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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 1642/1989.

Date of decision: 19-9-90

Shri S.M.Mukherjee ..

Applicant.

vs.

Director General, All India Radio .. Respondent.

O.A. No. 882/1990.

Shri S.M.Mukherjee ..

Applicant.

vs.

Director General, All India Radio .. Respondent.

O.A. No. 1391/1990.

Shri S.M.Mukherjee ..

Applicant.

vs.

Director General, All India Radio ..

Director of Estates.

Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ...

In person.

For the respondents ...

Shri P.H.Ramchandani,
Senior Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

Shri S.M.Mukherjee, an Assistant Engineer in
All India Radio, New Delhi has filed Original Application
No.1642/1989 (OA) aggrieved by an order of transfer from
New Delhi to Calcutta vide order dated 20.3.1989. This
O.A. was heard and decided by one of us (Hon'ble Shri
B.C. Mathur, Vice-Chairman (A)) as a Single Member Bench
on 26.10.1989 dismissing the O.A. and permitting the
applicant to make a representation against his transfer to

the competent authority. A Review Application was filed by the applicant complaining of certain procedural shortcomings. The Review Application was heard by us and allowed on 13.8.1990. The order dated 26.10.1989 was set aside and the O.A. was directed to be heard afresh. Learned counsel for the respondents was granted time to file a reply to the O.A. and the applicant was granted time to file a rejoinder, if any. The matter came before us on 4.9.1990 when we heard the applicant in person and Shri P.H.Ramchandani, learned counsel for the respondent.

O.A. No.882/1990 is by the same applicant. The applicant is aggrieved by an order of stoppage of his salary with effect from 1.4.1990. This O.A. was filed on 7.5.1990. He had also made a prayer for an interim order so that his salary could be paid. A Division Bench directed this O.A. to be heard by the same Bench which was hearing the Review Application and further directed that since the applicant was getting his full salary till the month of March, 1990, they directed his salary to be released by the respondents, on a provisional basis, till further orders. This matter was also listed before us for admission on 4.9.1990. We have heard the applicant in this case also.

O.A. No.1391/1990 is also by the same applicant. In this O.A. he has prayed that the respondent be directed to treat him as not a legally relieved gazetted officer since the charge was not taken over from him and that the

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Directorate of Estates be directed not to treat him as an unauthorised occupant. A Division Bench by its order dated 20.7.1990 directed that this matter be heard by the same Bench which hears the Review Application. The O.A. was not admitted but notice was issued to the respondents on admission and interim relief returnable on 3.8.1990. There was a further order that the applicant be not dispossessed from the Govt. accommodation at 28-M, Sector IV DIZ Area, Saheed Bhagat Singh Marg, New Delhi meanwhile. We have heard the applicant and the learned counsel for the respondents. Since all these matters are connected, we propose to deal with them by a common order.

In O.A. No. 1642/1989, the applicant is aggrieved by the order of his transfer dated 20.3.1989 from New Delhi to Calcutta. The order dated 20.3.1989 (Annexure A-I to the O.A. reads as follows:

" GOVERNMENT OF INDIA
DIRECTORATE GENERAL: ALL INDIA RADIO.
No. 1/1/89-SIV(B) New Delhi, the 20th March, 1989.

The following transfers in the cadre of Assistant Engineers are ordered with immediate effect:-

<u>S. No.</u>	<u>Name</u>	<u>From</u>	<u>To</u>
	<u>S/SHRI</u>		
1.	S. Gunasekharan	AIR, Ahmedabad	CE(WZ) AIR & TV, Bombay.
2.	R.K. Sunehra	AIR, Bhopal	-do-
3.	Nirmal Prasad	AIR, Vadodara	-do-
4.	P.C. Girishbabu	CES, AIR, Bombay	-do-
5.	N. Bishnu	CES, AIR, Calcutta	CE(EZ), AIR TV, Calcutta.
6.	S.M. Mukherjee	SD, AIR, New Delhi	-do-
7.	H.P. Chaudhary	AIR, Agartala	- do -
8.	R.K.P. Sinha	AIR, Darbhanga	-do-
9.	V.G. Chacko	HPT, AIR, Alleppey	CE(SZ), AIR & TV, Madras.
10.	P. Lajapathy	CE(NZ), AIR & TV, New Delhi.	-do-

<u>S.No.</u>	<u>Name</u>	<u>From</u>	<u>To</u>
11.	S/Shri S.Vasudevan	SPT,AIR,Nagpur	CE(SZ)AIR & TV Madras.
12.	D.P.Agarwal	HPT,AIR,Kingsway Delhi.	CE(NZ),AIR & TV, New Delhi.
13.	V.B.Rai	AIR,Gorakhpur	-do-
14.	P.D.Saxena	P&T Unit,DG,AIR, New Delhi.	-do-
15.	H.R.Khanduja	CE(R&D),AIR, New Delhi.	-do-

2. In addition to above Shri J.Padmanabhan, Assistant Engineer is transferred from Low Power Transmitter (TV) Tiruchy to the O/O Chief Engineer (SZ), All India Radio & Television, Madras. His transfer to Doordarshan Kendra, Kurseong is hereby cancelled.

