

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 496/1997
T.A. No.

199

Sept. , 1997.

DATE OF DECISION ~~29.8.1997~~

Shri B.S. Pannu

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri R.L. Dhawan

Advocate for the Respondent(s)

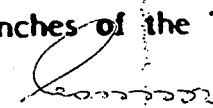
CORAM

The Hon'ble Mr. S.P. Biswas

The Hon'ble Mr.

1. To be referred to the Reporter or not? ✓

2. Whether it needs to be circulated to other Benches of the Tribunal?


(S.P. Biswas)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 496/1997

New Delhi, this 1st day of September, 1997.

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

Shri B.S. Pannu
Assistant Bridge Engineer
Northern Railway, Lajpat Nagar
New Delhi

.. Applicant

(By Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. The Chief Engineer
Northern Railway, New Delhi
3. Chief Bridge Engineer
Northern Railway, Baroda House
New Delhi

.. Respondents

(Shri R.L.Dhawan, Advocate)

ORDER

One of the two issues that fall for determination is whether a Government servant, having all-India transfer liability, can be transferred very frequently? Facts of the case, in brief, are as under.

2. The applicant joined the Railways in 1963 as Assistant Permanent Way Inspector (APWI for short) and has risen upto the level of Assistant Bridge Engineer (AEN/Bridge in short) by 1989. He is due for superannuation in February, 1999. The applicant, presently as AEN under the respondent-Railways, came on transfer on his own request from NF Railway to Northern Railway vide A-2 order dated 26.5.92. Thereafter, he had to face series of transfers details of which could be seen from the table hereunder;

Date of posting	Place of posting	Duration of stay at the last place of posting (months)	Remarks
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1. 30.6.92	Ambala	16	While doing track renewal work
2. 8.11.93	Roza (Moradabad Dn)	19	-do-
3. 7.6.95	Pathankot (Firozpur Dn)	10	-do-
4. 19.4.96	Jullundar	14	-do-
5. 18.11.96	Kashmeri Gate	12	Worked under CAO/ Construction
6. 24.11.96	Tilak Bridge	2	AEN(Line)
7. 25.2.97	Baroda House	-	AEN(PP)

As is evident from above, the applicant have had seven transfers in a period of four and a half year.

3. The order issued last on 25.2.97 has been challenged by the applicant in this application filed under section 19 of AT Act, 1985 on the following grounds:

(i) He has been transferred seven times during the last four and a half year and these frequent transfers have resulted in considerable dislocation in the family in the sense that the applicant has not been allowed to settle down besides affecting his poor health;

(ii) No reasons whatsoever have been given to him for such quick **transfers**.

(iii) He has been forced to live in private accommodation without his family and without arrangement for proper food and even no transfer/packing allowance has been paid to him.

4. The learned counsel for the applicant submitted that the performance of the applicant continued to be satisfactory so much so that he had been able to ensure excellent track renewal work with PQRS machines and the progress was 4 to 5 km per month as against earlier performance of 2.5 to 3 km per month. Neither there has been any formal complaint against the applicant nor

the applicant has been issued with a letter of warning regarding his performance. He had placed his grievances against such transfers before the Chief Engineer but without any result.

5. Opposing applicant's plea, counsel for respondents submitted that the performance of applicant was not satisfactory on any of the assignments given to him. Lack of initiative, improper planning, non-coordination and poor leadership resulted in unsatisfactory performance of track renewal work. Drawing support from the decisions of the Hon'ble Supreme Court in the case of Gujarat State Electricity Board Vs. Atma Ram (SLJ 1989 SC 1433), the counsel submitted that transfer of an employee is an incident of service and an employee has no right to get posted to a particular place and transfer cannot be avoided merely on ground of pendency of representation or personal difficulties. It has been further argued on behalf of the respondents that the applicant was posted for track renewal work and on completion of work at a particular site, he was ordered to move out alongwith the team engaged in track renewal job. His repeated misbehaviour and inept handling of staff matters lead to near unrest situation in the workshop and he had to be transferred out of Dhilwan workshop in public interest to Delhi under CAO/Construction as AEN(Line). His transfer from Tilak Bridge to Baroda House(Hqrs.) was ordered as it did not involve change of station.

6. The law laid down in case of transfer is very well settled. Transfer orders issued by competent authority in public interest cannot be questioned unless it is

issued with malafide or issued in violation of statutory provisions or an act arising out of colourable exercise of power. Government servant is liable to be transferred to a similar post in the same capacity and it is a normal feature and no government servant can claim to remain at a particular place or in a particular post unless, of course, his appointment is specifically for a non-transferable post. If any authority is required for this proposition, it is available in the decisions of the Hon'ble Supreme Court in the cases of UOI Vs. S.L. Abbas (1994 SCC(L&S) 320) N.K. Singh Vs. UOI (JT 1994(5) SC 298), Shilpi Bose Vs. Govt. of India (AIR 1991 SC 532), State of M.P. Vs. S.S. Kourav (1995 SCC L&S 666) and GSM(Telecom) NE Telecom circle and another Vs. R.C. Bhattacharya (1995) SC 532..

