

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 1302/1997

Date of Decision: 31.07-1998

Shri Vinod Kumar Goswami .. APPLICANT

(By Advocate Shri G. Ramakrishna Prasad

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri N.S. Mehta)

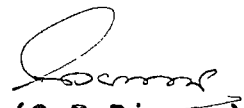
CORAM:

THE HON'BLE SHRI T.N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, 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?


(S.P. Biswas)
Member(A)

Cases referred:

1. U. O. I. Vs. S. L. Abbas (AIR 1993 SC 2444)
2. Shantikumari Vs. Regional Dy. Director, Health Services (AIR 1981 SC 1577)
3. Gujarat State Electricity Board Vs. Atmaram Sungamal Poshani (1989(18)ATC 396.
4. U. O. I. Vs. H. N. Kirtania (1989(11)ATC 269.
5. Shilpi Bose Vs. State of Bihar (1992 SCC (L&S) 127)
6. CGMT/Telecom, North East Telecom Grid Vs. R. C. Bhattacharya (1995(2) SCC 532.
7. State of M. P. Vs. S. S. Kauraa (1995 SCC L&S) 666
8. Abani Kanta Ray Vs. State of Orissa (1996(32) ATC 18.
9. Kalesh Trivedi Vs. Indian Council of Agriculture Research (1998(7) ATC 253.
- 10.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1302/97

New Delhi, this the 31st day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Vinod Kumar Goswami,
Aged 45 years,
L. 39, B. Malviya Nagar,
New Delhi.
(By Advocate: Sh. G. Ramakrishna Prasad)

Vs.

1. Union of India
Development Commissioner for Handlooms,
O/O Dev. Commn. for Handlooms,
Udyog Bhawan,
New Delhi.
2. Union of India
The Zonal Director (Northern Zone),
Weavers Service Centre,
Bharat Nagar,
Delhi-52.
(By Advocate: Sh. N.S. Mehta)

O R D E R (ORAL)

delivered by Hon'ble Shri S.P. Biswas, Member (A)

The applicant, an Assistant in the Weavers Service Centre (WSC, for short) under Development Commissioner, Handlooms, is aggrieved by A-1 order dated 9.8.94 transferring him from WSC, Delhi to Indian Institute of Handloom Technology (IIHT, for short) Jodhpur. Consequently, he seeks to quash the aforesaid transfer order and issuance of direction to respondents to allow him to continue at WSC, Delhi.

2. The applicant has challenged the aforesaid transfer order on two grounds. Firstly, the transfer of the applicant along with the post itself is in violation of by the respondents vide their communication dated

2

11.4.1989 which stipulates allocation of different posts in four WSCs meant for Group 'C' and 'D' staff. The transfer order violates the principles of natural justice and administrative law in that an employee has been transferred from service Centre to Handloom School where his services cannot be utilised.

3. Secondly, the Joint Development Commissioner for Handlooms has no authority to transfer the non-gazetted staffs in WSC from Delhi to outside the zonal office.

4. That apart, the applicant is also aggrieved because the transfer order, as alleged, has been issued ignoring the norms laid down by the Government of India for keeping the husband and wife at the same station of working. In this respect, the applicant seeks to draw support from the decision of the Apex Court in the case of Union of India vs. S.L. Abbas, AIR 1993 SC 2444.

5. It is not in dispute that the applicant's job has all India transfer liability and he has been continuing at Delhi for a long time.

6. We shall now indicate the position of law on the subject. The scope of judicial review in matters of transfer is now well settled and is very limited. In a catena of judgements, the Apex Court has, in no uncertain terms, cautioned against interference of transfer orders issued in public interest. In Shantikumari vs. Regional Dy. Director, Health Services, AIR 1981 SC 1577, the Supreme Court observed that in the case of transfer of a

