

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2448 of 1999

New Delhi, this the 7th day of December, 1999

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Shri B.D.Prasad
s/o Shri Lal Prasad
R/o 50/2B, Type III, Sector III
D.I.Z.Area, K.B.Marg
New Delhi-110001

-APPLICANT

(By Advocate: Shri George Paracken)

Versus

1. Union of India
Through its Secretary
Ministry of Information and
Broadcasting,
Shastri Bhawan,
New Delhi-110001

2. Director,
Publications Division
Patiala House,
New Delhi-110001

-RESPONDENTS

(By Advocate: Shri V.S.R.Krishna)

ORDER

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant is aggrieved by an order dated 22.10.99 (Annexure 'A') vide which he has been transferred to Sales Counter, Guwahati. The applicant has prayed for quashing of this order and also that he be allowed to continue in the present post and be not transferred out of Delhi until a transfer policy is framed by the respondents.

2. Facts in brief are that the applicant had joined under the respondents as Sales Representative with effect from 13.1.84. Thereafter he was promoted as Business Executive with effect from 8.8.89 and transferred to Patna. The applicant has alleged that his posting at Patna was not proper since there was no post

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of Business Executive at Patna and the only post available there was of Business Manager. He was forced to perform the duties of Business Manager. The applicant has submitted that since his juniors were not willing to be posted at Patna, he was posted there. He also states that he has been transferred to various other places such as on deputation to Ministry of Defence, New Delhi and also to Sales Emporium, Lucknow. From Lucknow, he was again transferred to Patna. He also alleges that the respondents are making frequent transfer orders against him and posting him outside Delhi in order to accommodate his junior Shri V.S.Rawat, who is posted in the Employment News, New Delhi as Assistant Business Manager. He alleges that he has been subjected to transfer so that he may not be in a position to defend his case before the Tribunal in OA-962/99 filed by his junior Shri V.S.Rawat. It is also stated that the transfer order has been issued in an arbitrary manner in order to harass him. It is further stated that it has been issued in a colourable exercise of power which on the face of it, is stated to have been issued in public interest or on administrative grounds but, in fact, it is malafide and totally arbitrary.

3. Respondents have contested the O.A. by filing a reply. They have stated that the application has been filed in violation of the provisions of Section 20 of the Administrative Tribunals Act. The applicant has submitted his representation on 1.11.99 for cancellation of order regarding his transfer from New Delhi to Guwahati and without waiting for a reply even for a fortnight, he rushed with this OA to the Tribunal on

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15.11.99. However, the respondents have given him a reply on 24.11.99 wherein reasons for not acceding to his request have been given and it is also stated as to how and why he is being transferred. The respondents have also explained in para 5 of their reply that as per the report of the Staff Inspection Unit, only five posts of Assistant Business Manager in Publications Division have been recommended as against the existing seven. But in between the period of study undertaken by the SIU and the actual implementation of its recommendations there were changes in the working arrangements of the Division and among other things, one Mobile Book Van was purchased to promote sales of publications brought out by the Division in the North Eastern Region of the country. Since the purchase of this Van, on account of inadequate staff, it was not being put to the desired use. Therefore it was decided to transfer one of the post of Assistant Business Manager with a view to ensure proper utilisation of Mobile Book Van. Since the applicant was awaiting his posting order so he had been transferred to Guwahati.

4. As regards the grievance of the applicant against Shri A.K.Duggal, the respondents have submitted in their reply that he was offered promotion twice but he refused to accept the same. So far as the second regular Asstt. Business Manager is concerned, he is posted outside Delhi at Feeder Store, Faridabad and the third is the applicant himself. The other two posts of Asstt. Business Manager are stated to be managed by ad-hoc employees and U.P.S.C. had been requested to select candidates through direct recruitment to replace the

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ad-hoc Asstt. Business Managers and as soon as the direct recruits become available, the ad-hoc arrangements have to be terminated. Keeping in view these administrative factors, the ad-hoc appointees were considered for transfer. It is denied that the applicant is being transferred so that he may not pursue the matter filed by Shri V.S.Rawat before the Tribunal.

5. Rejoinder to this reply was also filed wherein the contentions raised in the OA have been reiterated.

6. I have heard the learned counsel for the parties and gone through the records.

7. The main ground of the applicant is that he has been subjected to frequent transfers since persons having longer duration of stay at Delhi are allowed continuously to stay and he has been singled out for transfer time and again. He has also submitted that Shri A.K.Duggal has never been transferred outside Delhi. He further submitted inspite of the fact that Shri Duggal had refused his promotion as he was unable to move out of Delhi, even then there was no bar for the respondents to transfer him as Asstt. Business Manager outside Delhi. Delhi.