3. No representation against these transfer would be entertained.

Sd/- (B.S. JAIN)
DEPUTY DIRECTOR OF ADMINISTRATION
FOR DIRECTOR GENERAL...."

The applicant is aggrieved by the third paragraph of the above order which says that "No representation against these transfer would be entertained." The applicant's brother had submitted an application to the Director General, A.I.R. on 4.4.1989 (Annexure A-18 to the O.A.) but the office of the Respondent No.1 did not accept the application on the ground that the order of transfer stipulated that no representation would be entertained. The applicant has also felt aggrieved that he had been subjected to frequent transfers and that he had personal problems with children's education, his old mother with a fractured leg and permanently bedridden and

he himself suffered from high blood pressure. Another grievance of his was that two other persons Shri O.P. Aggarwal and Shri P.D.Saxena (at Sl.No.12 & 14) were allowed to continue in their respective postings at New Delhi whereas their names were also included in the transfer order. He, however, alleged that many A.I.R. Engineers posted in Delhi/New Delhi had never been transferred during their service career of 25 years whereas the applicant had already undergone 9 transfers. The applicant's brother had met the then minister of State in the Ministry of Information and Broadcasting and had submitted an application for the cancellation of the transfer order of the applicant which was acknowledged by the Private Secretary to the State Minister. The 3rd paragraph of the impugned order dated 20.3.1989 was said to be hit by Article 14 of the Constitution and grossly illegal, wrong, unjust and without jurisdiction. It precludes the applicant from seeking the sympathy of the employer even on compassionate grounds. He has alleged discrimination in the treatment meted out by the D.G., A.I.R. in the case of Shri O.P.Aggarwal and Shri P.D.Saxena whose names were mentioned in the transfer order but subsequently allowed to continue in their respective postings. Similar plea was also raised about Shri S.K.Garg, Asstt. Station Engineer who was also transferred around the same time as the applicant but the transfer order was cancelled subsequently.

The applicant had prayed for the cancellation of the transfer order dated 20.3.1989 and for a direction to the respondent to revise the transfer policy and formulate a new policy based on ingredients of circumstances and the weightage to be given to the above. Lastly, it was prayed that the respondent be restrained from transferring the applicant till the Tribunal is satisfied that all the Assistant Engineers posted in Delhi had more than 9 transfers, as in the case of the applicant. He had also prayed for an interim order against his transfer.

In their reply to the D.A. it was stated that along with the applicant, 14 other officers were also transferred and that representations against the order of transfer were considered by the respondent. In respect of paragraph 3 of the impugned order dated 20.3.1989, it was stated that this was incorporated in the order to expedite the transfers of the officers concerned for the timely completion of T.V. Projects. In spite of the instructions, representations were received and duly considered. No representation was received from the applicant but an application was received from his brother and a reply thereto was given at the level of the Minister of State for Information and Broadcasting after detailed consideration. It was stated that every transfer case is considered on merits and decided keeping in view

the exigencies of public services. The applicant has been transferred as he had been in Delhi for the last 12 years as against the prescribed tenure of 4 years. The plea of the applicant that there is no mechanism to get the vital information furnished by the employees verified has no foundation as all necessary information is available with the Directorate. The applicant had been transferred after taking all facts into consideration. The representation made by the applicant's brother against the transfer of the applicant was duly considered at the level of the Minister of State in the Ministry of Information & Broadcasting and was rejected. Lastly, it was submitted that the applicant is not entitled to any relief and the Application may be dismissed with costs.

The applicant had filed a rejoinder where he has reiterated his earlier stand and stated that the pleas taken in the reply of the respondent were not correct. It was pointed out that he had taken charge as Assistant Engineer in the year 1983 and in the year 1989 he had completed only 6 years and as such the allegation that he had completed 12 years in Delhi was totally wrong. Certain facts about other Engineers, Assistant Engineers etc. were mentioned in the rejoinder. The applicant

sought to give a rejoinder to the reply on the grounds raised by the respondent.

We have heard the applicant and Shri P.H.Ramchandani, learned counsel for the respondent. We have also perused his application, the reply by the respondent and the rejoinder along with their annexures.

