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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.433/95

New Delhi this the 24th Day of March, 1995.

Hon'ble Shri J.P. Sharma, Member (A)
Hon'ble Shri B.K. Singh, Member (J)

Shri Vinod Sharma,
S/o Shri Zile Singh Sharma,
R/o 28/II A.L.T.T.C.
GhaziabadApplicant
(By Advocate : Mrs Rani Chhabra)
VERSUS
UNION OF INDIA, THROUGH

1. Secretary,
Ministry of Telecommunications,
Sanchar Bhawan,
New Delhi.
2. The Chief General Manager,
Northern Telecom Region,
Kurshidlal Bhawan,
New Delhi.
3. The Assistant Director General (STN)
Deptt of Telecommunications,
Sanchar Bhawan, New Delhi.
4. The Chief General Manager,
Deptt of Telecommunications
ALTTC, GHAZIABAD.
5. The Sub Divisional Engineer (Admn),
ALTTC Ghaziabad.

(By Advocate : Shri M.K. Gupta)

Judgement (Oral)

(By Hon'ble Shri J.P. Sharma, Member (J))

The Applicant has been working in the Department of Telecommunications, and was posted in the Office of the General Manager, ALTTC, Ghaziabad as Time Scale Clerk, and presently designated as Telecom Office Assistant (TOA), has challenged the Order of Transfer dated 1.3.1995 issued in pursuance of DOT Order No.203-1/95-STN dated 13.02.95 and GMT Orissa Circle Order No.ST-220/8-72/95 dated 28.02.1995 by which the services of the applicant in the same capacity has been struck off from the strength of ALTTC Ghaziabad and he

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has been directed to report TDE, Koraput, Orissa Circle in the same capacity, (Annexure A-10).

2. The applicant has also prayed for interim relief and for retention of this file before the Principal Bench. The file has been ordered to be retained because of the vicinity of Ghaziabad to the Principal Bench. For grant of interim relief, order was passed on 9.3.95 that transfer order be stayed and the status quo be maintained for a period of 14 days. That order continues till today.

3. The respondents on notice filed a reply stating that the transfer of the applicant is in the public interest and in accordance with Para 37 of P&T Manual Vol IV. It is said that in the exigencies of the service and special circumstances of the case, as an investigation by the CBI on certain allegations of corruption for falsely encashing a cheque, against the applicant are pending and a case has been registered against the applicant by the CBI and the same is under investigation. It is stated the investigation against the applicant could not go smoothly as the applicant is interfering in the fair investigation either by tempering with the witnesses or persuading them not to testify against him. Considering this fact the impugned order of transfer has been passed. The learned counsel for the respondents Shri M.K. Gupta has placed a letter before us and we have passed it on to the learned counsel for the applicant Mrs Rani Chabra who also perused the same. The respondents, therefore, have taken the stand that there is no discrimination.

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arbitrariness or malafide in shifting the applicant from ALTTC Ghaziabad where he was TOA in the same capacity to CGMT, Orissa Circle, at Koraput.

4. We have heard the learned counsel for the applicant at considerable length. The learned counsel has referred to the decision of the Hon'ble Supreme Court in the case of B. Varadha Rao Vs State of Orissa; 1986 Vol 4 SCC 431. In that case the Hon'ble Supreme Court has held;

"It is well understood that transfer of government servant who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service and therefore does not withhold any alteration of any of the conditions of service to his disadvantage. (emphasis supplied). That a government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of government servant and no government servant can claim to retain in a particular place or in a particular post unless, of course, his appointment itself is to be specified non-transferable post."

The learned counsel for the applicant has also referred to the Full Bench decision Kamlesh Trivedi & another (P.B) Vs Indian Council of Agricultural Research, and Others reported in 1988 Vol (2) ATR C.A.T 116.

5. We have gone through the law stated by the learned counsel and also read along with the learned counsel for the applicant para 13 of the Full Bench decision.

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The Para 13 is reproduced below :

"It is, therefore, clear that K.K. JINDAL's case is not an authority for the proposition that when complaints are received and the exigencies of service require that a transfer be made, an inquiry must necessarily be held into the complaint before transfer is ordered. Nor did it lay down that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be penal in nature. All that it laid down was that a finding as to misconduct and finding which attaches stigma to the employee not preceded by an enquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer."

The contention of the learned counsel for the applicant is that by virtue of appointment letter Annexure A-1 to the application, Sub-para vii of Para 2, where both are read together, it may be inferred that the applicant cannot be transferred and belongs to non-transferable cadre except in special circumstances. However, this point is not disputed that the person has liability to serve in any part of India, that he can be transferred in special circumstances of the case. The learned counsel for the applicant also pointed out that in February, 1995 the applicant has made a representation that some of his juniors have been promoted ignoring the claim of the applicant. It appears that the reply was given to the applicant subsequently thereafter that his name has been struck down from the roll of ALITC Ghaziabad as he has been transferred to Koraput in Orissa.

6. The contention of the learned counsel cannot be favourably accepted because it is not disputed that the CBI has registered a case against the applicant and the same is under investigation. It is not challenged by the

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applicant that the case is under investigation. Merely certain letters written by the internal Vigilance of the Tele-communication that no case is pending will undo the registered case before the CBI. A fact cannot be twisted by hundred texts. Writing by the Internal Vigilance has, therefore, no meaning when a case is in progress against the applicant

7. The contention of the learned counsel for the applicant that the wife of the applicant is working and the children are in the mid-session of schooling and therefore, transfer of the applicant should be stayed. However, as already held by the Hon'ble Supreme Court in the case of Union of India vs SL Abbas reported in 1993 ATC (Vol.4) P-357; the liability to serve by the spouses as per the rules, and conditions of service have All India liability of transfer in public interest which cannot be interfered with unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions. The same view has been taken up by the Hon'ble Supreme Court in case of Bank of India Vs Jagjit Singh Mehta; 1992 Vol 1 SCC P-306. In view of this though the family of the applicant may suffer some hardship but at the same time it is for the employer to visualise the same on the representation made by employee and does not need any interference by the judicial forum.

8. It is likely to effect the education of the children but the respondents in their sympathetic consideration allow the applicant to retain the government quarter if any till the session of the education of the children is over. It is expected that

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the employee who is transferred in the mid of the session will also be adjusted though that may not be part of the service rules.

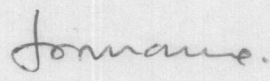
9. We also find that the order of transfer is not malafide or arbitrary. The transfer of the applicant has been effected at the request of Superintendent of Police, CBI, but only because the investigation is in progress against the applicant on a registered complaint was not going on smoothly on account of interference by the applicant in the process of investigation. It is, therefore, expected and the learned counsel for the respondents did not dispute this fact that the moment investigation is over, the respondents will sympathetically consider and review this order of transfer.

10. In view of this we do not go on further to probe into the matter. It shall be open to the applicant to make representation to the respondents when the said investigation is over and the respondents may consider the same objectively in the interest of their own employee.

11. At this stage, this application does not need any judicial interference and the application is dismissed leaving the parties to bear their own costs.

The interim passed earlier is vacated.


(B.K. Singh)
Member (A)
sss


(J.P. Sharma)
Member (J)