

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2370/96

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Date of decision 12-2-1997

Sh.P.Dorai Raj ... Petitioner

Sh.K.S.S. Rajan ... Advocate for the
Petitioner

Vs.

UOI & Ors ... Respondent(s)

Sh.M.K. Gupta ... Advocate for the
Respondents

CORAM

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

- (1) To be referred to the Reporter or not? *yes*
(2) To be circulated to all Benches of the
Tribunal? *X*

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2370/96

New Delhi this the 12th day of February, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

P. Dorai Raj,
Cameraman Grade-I,
Doordarshan,
Mandi House,
New Delhi-1.

...Applicant.

By Advocate Shri K.B.S. Rajan.

Versus

1. The Union of India, through
its Secretary,
Information and Broadcasting,
Shastri Bhawan,
New Delhi.

2. Director General,
Doordarshan,
Mandi House,
New Delhi.

...Respondents.

By Advocate Shri M.K. Gupta.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the transfer order dated 8.10.1996 transferring him from DDK Delhi to DDK Aizwal. The applicant has not denied that he has an All India Liability of transfer as he is working as Cameraman Grade-I with the respondents' organisation. However, Shri K.B.S. Rajan, learned counsel, has submitted that the impugned order transferring the applicant has been passed contrary to the relevant guidelines issued by the respondents. Para (ix) of these guidelines - professed norms for transfer - provides as follows:

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"When the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station, irrespective of the rank(S) held by him earlier, should ordinarily be transferred first. For this purpose, the service rendered at a station as a Local recruit will not be taken into consideration for determining the length of continuous stay at that Station. Also, the actual period of continuous service at the site(s) of installation(s) will be excluded for computation of continuous is more than ninety days in a calender year".

(emphasis added)

2. According to the applicant, in terms of the provisions of para.(ix) above, since there were as many as nine other persons, who were senior to him, who were posted at Delhi, the respondents had not followed the norms for transfer. In his representation made to the respondents on 9.10.1996, he had mentioned, inter alia, that other persons, for example, Shri Rajesh Bhatia and Shri Rajiv Rai, who had ~~been~~ longer stay at Delhi have not been transferred out whereas he has already undergone two transfers, namely ^{to} (1) Amritsar and (2) Madras. The other ground he had taken was that as per the transfer policy, the transfer should be effected during the month of April/Month which has not been followed in the impugned order dated 8.10.1996. During the course of arguments also, the learned counsel for the applicant had submitted that since the applicant's daughter was appearing for the Xth class Board Exams, he may not be transferred till atleast May, 1997, if at all he has to be transferred. He had further submitted that in any case the applicant's transfer can be considered only along with the other persons who had longer stay at Delhi who were transferred by the office order dated 18.11.1996.

3. This O.A. was filed on 5.11.1996 and by the interim order dated 7.11.1996 the respondents were directed to maintain status quo as on that date, which order has been continued from time to time.

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4. The respondents have filed their reply. They have submitted that the applicant has completed more than normal tenure of four years at Delhi Station and since he has ^{an} all India transfer liability, the impugned transfer order being an incident of service was valid. They have stated that the applicant was guilty of suppressing material facts. According to them, by the order dated 30.10.1996, the applicant had stood relieved from Delhi w.e.f. 4.11.1996. Shri M.K. Gupta, learned counsel for the respondents, has, therefore, submitted that the applicant was well aware of the relieving order issued on 30.10.1996 as he was on duty on that date and he, therefore, stood relieved on 4.11.1996 to assume his posting at Aizwal. In this connection, the respondents have produced the relevant records, including the Peon Book showing entries as on 31.10.1996 and the duty chart of Cameramen Grade-I, including that of the applicant for the relevant period from 30.10.1996 to 4.11.1996. The respondents have submitted that as per their records, the applicant had performed his duties on the dates when they had tried to serve the relieving orders but since he has not accepted the same when it was delivered through the Peon till 4.11.1996, the relieving order was sent to him by Registered post which the applicant states that he had received only on 8.11.1996, i.e. after the aforesaid interim order ^{was} passed by the Tribunal. Further, they have submitted that the applicant has not exhausted the departmental remedies as he had submitted representation dated 9.10.1996 against the impugned transfer order dated 8.10.1996, which the competent authority has considered dispassionately, but they have not sent a formal reply to the applicant as the matter is subjudice.

