



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 09, 2023

+ W.P.(C) 6326/2023, CM APPL. 24856/2023

STATE OF BIHAR & ORS.

..... Petitioners

Through: Mr. Azmat H. Amanullah, ASC with
Mr. Hardik Choudhary, Adv.

versus

AMIT LODHA & ORS.

..... Respondents

Through: Mr. S. Sunil, Adv. for R-1
Mr. Ripu Daman Bharadwaj, CGSC
with Mr. Kushagra Kumar, GP for
R-2 & R-3/UOI

AND

+ W.P.(C) 7341/2023, CM APPL. 28535/2023

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CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The captioned writ petitions have been filed by the State of Bihar assailing orders dated March 02, 2023 and March 17, 2023, passed by the Chairman of the Central Administrative Tribunal, Principal Bench, New Delhi in Transfer Petitions bearing PT No.06/2023 and PT No. 27/2023 respectively, whereby an Original Application filed by the respondent No.1 that was pending before the Patna Bench of the Tribunal was transferred to the Principal Bench at New Delhi, and another Original Application filed by the respondent No. 1 before the Principal Bench was retained.

2. At the outset we may briefly narrate the facts leading up to the present petitions. The petitioners herein are State of Bihar and its functionaries. The respondent No.1 is an Indian Police Service (IPS) Officer of the 1998 Batch of Bihar Cadre posted in the State of Bihar.

3. On July 12, 2022, a decision was taken by the petitioners *vide* Memorandum No. 6932 issued by the Department of Home, to initiate disciplinary proceedings against the respondent No.1 under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 ('*Rules of 1969*', hereinafter). The allegations against the respondent No.1 was that when he was posted as Inspector General of Police, Magadh Zone, Gaya, he, in review of Magadh Medical Police Station Case No.197/2021, adopted a biased attitude and in various other



Departmental Proceedings bearing Nos. 43/2020, 20/2017, 140/2016, 141/2016, 40/2020 and 92/2019 provided undue benefits/reliefs to some officers. That apart, the suspension period of one delinquent Mr. Ravi Bhushan who was a Station House Officer at Jehanabad was disposed of by the respondent No.1 in a suspicious manner. The Articles of Charges and the Statement of Imputations of Misbehavior and Misconduct alleged corruption and gross irregularities in his work, indicative of his indiscipline, arbitrariness, ignorance and incompetence towards his duty, which is derogatory to dignity of a Senior Police Officer, culpable under Rule 3(1), 3(1A)(i), 3(1A)(iii), 3(1A)(iv), 3(2A), 3(2B)(iii), 3(2B)(viii), 3(2B)(x) and 3(2B)(xiii) of the All India Services (Conduct) Rules, 1968 ('Rules of 1968', hereinafter).

4. The respondent No.1 challenged the said proceedings in O.A. No. 860/2022 before the Patna Bench of the Tribunal. His case was that he is one of the youngest officers of 1998 batch of Bihar Cadre, and is number one in his batch. He has been empanelled as Inspector General by the Central Government and his name was cleared after a rigorous appraisal of integrity, conduct and professionalism. He has served with distinction in different capacities assigned to him and has been awarded the Police Medal for Gallantry, the President's Medal for Meritorious Service and the Utkrisht Seva Medal. His case was that the charges against him are vague and meaningless and does not amount to any misbehavior or misconduct for which a disciplinary proceeding may be justifiably initiated. He contended that in the absence of any specific charge of *mala fide* or illegal gratification, his



actions cannot result in initiation of disciplinary proceedings. If the delinquent officer passes a judicial/quasi judicial order, the same cannot be treated as having been passed by exceeding his power for any corrupt motive. It is a settled proposition of law that misconduct must necessarily be measured in terms of its nature and be examined as to whether it has been detrimental to public interest. The respondent No.1 evidently has taken lawful action in terms of established procedures/rules and as such the alleged charges are based on surmises and conjectures. Even if the charges are taken on their face value and are construed as error of judgment, the same cannot be termed as 'misconduct' as it is an established principle that error of judgment, carelessness or negligence in performance of duty cannot be construed as misconduct.

5. He has also alleged in the O.A. that the proceedings have been initiated only for the reason that he has reversed various erroneous and illegal decisions of the then Senior Superintendent of Police, who was being protected by the Director General of Police, Bihar.

6. Subsequently, the respondent No.1 filed a Transfer Petition bearing PT No.06/2023 under Section 25 of the Administrative Tribunals Act, 1985 ('Act of 1985', hereinafter), whereby he has sought transfer of the O.A. from Patna Bench of the Tribunal to the Principal Bench at New Delhi. The basis for the Transfer Petition as put forth by the respondent No.1 before the Tribunal, and now before this Court is that the entire actions of the petitioners in initiating the disciplinary proceedings is ill motivated, in order to deprive the applicant of his promotion to the next post of Additional Director



General of Police. It would be in the interest of justice for the case to be heard outside the State of Bihar, as the case of the respondent No.1 is against the state authorities and is sensitive.

