation before passing such an order. The contentions of the parties and the balance of convenience are some of the factors which must weigh with the Chairman before such an order is passed. A final order under Section 25 of the Act ex-parte can never be passed.

6. Mr. Digpaul, who appears on advance notice has supported the impugned order.

7. We have considered the submissions of Mr. Raju, perused the impugned order as well as the record and the decisions relied upon by Mr. Raju.

8. Even if the submission of the petitioner that he had moved his residence permanently to Bangalore were to be accepted, and it were to be held that the Original Application was correctly instituted in terms of Rule 6(2) of the Central Administrative Tribunal (Procedure) Rules, 1987 before the Bangalore Bench of the Tribunal, that did not impinge on the power of the Chairman vested by Section 25 of the Administrative Tribunal Act to transfer the proceedings to another Bench. Section 25 of the aforesaid Act reads as follows:

“25. Power of Chairman to transfer cases from one Bench to another.—On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.”

9. The aforesaid Section, by itself, does not lay down any guideline for the exercise of the power of transfer vested in the Chairman. However, that does not mean that the said power to transfer an application from one Bench to another is unguided, or arbitrary. The said discretionary power like – another discretionary power, would have to be exercised by the Chairman for good and germane reasons, which should be reflected in the order that the Chairman passes while granting or declining the request for transfer made by one, or the other, party and if the said power is exercised by the Chairman on its own motion, even then, he would have to disclose the reasons for the order that he passes for transfer of a pending application from one Bench to another. At the same time, we may observe the width of the power – and the discretion vested in the Chairman, can be gauged from the fact that when the Chairman exercises the said power suo moto, he may pass the order without notice to the parties.

10. The decision relied upon by Mr Raju emphasizes that the power of transfer vested in the Chairman is an extraordinary power and cannot be exercised on the mere *ipse dixit* of the Chairman. The Chairman would have to satisfy himself on an application being made for transfer, that the exigencies of the situation justify the passing of an order for transfer. The Chairman, while passing the order would have to keep in mind the

contention of the parties and the balance of convenience, apart from other relevant factors.

11. The impugned order shows that the Chairman has ordered the transfer of the petitioner's Original Application not on the basis that the Bangalore Bench of the Tribunal did not have the jurisdiction. In fact, the impugned order shows that the Chairman was of the view that it was too early to take a view whether the petitioner herein had become a permanent resident of Bangalore. Consequently, he did not accept the submission of the respondent that the petitioner was a permanent resident of Delhi when he filed the Original Application. The impugned order shows that what has weighed with the learned Chariman, while passing the same is the manner in which the Bangalore Bench of the Tribunal proceeded to pass order for stay of disciplinary proceedings against the petitioner, even though, there was no prayer made thereof in the Original Application. The said development raised apprehensions in the mind of the respondent, which led to filing of the transfer petition.

12. The submission of Mr. Raju that the Chairman, while passing the impugned order has not noticed the decision of the High Court of Karnataka at Bangalore in W.P. (C.) No. 29576-29577/2019 (S-CAT), dated 16.07.2019, whereby the respondent's challenge to the order dated 26.06.2019 had been rejected, does not impress us. The said order has been tendered in Court and has been perused by us. The said order dated 16.07.2019 shows that after the passing of the exparte interim order, inter alia, staying the departmental proceedings on 26.06.2019, the matter was

listed before the Bangalore Bench of the Tribunal on 10.07.2019. Evidently, on 10.07.2019, the Tribunal made it clear to the respondent herein that if they fail to implement the order dated 26.06.2019 qua deposit of the retiral dues of the petitioner, the Tribunal would have to take suo moto contempt proceedings. The Tribunal adjourned the proceedings till 16.07.2019.

13. It appears that the aforesaid writ petition was preferred by the respondent herein before 16.07.2019, and came up before Division Bench on 16.07.2019 itself. The relevant extract from the order passed by the Division Bench in W.P. (C.) No. 29576-29577/2019 (S-CAT) reads as follows:

“4. We have heard the learned counsel for the petitioners and perused the records.

5. Though sufficient time was granted to deposit the entire retirement benefit amounts due to the applicant in any nationalized Bank, petitioner No.1/ Union of India should have complied with the order of the Tribunal. Instead of doing so, they have preferred these petitions. Normally as long as the Court or the Tribunal has got the jurisdiction on failure of the authorities to comply the order which authority should have to pass order either accepting or rejecting pleadings of the parties. We do not find any such error or irregularity committed by the Tribunal so as to call for interference.

6. Accordingly, these writ petitions are disposed of at the stage of preliminary hearing.

Liberty is reserved to the petitioners to move an application. If such application is moved, it is for the Central Administrative Tribunal to consider the same and pass appropriate orders in accordance with law. ”

14. From the above, it would be seen that the Division Bench of the High Court did not at all go into the aspect whether the Bangalore Bench of the Tribunal had acted with propriety, and with justification while passing an *ex parte* order, staying the departmental proceedings when no such prayer had been made in the Original Application itself. The Division Bench merely concerned itself with the non-compliance of the order dated 26.06.2019 – which also required the respondent to deposit the retiral dues of the petitioner, and found justification in the further orders passed by the Tribunal on 10.07.2019 – directing the respondent herein to comply with the order dated 26.06.2019, and putting the respondent herein to notice that the Tribunal would take *suo moto* contempt proceedings if the order dated 26.06.2019 is not complied with.

15. The exercise of discretion by the Chairman to transfer the petitioner's Original Application cannot be said to be arbitrary, or merely founded on the *ipse dixit* of the Chairman in the facts of the present case. The learned Chairman has recorded his reasons for exercising the said jurisdiction vested in him. He has taken note of the fact that the Bangalore Bench of the Tribunal granted *ex parte* stay of the disciplinary proceedings, even though no such relief had been sought in the Original Application. We may observe that even when such an interim relief is sought, the Tribunals/ Courts normally do not grant the same, much less, *ex parte*, because the conduct of the disciplinary proceedings are time consuming and reversible by the order of the Tribunal/ Court. There is no tearing hurry to stay the disciplinary proceedings, much less, *ex parte*. In the light of the aforesaid, if the said aspect was flagged by the respondent before the learned Chairman, to seek

transfer of the Original Application and in exercise of his discretion, the learned Chairman has found merit in the respondent's transfer application, in judicial review, this Court would not interfere with the exercise of the said discretion since the same is founded upon cogent and relevant material.

16. We, therefore, do not find any merit in this petition. Dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

AUGUST 06, 2019

N.Khanna