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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3346/2001

New Delhi this the 24th day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri A.N. Rai,
S/o late Sh. L.M. Rai,
R/o RZ-D/20, Roshan Vihar-II,
Najafgarh, New Delhi.

-Applicant

(By Advocate Ms Harvinder Oberoi)

-Versus-

Union of India through:

1. Secretary,
Ministry of I & B,
Shastri Bhawan,
New Delhi.
2. Chief Executive Office (CEO),
Prasar Bharti, Akashwani Bhawan,
New Delhi.
3. Director General, All India Radio,
Akashwani Bhawan, New Delhi.
4. Director General (News),
News Service Division,
All India Radio, New Delhi.
5. Director of Programme (Personal),
(AIR) Akashwani Bhawan,
New Delhi.

-Respondents

(By Advocate Shri J.B. Mudgil)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 28.11.2001, whereby his request for cancellation of his transfer from News Service Division to National Channel AIR has been rejected. He has sought quashment of this order with direction to respondents to strictly act according to rules.

2. Applicant has been working as Transmission Executive and was transferred on 6.8.99 from AIR to department of News Service Division. He was again

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transferred to the office of Station Director, AIR vide order dated 7.9.2000. On representation same was cancelled and he was allowed to continue to work in NSD. By an order dated 25.9.2000 applicant was transferred from News Division to National Channel, AIR. Applicant preferred OA-2029/2000 before this court and by an order dated 30.8.2001 noting all the contentions of applicant as well as respondents directions have been issued to treat the OA as representation and to dispose of the same by passing a detailed and speaking order. Till then applicant's posting was directed not to be disturbed.

3. In compliance of the aforesaid direction by an order dated 28.11.2001 request of applicant to retain him at NSD, AIR, New Delhi was rejected, giving rise to the present OA.

4. By an order dated 13.12.2001 status quo was maintained by this court.

5. Learned counsel for applicant Ms Harvinder Oberoi contended that whereas in the earlier OA filed Director General, AIR was one of the respondents to whom directions have been issued to dispose of the representation, but the representation has been decided by the Consultant, who has been appointed on 17.10.2001 and was not authorized to implement the decision by office order dated 17.10.2001 issued by Director General. Moreover, by referring to transfer policy it is stated that the same has not been adhered to while effecting transfer of applicant. According to her aforesaid policy is not geographically operated and is applicable in cases of

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inter-station transfers. By referring to the list, showing the names of AIR station it is stated that even in Delhi itself there are two stations in category 'A' as well as News Service Division is one of the categories. Referring to clause 9 of the transfer policy it is stated that as a normal rule a person with longest stay at the station is to be transferred and in this conspectus it is stated that in NSD applicant was juniormost and other persons like Y.P. Singh, Ashok Mehra, Sukhdev Singh, Rangrajan, Ruby Mishra, Vinod Kumar and Rajni who were senior to him were not transferred. As transfer effected is against the policy the same is liable to be set aside.

6. Ms. Oberoi contended that Delhi consists of nine different installation having different stations, transfer of applicant from NSD to National Channel is covered within the ambit of the transfer policy. By referring to the transfer resorted to through order dated 6.8.99 it is stated that even in case of posting within the Delhi Zone the same is having a nomenclature of transfer.

7. Learned counsel further stated that transfer is vitiated by malafides in so far as applicant who is General Secretary of the newly formed and registered Association, i.e., PSWA, which has been opposed by Director (Personnel) Sh. A.K. Padhi who was the signatory desisting the various officers not to break away from the earlier Association. It is also stated that as the election for the various posts Programme Staff Association was conducted and challenged by applicant in Civil Suit No.70/2000 which is pending before the Civil Judge, Tis

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Hazari, Delhi to pressurize applicant and to stop his activities by way of punitive measure transfer has been resorted to, which cannot be sustained in law.

8. On the other hand, respondents' counsel strongly rebutted the contentions and stated that transfer policy dated 31.12.1992 is made applicable to transfer from one stage to another and one station to another station in the country and is not applicable either within the zone or within the State governing the service condition of employee. It comes into operation only when station is changed. As applicant is transferred from one establishment to another within the Delhi State which is a normal incident of service and is resorted to on administrative exigencies and public interest the same cannot be interfered with by this court.