7. I also find that on the issue of "Transfers", there are guidelines and the administrative authorities are to follow them before issuing such orders. Those guidelines include, inter alia, normal period of tenure of 3 years at a particular place of posting, accommodating husband and wife at the same place of posting and avoiding transfer of an employee as far as possible two years before his/her superannuation. These are only norms professed by executive authorities. Transfers made in violation of transfer policy by itself would not be a ground for quashing the order of transfer as instructions embodying the transfer policy are in the nature of guidelines to the officers who are vested with the power to order

transfers in the exigencies of administration than vesting any immunity from transfer in the government servant or a right in the public servant. (2)

10. The scope of judicial interference in matters of transfer is very limited. The Tribunal could strike down an order of transfer if it is in violation of statutory provisions or is actuated by mala fides. Even violation of guidelines and instructions would not justify judicial interference. However, mala fide has only to be presumed from established facts. In *M. Sankaranarayanan v. State of Karnataka* (1993) 1 SCC 54 : 1993 SCC(L&S) 122 : (1993) ATC 412 the Supreme Court observed:

"It may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insituations, surmises and conjectures".

9. The respondents have therefore to satisfy the Court that the transfer was for some administrative exigency. Merely repeating the phrase 'administrative exigencies' in the reply would not suffice when a specific charge of mala fides is made on certain facts which are borne out from records and are not disputed by the respondents. The respondents have to satisfy the court as to the administrative exigency that necessitated that transfer.

10. The other important issue in the instant case is to ascertain whether the actions taken herein were more of a "softer approach" in an attempt to avoid taking

alternative harder steps already available with the executives for tackling such administrative problems concerning placement matters of allegedly inefficient hands. The applicant has not been officially communicated any notice or warning regarding his inept and inefficient working. In rare cases, it is for the court/Tribunal to tear the veil and bring out the real purpose behind certain actions. It is one such case. As already mentioned earlier, transfer is an incident of service. It is also an implied condition of service and the appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised only in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to malafide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as malafide. The public authorities and the Government are bound to act reasonably and fairly and each action of such authorities must pass the test of reasonableness. If any authority is required for this proposition, it is available in *Hansraj H. Jain V. State of Maharashtra* (1993) 3 SCC 634, 647. The series of transfer orders herein does not fulfill the criterion of reasonableness. It is a basic principle of rule of law and good administration, that even administrative actions should be just and fair. In other words, transfer is not an unfettered power. All public authorities charged with public duties and responsibilities are beholden to act and adhere to

professed norms, as aforementioned. The frequency with which the applicant has been transferred is not in tune with the norms laid down, especially when the applicant is due to retire very shortly. (5)

11. It appears, on the basis of records available before me, that the applicant had to carry out the last few orders without allowing him to settle down in any one of positions, an essential requirement even for an extraordinarily efficient worker. If he was bad in track renewal work, as is being claimed by respondents, there are no reasons why he should have been assigned the same job again and again. If such an officer was to move alongwith the team on completion of track work on a particular section, there are no explanations to indicate what had happened to applicant's predecessors or succesors. In the absence of appropriate reasons, in the facts and circumstances of this peculiar case, it would appear that the authorities have acted on the strength of, as if, unfettered powers were conferred on them. Decisions must be taken based on law and not by whims. They must be predictable and not sporadic. In S.G. Jaisinghama Vs. UOI and ors. (AIR 1967 SC 1427), the apex court pointed out that there are no powers which can be exercised by an authority, as it were, by whims.

12. The apex court has also strongly deprecated the tendency of frequent transfers of Government employees and held in the case of B. Varadha Rao v. State of Karnataka & Ors. AIR 1986 SC 1955 at page 1957=1988(2) SLJ 101(SC) that:

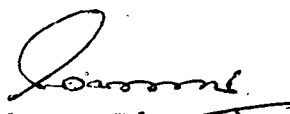
"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation".

13. The respondents have transferred the applicant 7 times within a short period of four and a half year. In the facts and circumstances of the case, I find that the impugned order is clearly in violation of law and the norms laid down in this respect.

14. In view of the above, the application is allowed with the following directions:

- (i) The impugned order transferring the applicant from Tilak Bridge to Baroda House shall stand quashed in case the same has been filled up by an Assistant Engineer not duly selected in the panel.
- (ii) Alternatively, respondents are directed to allow the applicant to continue at Baroda House in the present post of AEN/PP till the date of applicant's superannuation, unless there are pressing unavoidable reasons, to be recorded in writing and communicated to the applicant in advance before effecting any future transfer order. Respondents shall do well to remember that such frequent transfer orders besides being unproductive are also potential sources of subsequent litigations concerning delayed payment of retiral dues.

No costs.


(S.P. Biewas)
Member(A)

/gtv/