Government servant made in the exigency of service and for administrative reasons, the Court should not normally interfere. Even if a transfer order is alleged to have been issued in contravention of the Government instructions/guidelines, the official concerned has to put up representation to the appropriate authority. In the case of Gujarat State Electricity Board v. Atmaram, 1989(18) ATC 396, the Apex Court held that transfer of an employee is an incident of service and the employee has no right to get posted to a particular place and transfer cannot be avoided merely on the grounds of pendency of representation or personal difficulty. In case of Union of India vs. H.N. Kirtania, 1989(11)ATC 269, the Apex Court ruled that it is not open to the Court to interfere in transfer of an employee unless the same is vitiated by malafide, or actuated by colourable exercise of powers or in violation of statutory rules. In Shilpi Bose vs. State of Bihar, 1992 SCC (L&S) 127, the Supreme Court had gone into the question in greater details and observed, inter-alia, that even if transfer orders are issued in violation of executive instructions or guidelines, the Court ordinarily should not interfere with the said order. Para 4 of the judgement refers in this connection: The affected parties should approach the higher authorities in the department for necessary relief. The Hon'ble Supreme Court has laid down that a Government servant, holding a transferable post, has no choice in the matter of posting and that even hardship pleaded by applicant is not a matter which can enter legitimate consideration (see CGMT/Telecom, North-East Telecom Grid vs. R.C. Bhattacharya, (1995) 2 SCC 532 and State of M.P. vs. S.S. Kaurva, (1995) SCC (L&S) 666).

20

7. Very recently in the case of Abani Kanta Ray vs. State of Orissa, 1996(32) ATC 18, the Supreme Court has held that "it is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principles governing a transfer".

8. The full Bench of this Tribunal in its decision in Kamlesh Trivedi v. Indian Council of Agriculture Research, (1988) 7 ATC 253: CAT (FBJ) 180, decided on 27.4.1988, also held that transfer orders must "(1) be in public interest and in the exigency of service on administrative grounds, (2) It must not be in colourable or malafide exercise of powers, (3) It should not be arbitrary, (4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy, (5) The transfer itself must be ordered by a competent authority in bona fide exercise of power, (6) It should not be fixed transfer for settling scores, (7) However, merely because transfer is ordered on complaints or after an enquiry into the guilt of the employee, it cannot be said to be by way of punishment, (8) The principle that justice should not only be done but appear to be done is not contravened if transfer is made without

9

22

any further enquiry after a penalty is imposed in a proper disciplinary proceeding, (9) It does not amount to double jeopardy."

9. Applicant has taken the plea that he has been prejudiced because the guidelines of the Government of India in posting husband and wife at the same station has not been followed. This plea cannot be accepted because such guidelines do not vest a Government servant with an enforceable right against the order of transfer. This view finds support in the law laid down by the Apex Court in a long chain of decisions including the one in Shilpi Bose Vs. Government of India, AIR 1991 SC 532.

10. We find that following the issue of A-I order on 7.8.94 the respondent had also issued a major penalty chargesheet on 3.1.97 because of the non-compliance of the transfer order and other allegations as mentioned in the charge memo along with the statement of imputations. Those are the issues that would require to be sorted out separately. We are, however, concerned with the legality or otherwise of the transfer order.

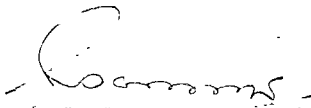
11. If the respondents have transferred the sanction itself, it is not for the applicant to question that. This is because it is for the executive authorities to decide as to how and where a post has to be operated. Courts/Tribunals are not to interfere in such matters. It is really surprising that the applicant has decided to challenge only the reallocation of Assistants' posts in WSC by respondent no. 1, whereas the original allocation

22

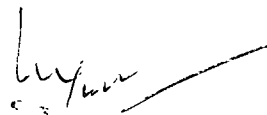
by the same authority has not been questioned. The applicant cannot choose to question only that part of a Scheme which is unsuitable to him.

12. In the light of aforesaid rules/regulations, the order of transfer in the present case is in compliance of law laid down in A.K.Roy's case (Supra) as well as norms/ principles enunciated by Full Bench judgement.

13. In the result, the O.A. fails on merits and is accordingly dismissed. No costs.


(S.P. BISWAS)
Member (A)

SD


(T.N. BHAT)
Member (J)