9. It is stated that in so far as Consultant issuing orders, though no specific plea has been taken by respondents yet Director General has assigned the work of implementing the direction of the Court through letter dated 17.10.2001 to the Consultant and the decision arrived at on representation is the decision of the Director General.

10. In so far as Association is concerned, it is contended that the Programme Staff Association of AIR and Doordarshan of which applicant is the General Secretary is not a recognized Association and in view of OM dated 8.4.69 it is only when the association is recognized it is

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forbidden to transfer the General Secretary. As the Association is a non-recognized transfer resorted to cannot be found fault with.

11. It is stated that speaking order has been passed on the representation of applicant and the services of applicant were placed at the disposal of the Station Director, AIR for further posting which was subsequently withdrawn and applicant was transferred from NSD to National Channel as per his suitability and capacity to work, which is directly proportional to the result.

12. In so far as tenure laid down for the offices at the same station is concerned, it is contended that transfer policy is not applicable to inter-station transfers. The time limit would have no application.

13. In the rejoinder applicant has re-iterated his pleas taken in the OA.

14. I have carefully considered the rival contentions of the parties and perused the material on record. At the outset, a transfer which is neither malafide nor in violation of the rules cannot be interfered with by this Tribunal in a judicial review. If the transfer is founded on administrative exigencies and public interest the wheels of administration should be allowed to run smoothly and as an appellate authority this court cannot act in a judicial review. The aforesaid dictum has been laid down in the following cases:

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i) N.K. Singh v. Union of India & Ors. 1994 (28) ATC 246 (SC).

ii) Union of India v. S.L. Abbas, 1993 (2) SLR 585 (SC).

15. Apex Court in National Hydroelectric Power Corp. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574 held that "transfer of employee, held, is not only an incident but a condition of service. Unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine. Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management."

16. Moreover, in State Bank of India v. Anjan Sanyal, (2001) 5 SCC 508, Apex Court observed "unless mala fide, or prohibited by service rules, or passed by an incompetent authority, held, should not be lightly interfered with, in exercise of a court's discretionary jurisdiction."

17. If one has regard to the aforesaid rulings and applying the same in the conspectus of the present case the contention of applicant that transfer policy is applicable in case of inter-station transfer is concerned, cannot be countenanced. The policy laid down envisages normal tenure at station officers category as 'A', 'B' and 'C'. In 'A' category Delhi figures at two places and in 'B' other places in different States are enumerated. It is only when a transfer is to be resorted from one category

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office to another outside the State only then the normal rule of longest stay at the station is to be adhered to. The aforesaid policy would not be applicable in a case of inter-state transfer. Applicant who was working in NSD station, transferred to National Channel within the State as different establishments are situated in Delhi in exigencies of service and in public interest an employee can be posted from one establishment to another which does not require transfer policy to be applied either geographically or otherwise. Transfer of applicant from one establishment to another is on account of requirement of post and his suitability and in my considered view is in public interest and administrative exigencies.

18. In so far as plea that as applicant was General Secretary and had formed a new association and on appeal competent authority Sh. A.K. Padhi who was the signatory desisted various officers not to break away from the earlier Association is not sufficient to establish malafides. Moreover, in a case of malafides necessary party should be made as a respondent in person which applicant has failed to do and accordingly a general malafide directed against Sh. A.K. Padhi would not be sufficient to discharge the requirement of law.

19. In so far as other malafides are concerned, as the association is not recognized being General Secretary of the association applicant is not exempted from being subjected to transfer as per OM dated 8.4.1969.

20. Learned counsel for applicant has miserably failed to show any other provision or rule of which violation has been made, which makes the transfer order as malafide or punitive in nature.

21. As settled by the Apex Court one does not have an indefeasible right to a particular post or posting and one can also not choose his choice posting. If applicant has been required in National Channel AIR, he has no right to continue in NSD.

22. As applicant has failed to establish any malafides and in absence of any violation of the transfer guidelines or statutory rules and the fact that orders have been passed by the competent authority, I do not find any legal infirmity either in the transfer order or in the order passed by the respondents which has dealt with the contentions of applicant and a reasoned order has been passed, rejecting request of applicant for stay of transfer.

23. In the result, for the foregoing reasons, as the OA is found bereft of merit and is accordingly dismissed. No costs. Interim order is vacated.

S. Raju
(Shanker Raju)
Member (J)

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