7. The transfer petition was allowed by the Chairman of the Tribunal and the O.A. was transferred from Patna Bench to the Principal Bench at New Delhi *vide* order dated March 03, 2023.

8. Meanwhile, another Memorandum was issued initiating separate disciplinary proceedings against the respondent No.1, which was challenged by the respondent No.1 in a fresh O.A. before the Principal Bench along with a Transfer Petition bearing PT No.27/2023 seeking retention of the fresh O.A. before the Principal Bench instead of the Patna Bench which exercised actual territorial jurisdiction. PT No.27/2023 was allowed by the Chairman on March 17, 2023 upon the respondent No.1 citing the order dated March 02, 2023.

9. The petitioners have approached this Court being aggrieved by the order dated March 02, 2023 and the resultant transfer of O.A. No.860/2022 (now renumbered as O.A. No.973/2023) and also the order dated March 17, 2023 and the resultant retention of the fresh O.A. filed by the respondent (now numbered as O.A. No.1130/2023).

10. Mr. Azmat H. Amanullah, learned ASC for the State of Bihar, submitted that the impugned orders are cryptic, nonspeaking and passed in an extremely mechanical manner as would be clear from a perusal of the orders. For the sake of convenience, we reproduce the orders dated March 02, 2023 and March 17, 2023 hereunder:-

Order dated March 02, 2023

“Order of The Tribunal



*For the reasons stated in para Nos. 3&4 of this PT and in exercise of powers under Section 25 of the Administrative Tribunals Act, 1985, I allow this PT. Accordingly, the petitioner's prayer for transfer of OA No. 860/2022 pending adjudication before Patna Bench is transferred to Principal Bench of this Tribunal at New Delhi.
The Registry is directed to take necessary steps in this regard."*

Order dated March 27, 2023

"Order of the Tribunal

For the reasons stated in the P.T. and in exercise of powers under Section 25 of the Administrative Tribunals Act, 1985 r/w Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, I allow this P.T. allowed and retain the proceedings of the subject O.A. at Principal Bench of this Tribunal at New Delhi."

11. Mr. Amanullah submitted that insofar as the order dated March 02, 2023 is concerned, a bare perusal of the Transfer Petition would show that the same does not even contain paragraphs 3 and 4, and the ostensible reasons for which the transfer was sought were mentioned in sub-paragraphs of paragraph No.2, all of which were devoid of any merit.

12. His contention is that the power conferred upon the Chairman of the Tribunal under Section 25 of the Act of 1985 cannot be exercised arbitrarily and without any basis. To hold to the contrary would render the entire purpose of Sections 18 and 19 of the Act, which deals with distribution business of the Tribunal amongst its Benches and filing of applications on the basis of jurisdiction, otiose. He stated further that the territorial jurisdiction of Patna Bench covers



the States of Bihar and Jharkhand, while the territorial jurisdiction of the Principal Bench covers the National Capital Territory of Delhi.

13. The respondent No.1 is an IPS Officer of the Bihar Cadre currently posted as Inspector General, State Crime Records Bureau, Bihar and resides at Patna. The disciplinary proceedings have been initiated by the Home Department, Government of Bihar, with respect to actions taken by the respondent No.1 while serving within the State of Bihar. He stated that without prejudice, the cause of action, if any at all, wholly arose within the jurisdiction of Patna Bench of the Tribunal.

14. Even in the transfer petitions, the respondent No.1 did not allege or disclose any ground to show how he is being prejudiced by the proceedings before the Patna Bench, and as such the transfer petitions needed to be dismissed *in limine*. This shows that the respondent No.1 was attempting to indulge in forum shopping.

15. He has controverted the stand of the respondent No.1 that as he is an All India Service Officer, is governed by the Rules of 1968, and since the Union of India, under whose control and supervision the Department of Home, Patna, operates, has its office in Delhi, the Principal Bench would have the jurisdiction to entertain the issue. According to him, accepting this argument would lead to absurdity and would open floodgates, increasing the workload of the Principal Bench, defeating the very purpose of setting up multiple Benches.

16. He has also opposed the grounds set up in the Transfer Petitions by the respondent No.1 including the allegations that the disciplinary proceedings are ill motivated and malicious in nature, by stating that while there is no truth or basis to these allegations, it is the



Tribunal, Courts and other quasi-judicial *fora* that are to dispassionately assess such pleas and allegations and arrive at the truth. Such allegations cannot be a viable ground for transferring a petition as the same would send a wrong message that the concerned Bench could not be trusted to handle the matters involving such allegations. That apart, he has also stated that the respondent No.1 has failed to indicate as to how the matter was sensitive and whether the standard of such sensitivity would warrant a transfer out of the State of Bihar.

