

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2920/2w1
IA No.

8-1-2w2

Date of Decision

Shri T. K. Das

...Petitioner (s)

Shri Jag Singh & Shri
Baldev Singh

...Advocate for Petitioner (s)

V E R S U S

VOI & Ors.

...Respondents

Shri N. S. Mehta & Counsel
for the Respondents

...Advocate for respondents

Coram :-

Hon'ble Shri/Smt.

Hon'ble Shri Govindan S. Tamai, Member (A)

1. To be referred to the Reporter or not ? YES

2. Whether it needs to be circulated to
other Benches of the Tribunal ? NO

(GOVINDAN S. TAMAI)
MEMBER (A)

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 2920/2001

New Delhi, this the 08 day of January 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. T K Das S/o Late Sh. H C Das,
F- 005, Pragati Vihar,
Lodhi Road, New Delhi

serving as Controller of Programme,
Doordarshan Copernicus Marg,
Mandi House, New Delhi

.....Applicant

(By Advocate Shri Jog Singh with Sh. Balvendra Singh)

VERSUS

1. Union of India through its Secretary
Min. of Information & Broadcasting,
Shastri Bhawan, New Delhi
2. Chief Executive Officer,
Prasar Bharati, Doordarshan Bhawan,
Copernicus Marg, New Delhi
3. Sh. T R Malakar,
Deputy Director General (DDG)
Doorshan, Parshar Bharti,
Copernicus Marg, New Delhi

.....Respondents
(By Sh. N S Mehta, Sr. Govt. Counsel with Sh. Rajeev
Kumar, Advocate)

O R D E R (ORAL)

The applicant in this case challenges the order dated 19.10.2001 issued by the Respondent No. 3 asking him to lookafter the work relating to Parliamentary Cell and Human Resources Development with immediate effect as being arbitrary and discriminatory in nature.

2. M.A. 2770/2001 has become infructuous as the respondents have produced the records during the oral submission.

[Handwritten signature]

3. Heard Shri Jog Singh with Sh. Balvender Singh, Advocate learned counsel for applicant and Sh. N S Mehta with Shri Rajeev Kumar , Advocates for the respondents.

4. The applicant had joined as Station Director (OG) on selection by the UPSC. He had originally ^{been} L working with the Ministry of Fertiliser and Chemicals, Government of India. After joining I&B Ministry he had worked in various Stations like Darbhanga, Bihar, Kurseong, Siliguri, Calcutta and Port Blair etc. where after in June 1997 he came over to Delhi as Controller of Programme (Policy) in Headquarters. In December 1997 he was posted to Bhopal wherefrom in December 1998 he was posted back to the Headquarters at Delhi once again as Controller Production (Policy). After a year he was transferred to National Channel , to Films Section and once again to National Channel & Sponsored Section in a quick succession. These transfers reflected according to the applicant, unpredictable and unprofessional approach of the respondents and hostility towards him which were violative of L principle of natural justice and against the doctrine of "legitimate expectation". It is alleged that transfers had occurred on account of animus Shri T.R. Malakar , Dy. Director General and Respondent No. 3 had developed towards him. In June 2001 without following the laid down procedure for shifting he was posted by respondent No. 3 from the National Channel to Sports Section just to suit his own convenience and to harass . Thereafter he did not have any posting from 20.8.2001 to 31.8.2001. On his representation, the competent authority issued order dated 31.8.2001 transferring him to Kashir Channel (Kashmir Cell) as Controller of Programme. However on 19.10.2001 Respondent No. 3 took the matter ~~on~~ his own and shifted

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the applicant once again and this time to Parliament Cell and HRD. These transfers are not routine in nature and the applicant was being singled out before completion of a tenure of 3 years and not in public interest and have been made in haste without any administrative exigency or by following the procedural formalities. It is only the vindictive attitude of Sh. T.R. Malakar who has transferred-shifted him repeatedly in quick succession which has hit his normal evaluation for the purpose of further enhancement. This was also because he was an outsider who had joined as Station Director as a direct recruit from elsewhere. Arguing persuasively on behalf of the applicant, Shri Jog Singh reiterated all the pleadings made in the written submissions and specially invited my attention to the Office Order No. 56/2001/S.III issued under No. A.11019/7/2001-S.III dated 31.8.2001 issued with the approval of Chief Executive Officer , Prashar Bharti posting him as a Controller Programme to lookafter the work of Kashmir Cell/ Kashir Channel as against the impugned order dated 19.10.2001 which had been issued according to him by Respondent No. 3 on his own . These orders also fly in the face of the transfer policy guidelines indicated under Ministry of Information and Broadcasting letter No. 310/78/75-B(D) (Vol. II) dated 14.7.1981 whereunder various tenure for transfer / postings are made. In view of the above , the impugned order deserves to be set aside and justice rendered to him pleads Shri Jog Singh, learned counsel for the applicant. The learned counsel also relied upon the decision of the Hon'ble Supreme Court in the case of Amarchand Dalani Vs High Court of MP, Jabalpur & Others [1987 SCC (L&S) 275], relevant portion of which reads as follows:

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" Special Leave Petition is dismissed. But we would like to observe that members of the subordinate judiciary should not be frequently transferred without compelling reasons and ordinarily they should not be transferred before the expiration of the period laid down by the High Court for transfer in regard to any particular station and as far as possible no transfer should be effected in mid-term unless compelled by administrative exigencies. Otherwise, it would not only cause personal hardship and inconvenience to the members of the subordinate judiciary but would also have the effect of demoralising them and would be likely to affect performance of judicial work. " ~

He also referred to the decision in the case of B. Varadha Rao Vs State of Karnataka (1986) 4 Supreme Court Cases 131). Relevant portion is as below:

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally."