The principal question in this O.A. is about the order of transfer of the applicant from New Delhi to Calcutta. He is also aggrieved by the 3rd paragraph of the impugned order of transfer which indicated that no representation against the order of transfer to be entertained. His stand is that this shut out any representation being made or the consideration of his case even on compassionate grounds. In the first place, he challenged the authority of the D.G., A.I.R. to bar the entertainment of any representation. He urged that every Government servant had a right to make a representation to the statutory authority and this could not be barred. His other contention was that he had too many transfer orders in 28 years of his service and that he was in a very difficult situation at home where his aged mother lay in bed with fractured leg. His son has a very poor vision and his children were receiving education in Delhi and as he was suffering from high blood pressure.

Admittedly, the applicant is in Government service and transfer is an incident of his service. The Supreme

in the
Court / case of GUJARAT ELECTRICITY BOARD & ANR. Vs.

ATMARAM SUNGOMAL POSHANI (JT 1989 (3) SC 20) laid

down the law of transfer in the following words:

" Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules..."

There is no dispute that the applicant was holding a transferable post and under the conditions of service applicable to him, he was liable to be transferred and posted at any place in the country. In the GUJARAT ELECTRICITY BOARD & ANR case (supra) the respondent Atmaram Sungomal Poshani was a Technical Assistant with the Gujarat State Electricity Board. He was promoted to the post of Deputy Engineer. He was transferred to Ukai

Sub-division and was relieved from his duties at Surat. He made a representation to the Additional Chief Engineer for cancelling his transfer order on the ground that his mother aged 70 years was ailing and it would cause great inconvenience to him if he was required to join at Ukai. His representation was rejected and he was directed to join at Ukai. He, however, did not do so. Instead, he filed a Civil Suit at Baroda challenging the validity of the order of transfer. The Chief Engineer by another order discharged the respondent from service in accordance with Service Regulations. That order also was challenged by the respondent. The learned Single Judge of the High Court quashed the order of termination but declined to grant the applicant consequential relief. Two appeals were filed against the order of the Single Judge before a Division Bench which dismissed the appeal of the Electricity Board but allowed the appeal of the employee granting the consequential benefit. The Electricity Board went up in appeal to the Supreme Court. The appeal was heard and allowed. The order of the Division Bench and that of the learned Single Judge of the High Court were set aside and the respondent's Petition was dismissed. The principles decided in the above case are fully applicable to the present case.

In another decision UNION OF INDIA Vs. SHRI H.N. KIRTANIA (JT 1989 (3) SC 131), the Supreme Court held that they found no justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Their Lordships observed:

"The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. ... Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

The above decision is binding on all Courts and Tribunals throughout India under Art. 141 of the Constitution.

It is not in dispute that the applicant was holding a transferable post. Under the conditions/applicable to him, he was liable to be transferred and posted at any place within India. He had no legal or statutory right for being posted at one particular place of his choice.

The applicant wanted his transfer order to be cancelled on a variety of grounds. His stand was that by inserting paragraph 3 in the impugned order, his right to make a representation against the order of transfer had been taken away and this was clearly in violation of Article 14 of the Constitution. He referred to the right of a Government servant to make a representation against an order of transfer. The Supreme Court itself had recognised the right of a Government servant to make a representation against an order of transfer. It is, therefore, clear that there is a right of a Central Government employee or an employee of the All India Radio/Doordarshan to make a representation, if necessary, against an order of

make transfer. The applicant did not make a representation to the Director General, All India Radio. But his brother moved an application on his behalf to the then Minister of State, Ministry of Information and Broadcasting in April, 1989, which was ultimately replied by the Private Secretary to the State Minister to the effect that it was not possible to cancel the order. It is, therefore, evident that it was not a matter where the applicant had not moved an authority even superior to the respondent, the Director General, All India Radio.

Even otherwise, when the order dated 26.10.1989 was passed by a Learned Single Member, he had allowed the applicant to make a representation to the respondent at that stage. It appears, no representation was made following the order dated 26.10.1989.

In the reply of the respondent it was stated that paragraph 3 was inserted in the transfer order to expedite the transfers of the officers concerned for the timely completion of T.V. Projects. This indicates that the transfers were ordered on ground of public interest. The Supreme Court has held that where the transfer orders are made in public interest, these cannot be interfered with by the High Court or the Tribunal. If a representation is made and rejected, the applicant has no other option but to proceed to the place of posting, otherwise, he would have to face the consequences. This too has been made clear by the Supreme Court.

In view of the above, the law laid down by the

Supreme Court in the aforementioned decisions, it is no longer open to a Central Government employee holding a transferable post to question his transfer unless it is contrary to some statutory rules or is mala fide. There is no allegation of mala fide against anyone in particular and in any event, nobody has been arrayed by name, which is imperative in case of allegations of mala fides.