17. According to Mr. Amanullah, if the impugned order is upheld on the basis of the allegations of the petitioner, the same would open floodgates for similar applications on similar vague grounds, and despite a bar of jurisdiction, the litigants will seek and be permitted to engage in forum shopping to transfer/retain petitions to/at a Bench of their choice.

18. That apart, a perusal of Section 25 of the Act of 1985 read with Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987, would indicate that its purpose is to facilitate requests for transfer, of those persons who, due to retirement, dismissal or termination of service may not find it convenient to litigate their grievance before the Bench having territorial jurisdiction. The powers under Section 25 must be exercised sparingly and with circumspection, only where valid grounds are made out. In this regard, he has placed reliance upon the judgments of the Supreme Court in ***Union of India v. Alapan Bandyopadhyay, 2022 (3) SCC 133*** ('*Alapan Bandyopadhyay – I*', hereinafter).

19. Mr. S. Sunil, learned counsel for the private respondent has



reiterated the submissions made before the Tribunal, that the disciplinary proceedings are ill motivated and malicious, undertaken by abusing the process of law, with a view to obstruct/halt the promotion of the respondent No.1 to the higher post of Additional Director General of Police. Additionally, he submitted that the Chairman has adequate powers under Section 25 of the Act of 1985, to transfer any case pending before any Bench of the Tribunal, on an application by the parties, or even *suo moto*. As per him, the Tribunal was completely justified in passing the impugned orders transferring/retaining the O.As. To buttress his arguments, he has referred to the judgment of the Supreme Court in ***P.V. Narasimha Rao v. State (CBI/SPE), SLP (Crl.) No. 2048/1996*** decided on August 22, 1996 and of a co-ordinate Bench of this Court in ***Alapan Bandyopadhyay v. Union of India, 2022 SCC OnLine Del 683*** ('*Alapan Bandyopadhyay – II*', hereinafter), passed pursuant to the judgment in *Alapan Bandyopadhyay – I*.

FINDINGS

20. Having heard the learned counsel for the parties, at the outset, we may state here that W.P.(C) 6326/2023 has been filed by the petitioners herein challenging the order of the Tribunal in PT No. 06/2023 whereby the Tribunal has transferred the OA filed by the respondent No.1 to the Principal Bench, New Delhi. W.P.(C) 7341/2023 arises from an order passed in PT No. 27/2023, wherein the Tribunal has directed the retention of the OA filed by respondent No.1 before the Principal Bench, New Delhi itself.

21. The issue which arises for consideration is whether the



Tribunal was justified in transferring the OA which is pending before the Patna Bench of the Tribunal to New Delhi and also directing the retention of the OA filed before the Principal Bench, New Delhi.

22. Coming to W.P.(C) 6326/2023, the petitioners herein had opposed PT No. 06/2023 before the Chairman on grounds identical to those put forth by them in these proceedings. The same are not repeated for the sake of brevity. From a perusal of the submissions advanced by Mr. Amanullah, it can be noted that one of the issues raised to contest the order of transfer is that though the impugned order dated March 2, 2023 records that it is for the reasons stated in paragraphs 3 and 4 of the Transfer Petition that the petition is being allowed, there are no such paragraphs 3 and 4 in the PT No. 06/2023. We agree with the submission of Mr. Amanullah that though paragraphs 3 and 4 could not be found in PT No. 06/2023, the ostensible reasons for which the transfer was being sought can be found in sub-paragraphs 3 and 4 of paragraph 2 of the Transfer Petition. The omission of a reference to paragraph 2 may be an error.

23. It is noted that the impugned order does not refer either to the stand taken by the parties in support of their respective cases or the actual reasons for allowing the petition.

24. We may state here Mr. Sunil appearing for respondent No.1 has sought to justify the impugned orders by stating that the proceedings which have been initiated against respondent No.1 are ill-motivated and malicious undertaken by abusing the process of law with a view to obstruct and halt the promotion of respondent No.1 to the higher post of Additional Director General of Police. He does state



that though this stand taken by the respondent No.1 is not against the Patna Bench of the Tribunal; since it is against the action taken by State functionaries, it shall be appropriate that the matter is transferred to the Principal Bench.

25. Before deciding upon the issue raised with regard to the legality of the impugned orders, it is necessary to reproduce Section 25 of the Act of 1985, which reads as under:-

“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.”

26. The law with regard to the nature of power exercised by the Chairman of the Tribunal has been settled by the Supreme Court in the case of ***All India Institute of Medical Sciences v. Sanjiv Chaturvedi, (2020) 17 SCC 602***, wherein the Apex Court has clearly held that the power to transfer cases from one Bench to another under Section 25 is an administrative power of the Chairman.