5. The respondents have in their reply submitted that there were only seven other Cameramen Grade-I who had longer stay, other

than the applicant and among them S/Shri Ajay Julka and Surinder Kumar have already been transferred along with the applicant by order dated 8.10.1996. Regarding Shri Rajesh Bhatia, although his transfer from Delhi has also been decided, they have briefly held it back for administrative reasons and the rest of the Cameramen Grade-I, namely, S/Shri Rajiv Rai, Anil Kumar Singh, U.N. Nayak and G.K. Jagdish have since been transferred from Delhi by Office Order No. 71/96 dated 18.11.1996 to various places in the country. Therefore, they have submitted that the allegation made in the O.A. that other persons who have longer stay at Delhi have not been transferred is not correct. Regarding the posting of the applicant at DDK Aizwal, they have submitted that since there is not a single Cameraman Grade-I in position against the sanctioned strength of three, the transfer order of the applicant is on administrative ground and, therefore, valid. Regarding the transfer policy, they have again stressed on the fact that the applicant has ^{all} India transfer liability and it is for the respondents to decide who should be posted at a particular post taking into account the public service and exigencies of administration. They have further submitted that since the applicant has already completed more than seven years against the normal tenure of four years at Delhi, it is not always possible to make the transfers in all cases to synchronise with the end of the academic year and there was a great need for posting a Cameraman at Aizwal station as there was no staff of Cameramen. Shri M.K. Gupta, learned counsel for the respondents, very emphatically argued that the applicant was fully aware that he has been transferred from Delhi and relieved by DDK Delhi w.e.f. 4.11.1996 by order dated 30.10.1996 which he had tried to avoid receiving, by claiming that he was on leave when the records maintained by the respondents show otherwise. In this connection, the respondents have filed an additional affidavit to which the applicant has also filed a reply.

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6. From the above facts, it is seen that in the impugned transfer order dated 8.10.1996, a number of persons have been transferred within various places in the country, including the applicant. Out of the seven persons whom the respondents themselves state have longer stay than the applicant in Delhi, only two of them, namely, S/Shri A.K. Julka and Surender Kumar, were also posted out from DDK Delhi to DDK Srinagar and Patna, respectively. Shri M.K. Gupta, learned counsel, has also submitted that as far as Shri Julka is concerned, he had already carried out his transfer and assumed his duty at DDK Srinagar who had, as per the records submitted by the respondents, received that relieving order dated 30.10.1996 on 1.11.1996. Regarding the other five persons who are admittedly having longer stay at Delhi than the applicant, they have been transferred as Cameraman to various other cities by the Office Order dated 18.11.1996. The respondents have not explained satisfactorily as to why the applicant, who was having lesser stay than these other five persons at Delhi was picked up for transfer outside Delhi at a much earlier date than them. No doubt it is a settled law that the Tribunal ought not to interfere in such transfer matters excepting when mala fide or violation of statutory provisions are proved. However, considering that the respondents themselves admit that they have professed norms for transfer, which state that normally a person with the longer continued service irrespective of the rank held by ^{him} ~~them~~ shall ordinarily be transferred first, it cannot be stated that picking the applicant and transferring him from Delhi to Aizwal earlier to those who had longer stay at Delhi, is not in contravention of their own norms. As stated above, the reason for this has also not been satisfactorily explained. Therefore, the impugned transfer order dated 8.10.1996 is liable to be struck down on this ^{ground} ~~ground~~ ^{alone}.

7. However, by the subsequent Office Order No. 71/96 passed by the respondents dated 18.11.1996, it is seen

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that the other five persons have also been transferred out of Delhi. Therefore, in the facts of the case, after 18.11.1996 the applicant cannot have a grievance on this ground of violation of the professed norms of transfer issued by the respondents. In the meantime, the interim order directing the respondents to maintain status quo was passed by the Tribunal on 7.11.1996. It is also relevant to note the submissions made by the respondents that they have not communicated their decision regarding his representation dated 9.10.1996 against the impugned transfer order of 8.10.1996. While it is settled position (See Union of India Vs. Abbas, 1993(2) SLR 585, N.K. Singh Vs. Union of India & Ors., 1994(28) ATC 246 and Union of India Vs. H.N. Kirtania, JT 1989(3) SC 131) that it is not for this Court or Tribunal to interfere in the matter of transfer which is for the appropriate authority to decide, unless the order is vitiated by mala fides or is made in violation of any statutory provisions, norms or law, in this case the respondents have admittedly picked the applicant for transfer out of Delhi much earlier than the persons with longer continued stay at Delhi, contrary to their own professed norms, ^{18/} and, Therefore, the impugned transfer order dated 8.10.1996 is quashed and set aside. In this view of the matter, it would not be necessary to examine the rival contentions of the parties regarding the date of receipt of the relieving order of 30/31.10.1996 w.e.f. 4.11.1996 which has to be read together with the impugned order dated 8.10.1996.

7. However, at the same time, it was not the applicant's case that after the office order dated 18.11.1996 transferring the other five persons, he cannot also be similarly transferred out in the exigencies of service, but since he did not figure in this order, nothing further need be said in this matter. The competent authority could have taken a decision to transfer the applicant along with the other persons with longer stay at Delhi in the Office Order 71/96 dated 18.11.1996, but by that time the applicant had obtained status

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quo interim order which the respondents had not got vacated.

8. In the above facts and circumstances of the case, the impugned transfer order dated 8.10.1996 so far as it pertains to the applicant is quashed and set aside. The interim order stands vacated. The O.A. is allowed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'