Shri P.H.Ramchandani, learned counsel for the respondent contended that the impugned order is not void. Paragraph 3 is severable and does not vitiate the order of transfer. The order of transfer is neither non-est nor unconstitutional.

The other point that has been raised is about discrimination in the treatment of the applicant as against other employees in the A.I.R. who were treated differently in matters of transfer and postings. We do not think that it will serve any purpose to examine the allegations in this respect for each transfer when made on the ground of public interest will stand on its own. Besides, it is not evident from the material on record that the facts and circumstances of any two employees were exactly the same and that they were treated differently. Under the circumstances, we do not think that the ground of discrimination can be gone into.

Shri P.H. Ramchandani contended that conduct of the applicant is also to be seen. He neither makes a representation after the order of the Single Member on 29.10.1989, nor complies with the order of transfer even after the rejection of the application made to the then Minister of State, Ministry

of Information and Broadcasting. He stated that this amounted to an abuse of the judicial process. Further, he had obtained interim orders from the two different Benches of the Tribunal in regard to payment of his salary and continuance in the Government accommodation. He urged that if the transfer is valid, the applicant must go and report to the place of posting. He urged that the facts and the circumstances of the case does not entitle the applicant to any relief.

The applicant narrated his tale of woe, in particular, his children's education, mother's illness, his high blood pressure problem and frequent transfer orders. The fact of the matter is that in 28 years service, this was his 9th transfer which is not too many. Secondly, according to his own showing, he had been in Delhi for 6 years continuously and was liable to be transferred. The upshot of the matter is that the applicant being a Central Government employee holding a transferable post was liable to be transferred anywhere in the country in the public interest. We have noticed in the present case that the applicant was directed to make a representation even after the order of 26.10.1989 but he had not filed the same. However, it is established that a representation was made to the then Minister of State for Information & Broadcasting, which was disposed of by saying that it was not possible to cancel the order. Even though he did not make a representation to the Director General, All India Radio, yet his representation to an even higher authority was considered and decided.

We are not satisfied that any case is made out on any of the legal grounds submitted by the applicant for the cancellation of his transfer order.

The O.A. merits to be rejected and we dismiss the same accordingly. There will be no order as to costs.

O.A. 882/1990. We have heard the applicant. He has prayed for three reliefs. Firstly, the D.G., AIR be directed to withdraw "stop salary order" immediately and to pay arrears due w.e.f. 1.4.1990; secondly, the Directorate of Estates be directed not to evict the applicant during the period the case is sub-judice; and, thirdly, the respondent be served with a notice of contempt of Court for taking action against the applicant during the pendency of the Review Application.

As seen above, we have already passed order dismissing the O.A. 1642/1989 which was against the order of transfer dated 20.3.1989. Consequently, the applicant was required to join his place of posting. Since he had not done so, the respondent could pass an order stopping the payment of his salary from 1.4.1990. The second relief asked for about the eviction from the Government premises also cannot stand for the same reason. The third relief regarding taking contempt of court proceedings against the respondent cannot be made in this O.A. as it was a separate matter altogether.

We are satisfied that no case has been made out for admitting this O.A. This O.A. is accordingly rejected at the admission stage. The interim order passed in

the above O.A. on 15.5.1990 regarding the payment of salary is withdrawn.

O.A. 1391/1990. This O.A. was filed on 9.7.1990. The applicant has prayed that the D.G., A.I.R. be directed to treat the applicant as "not a legally relieved gazetted officer" since the charge was not taken over from him, and secondly, the communication from the D.G., A.I.R. that the applicant has been relieved from New Delhi on 24.4.1989 or that he is working in Calcutta from April, 1989 was false and void and he prayed for the withdrawal of the eviction notice.

There was a transfer order dated 20.3.1989. The applicant did not comply with the order and stayed on in Delhi. His case is that he was not legally relieved of his charge and consequently, he continued and he is entitled to continue at Delhi.

We have dismissed the O.A. No. 1642/1989 against the order of transfer today. The question raised in this case is one of fact as to when he was relieved of his charge. We decline to go into the question of fact as to whether he was relieved from New Delhi on 24.4.1989. We are not satisfied that any question of law has been made out for interference. We, therefore, decline to issue notice to the respondent and this O.A. is accordingly dismissed at the admission stage. The interim order dated 20.7.1990 is also vacated.

Before we conclude, we think, it will be in the

interest of justice to allow the applicant to make a representation to the Director General, A.I.R. for consideration of his difficulties and problems. He may also make a representation to the Director of Estates regarding his continuance in the flat, he is occupying at present.

B.C. Mathur
(B.C. MATHUR) 14.4.90
VICE-CHAIRMAN (A)

A.B.
(AMITAV BANERJI)
CHAIRMAN 14.4.90

SKS