5. In view of the above the transfer order which has been issued incorrectly and malafide should be set aside , pleads Shri Jog Singh.

6. Shri N S Mehta, Sr. learned counsel strongly rebuts in the pleas made by the applicant. According to him the OA is premature in as much as the applicant had not availed himself of any departmental remedy before coming to the Tribunal. While it is true that the applicant has been transferred on a few occasions after he was posted to Delhi in 1997 including a tour to Bhopal, these were postings and transfers from one seat to another, and were all within the city of Delhi. These did not at all involve any change of Station , shift of accommodation or disturbance to the education of the children, which normally occur consequent to a transfer . These transfers and postings postings are thus falling within the exclusive domain of the executive

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and it is for the supervisory authorities to decide as to where and how to place the service of an individual officer keeping in mind his suitability, the nature of job to be performed and exigency of service. So long as these transfers have been made by the competent authorities and are in consonance to guide lines issued from time to time and not malafide, there was no way Tribunals are the executive domain which Tribunal's can interfere in them. Shri Mehta urges that as the transfer order has been made within the same station and by authorities who were competent to do so, the same cannot be successfully assailed at all. He has further placed the guidelines and the order of the Supreme Court in the case of N K Singh Vs UOI [1994 (28) ATC 246], relevant para of which is reproduced below:

"23. However, acceptance of the appellant's claim would imply that no other officer in the CBI is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of any to consider himself indispensable is intemperate and unhealthy. Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

The applicant's case squarely falls within the four walls of the above decision and the same cannot thus be challenged.

7. Shri N S Mehta, referred to the points raised by Sh. Jog Singh on the guide lines regarding transfer issued by the Ministry of Information and Broadcasting vide their letter No. 310/78/75-B(D) (Vol II) dated 14.7.81 and submitted that the tenure which is indicated in the policy relates to change of station categorised as "A" & "B" and "C" to which an officer or staff can be transferred. The same does not cover postings ordered with the same station. In the instant case the administration has transferred the applicant from one seat to another and this cannot be considered as a transfer which has violative of the policy. With regard to alleged malafide of respondent No. 3, Shri Mehta also invites my attention to the specific reply given by Respondent No. 3 denying the charges and indicates that the transfer of the individual has been in public interest and there is nothing personal between the applicant and him, as is attempted to be made out. Tribunal's interference in the matter, would send wrong signals all around and should be avoided. The OA has no merit whatsoever and should be disallowed with cost, pleads Sr. Mehta.

8. I have carefully considered the matter. The transfer of officer is a matter which exclusively within the administrative domain of the executive and it is for the superiors of the individual concerned to assess the suitability or otherwise of any particular individual while posting them or shifting them from one seat /cell to another. That being the case the Courts and Tribunal are not inclined to interfere in these turfs of the executive

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authorities, moreso would it be the case where the transfer has been effected within the same station . Until and unless the transfer is made totally in violation of the accepted policy and guide lines and specific malafide the court will not interfere. The present transfer would have to be tested against the above criterion. With regard to first aspect I find that Ministry of Information and Broadcasting had indicated the guide lines for transfer / posting which have been referred to above by both the counsel for applicant and respondents. It is very clear from the guidelines that the period or tenure is fixed for out stations and not for postings within the same station. No norm has been violated and therefore applicant cannot assail this transfer which has been ordered by the respondents. The second aspect to be seen is that whether there is any malafides in the transfer order. The learned counsel for the applicant was at great pains to indicate that the impugned order has been passed on account of malafides and animus of respondent No. 3 towards him which he had made use of transfer . He had also stated that the order of the respondent No. 3 which is being impugned has not been issued with the concurrence of the competent authority, but has only been issued under the signature of respondent No.3. However perusal of the file No. A-11019/7/2001/S.III makes it clear that the impugned order has been issued with the approval of the competent authority i.e. C.E.O. of Prasar Bharti who is the person much higher than respondent No. 3. It cannot therefore be stated that this has been issued only by respondent No. 3 and that too without concurrence of the competent authority. A different inference was possible only if this case was a transfer issued, by the respondent No.3, on his own. Evidently therefore the allegations of violation of the accepted norms

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or policy guidance or the malafide as well the animus of Respondent 3 ~~are~~ is baseless and unacceptable. The order has been issued in proper exercise of the ^{powers vested in it} competent authority who has taken into consideration the requirement of the organisation and the suitability of the available concerned. Too many transfers which the applicant had to suffer earlier were avoidable but as the present transfer has been ordered by the competent authority as brought out in the relevant papers, placed before me for perusal, I do not feel that any interference with respondents is called for. Such an interference would be an improper exercise of the Tribunal's powers. I do not intend to do so.

7. I am convinced that applicant has not made any case for my interference. Application therefore fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/