27. Though it is trite law that the scope of judicial review of an administrative action is very narrow, and it cannot be subjected to the same rigours as would be applied to a judicial order, there cannot be any dispute or contest that even an authority exercising administrative power is required to follow the principles of natural justice. In fact, in ***Alapan Bandyopadhyay – II (supra)***, a Co-ordinate Bench of this Court in paragraph 24 of the judgment, on a similar issue, while referring to the decision of the Supreme Court in the case of ***Tata***



Cellular v. Union of India, (1994) 6 SCC 651, has observed as under:-

“24. We also find merit in the contention of the Respondents that the scope of judicial review of an administrative decision is extremely limited and can only be exercised to scrutinize the decision making process. In Tata Cellular (supra), the Hon'ble Supreme Court has culled out the principles delineating the scope of judicial interference and relevant paras from the judgment are as under :-

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

.....”

28. One of the three pillars of the principles of natural justice is the requirement of passing a reasoned or speaking order. Such an exercise introduces fairness in administrative actions and helps minimise and exclude arbitrariness to a great extent. It serves as an explanation as to what is the reason behind any order, which is an indispensable part of a sound judicial system.

29. In fact, we are of the view that this shall be the requirement in law, even if the Chairman is exercising powers under Section 25 of the Act of 1985. The Chairman was to record and specify the reasons for his decision, more so, when the parties before him have taken stands at variance with each other, i.e., the prayer of the respondent No.1 for



transfer of the petition was opposed by the petitioners herein. This we say so in view of the observations made by this Court in *Alapan Bandyopadhyay – II (supra)* wherein in paragraph 25, this Court has upheld an order passed by the Chairman by stating “*The order records the contentions of both the parties and has recorded reasons for transferring the petition from Kolkata to the Delhi Bench of the Tribunal. This Court finds no infirmity in the exercise of the administrative power, either on the procedural aspects or on the merits.*”

30. Additionally, we are fortified in our reasoning as the Chairman in the instant case, is not exercising his *suo moto* power as contemplated under Section 25 of the Act of 1985. Rather the exercise of power is on an application filed by the respondent No.1, pursuant to which notice was issued and arguments were heard from both sides. In such a circumstance, the petition seeking transfer of the proceedings from one Bench to another becomes an adversarial litigation, and therefore it was incumbent upon the Chairman to pass a reasoned order evidencing the reasons for his decision, in the interest of justice.

31. One of the submissions of Mr. Amanullah was that the impugned orders render Sections 18 and 19 of the Act of 1985 otiose. Suffice it to state, we are not impressed by the said plea, as under Section 25 of the Act, the Chairman is expressly vested with the power to transfer cases from one Bench of the Tribunal to another.

32. Now coming to W.P.(C) 7341/2023, the same as stated above, impugns the order dated March 17, 2023 in PT No. 27/2023, wherein the Chairman has stated that the same is allowed for the reasons stated



in the Transfer Petition. Much like the order dated March 2, 2023 in PT No. 06/2023, there is no reference to the stand taken by the parties, and no specific reasoning given to buttress the decision to allow the petition.

33. We note that a detailed reply was filed by the petitioners herein to PT No. 27/2023, wherein similar submissions as noted hereinbefore were made. It is stated by Mr. Amanullah that during the hearing of the petition before the Chairman, the counsel for the respondent No. 1 had made a reference to the order dated March 2, 2023 in PT No. 06/2023 to support his case.

34. Be that as it may, we have already held that the order passed on March 2, 2023 in PT No. 06/2023 is devoid of any reasoning, which is one of the cornerstones of the principles of natural justice, more so, when the petitioners- the State of Bihar had contested the Transfer Petition. The issue being similar in this writ petition, this order dated March 17, 2023 passed by the Chairman is also untenable.

35. Though, Mr. Sunil has relied upon the judgment in the case of ***P.V. Narasimha Rao (supra)***, in view of our conclusion that the impugned orders are untenable, the same need not be gone into.

36. In view of the foregoing discussion, we set aside the orders dated March 2, 2023 and March 27, 2023 passed by the Chairman in PT Nos. 06/2023 and 27/2023, respectively. The same are revived on the Board of the Chairman, Central Administrative Tribunal, who shall consider the Transfer Petitions afresh by hearing the counsel for the parties and pass a reasoned and speaking order in accordance with law. Till such time, no proceedings shall be held in OA 860/2022 (now re-



numbered 973/2023) and OA No.1130/2022 which are pending before the Principal Bench.

37. Accordingly, we fix the date of hearing in the above Transfer Petitions before the Chairman of the Tribunal on 3rd November, 2023.

38. The writ petitions are disposed of in the above terms. No costs.

CM APPL. 24856/2023 in W.P.(C) 6326/2023
CM APPL. 28535/2023 in W.P.(C) 7341/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 09, 2023/aky