8. Learned counsel for the applicant also relied on a judgement in the case of Y.Kurikesu vs. Senior Superintendent of Telegraph Traffic, Trivandrum Division & ors. (O.A.484/93) decided by C.A.T., Ernakulam Bench. He also referred to a judgement in the case of Jayashree

L.Narayanan (Mrs.) and another vs. Union of India and another (O.A. Nos.756 and 757 of 1991) decided by the C.A.T., Madras Bench on 20.2.92.

9. Shri Krishna, learned counsel for the respondents stated that the application is premature since the applicant had filed this O.A. without awaiting for the reply to his representation. He also stated that since the applicant has filed this petition against the Secretary, Ministry of Information & Broadcasting, he should have at least made a representation to that authority who could have taken a decision in that regard. He further submitted that the representation made by the applicant on 1.11.99 has been decided by a reasoned order during the pendency of the O.A. and there is no iota of malafide against the applicant. It is the right of the management to transfer an employee and the management is to see who is the fit person to be transferred to a particular place. As such, the respondents have exercised their right in a most bonafide manner and the transfer order cannot be quashed.

10. To my mind, the fact that the applicant has been subjected to frequent transfers is quite clear from the records and has not been denied by the respondents in their reply. It is also not clear from the record as to what criteria is being adopted to transfer an individual from one place to another. Except the use of words "public interest" or "administrative exigency", nothing is clear from the reply of the respondents. Admittedly, there is no transfer policy framed by the respondents nor there are transfer rules for transfer of Asstt. Business

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Managers. That is why, perhaps the applicant has prayed for a direction to the respondents to frame a policy regarding transfers of Asstt. Business Managers. In this regard, I may also mention that the judgement cited by the applicant's counsel in O.A.484/93 decided by Ernakulam Bench also states as under:-

"Transfer can only be in public interest and for no other reason (except when it is by way of disciplinary action). The expression "public interest" is not a magic word which can do service for anything in any situation. Nor is it a carpet under which anything could be swept. Expression "public interest" has a definite purport and in a particular case such interest must be disclosed or discernible. It has not been done here. The expression "public interest" like the expression "exigencies of public service" is often made an apology, for something that cannot be justified. It is clear from the fact that the transfer ordered is not supportable (prima facie) on any principle, rule or other known norm."

11. Another judgement cited by the applicant's counsel in OA Nos.756 and 757 of 1991 decided by the C.A.T., Madras Bench reads as under:

"In the present case, we find that the principle followed by the respondents for the transfer to a station which is admittedly a hardship station can hardly be considered to be reasonable. The principle that the juniormost must be transferred out is not just. Normally, a person who has served long at the same station continuously should be considered as a person who has to be transferred first. A person who has come most recently to a station should be the last person to be transferred out normally. The principle of seniority or juniority in a particular cadre cannot determine the question of the order in which persons in a particular station will have to be transferred out on administrative grounds."

12. According to the judgement of the Ernakulam Bench, it is clear that the passing of transfer order is in the right of the management but it can be made only in public interest and for no other reason. It was also

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held that the expression "public interest" like the expression "exigencies of public service" are often made an apology for doing something that cannot be justified.

13. I may further mention that the Madras Bench in OA Nos.756 and 757 of 1991 observed that "transfer of juniormost without regard to length of service at a particular station is unreasonable and arbitrary."

14. Keeping in view the observations of the court in the above two judgements and the contention of Shri Krishna, learned counsel for the respondents that the applicant should have waited till the disposal of his representation and before rushing to the Tribunal, he should have made a representation to the Secretary, Ministry of Information and Broadcasting who has been made a party to the present OA as respondent no.1, I feel that in this case, the representation of the applicant requires to be examined at the level of respondent of 1, particularly with regard to his allegation of frequent transfers and juniors being retained at the same station.

15. In view of the above discussion, I dispose of this O.A. with the direction that the applicant shall make a detailed representation to respondent no.1, namely, the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi, who will specifically examine (i) whether any public interest is involved in the transfer order; or (ii) there was any discriminatory treatment between the applicant and other Assistant Business Managers, particularly Shri

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A.K.Duggal. Representation so filed by the applicant, shall be decided by respondent no.1 within four weeks from the date of receipt of the same.

16. The O.A. is disposed of with the above directions. No order as to costs.

Kuldeep
(KULDIP SINGH)
MEMBER(JUDL)

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