

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 396 of 1989 198
T.A. No.

DATE OF DECISION 4.7.89

H.S. Sethi Petitioner

R.L. Sethi Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri P.P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE- CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? *aw*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

B.C. Mathur
(B.C. Mathur)
Vice- Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 396 of 1989

Date of decision: 4.7.89

Shri H.S. Sethi

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Applicant

Vs.

Union of India

....

Respondents

PRESENT

Shri R.L. Sethi, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri H.S. Sethi, Statistician, Audience Research Unit, D.G., A.I.R., New Delhi, against impugned order No. 7/24/81-AR dated 15.2.89 (Annex.A1) against his transfer from Delhi to Bombay.

2. The brief facts, as stated in the application, are that the applicant was appointed to the post of a Statistician in the grade of Rs. 550-900 from 21.2.76 on the recommendation of the U.P.S.C. and confirmed with effect from 21.2.78. The post of Statistician against which the applicant was appointed was a single vacancy at New Delhi and that there is no other unit of the Data Processing Wing, A.I.R., anywhere in the country. The applicant is the permanent incumbent of the post of Statistician ever since his appointment from 21.2.76 and that the post is of a technical nature and is a feeder cadre post for promotion to Indian Statistical/Indian Economic Service. Being a single vacancy post, it has no ^{relation} with any other equivalent post in the Directorate General of All India Radio.

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3. It has been stated by the applicant that chargesheet had been issued against him on 10.11.86 for alleged false L.T.C. claim and was awarded punishment of ^{reduction} by two stages against which his statutory appeal is pending. During the pendency of the appeal, the applicant has been ordered to be transferred

to Bombay and this transfer is, therefore, punitive in nature, specially as the applicant is not being posted to cadre post to which he could be transferred. The transfer stems out of malice-in-law to teach the applicant a lesson on the alleged misconduct against which a major penalty has been imposed and statutory appeal is pending. This transfer would also debar him from promotion to the higher grade in the cadre apart from causing him irreparable loss, including uprooting of the applicant's family.

4. The respondents in their reply have stated that a Data Processing Wing exists at Bombay just as in the case of Delhi and the posts are parallel/identical in the same scale of pay. The post of Statistician at AIR, Bombay, was created in 1976 and the cadre consists of two posts although at the time of the initial appointment of the applicant, there was only one post. The respondents have denied that the order of transfer is punitive or related in any way with the penalty already imposed on the petitioner for submitting a false LTC claim. The decision to transfer the applicant was purely in public interest. According to the original offer of appointment made to the applicant in October 1975, it was made clear that he was liable to be posted and transferred anywhere in the country (Annex. R-IV to the counter). Para 7 of the Memorandum dated 29.10.1975 offering the temporary post of Statistician to the applicant reads as follows:

"The appointee will be liable to be posted and transferred any where in India and if he, on account of family circumstances, anticipates any difficulty in the matter of place of posting, he should not accept the offer."

5. It has been further stated by the respondents that the Data Processing Wing in A.R. Unit, DG AIR, at New Delhi has become totally non-functional at present and since an identical post of a Statistician was lying vacant at Bombay, the DG AIR, being the appointing authority took the decision to transfer the applicant to Bombay in public interest. The contention of the petitioner that the post at Bombay is not a cadre

post is not correct. They have clarified that the transfer will not affect the applicant's chances for promotion in the feeder cadre in any way as his eligibility/seniority would not change. The Headquarters Unit of Audience Research in the Directorate General of All India Radio, New Delhi, is not a separate entity but the apex wing of an hierarchial structure of the network. The Central Sales Unit of the AIR, Bombay, where the applicant stands transferred, is as much a part of the AIR as the Headquarters Unit of Audience Research. The post at Bombay is not an ex-cadre post. The same recruitment rules apply for the posts at Bombay and New Delhi. The post at Bombay was created in February, 1976 soon after the post at Delhi was created. According to the amended Recruitment Rules concerning Group 'B' posts, two posts of Statisticians have been shown (Annexure R-V to the counter) in the Scheduled attached to the Rules.

6. The learned counsel for the applicant stated that post in Bombay was created after the appointment of the applicant at Delhi and has all along been treated as an ex-cadre post and filled by people on deputation. He said that there is no declared transfer policy and according to the decision of the Tribunal in the case of K.K. Jindal - ATR 1986 (1) CAT 304 - transfers cannot be arbitrary. He also cited the Full Bench's judgment in the case of Kamlesh Trivedi - 1988 (7) ATC p. 253 - where it has been held that any order of transfer must be bonafide and not in colourable exercise of power or arbitrary or for the purpose of settling scores. Shri R.L. Sethi, counsel for the applicant, said that the real cause of transfer to Bombay is to deny the applicant promotion to the post of a Statistical Officer. The applicant should have been promoted as a Statistical Officer after three years i.e. in 1979 or 1980. Rules have been amended in 1988 and this is the subject matter of another application (OA 1143/89) admitted at the Principal Bench. The transfer to Bombay in March, 1989 is malice in law. He said that the applicant was chargesheeted falsely and punished falsely and as his appeal has been rejected and another OA is also pending in the Tribunal, the impugned order has

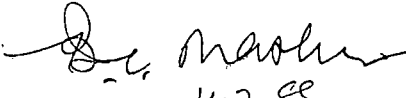
been issued to remove the applicant from the scene so that some one could be brought on deputation.

7. The contentions of the applicant are vehemently denied by Shri P.P. Khurana, counsel for the respondents. He said that in 1976 there was only one post of Statistician and within two days (R-VII) another post was sanctioned for Bombay. It is, therefore, wrong that the applicant was appointed against a single post and that it was made very clear to him in the letter of offer of appointment that he was liable to be transferred anywhere and it is not open to the applicant to say that he was appointed to a single post at Delhi and was not liable to be transferred outside Delhi. Since both the posts at Delhi and Bombay are cadre posts, his promotion chances remain the same.

8. Shri R.L. Sethi, counsel for the applicant, said that since two other OAs were pending at Delhi, it would be inconvenient for him to pursue the cases from Bombay. Shri Khurana said that in case the applicant wanted, the two OAs pending at Delhi be transferred to Bombay Bench and he has no objection to their being transferred to that Bench. He said that the real reason for transferring the applicant to Bombay is that the post has become non-functional at Delhi and they want to upgrade it by bringing some additional equipment, but in the mean time the post at Bombay has been lying vacant and there is still a lot of work to be done in procuring equipment, therefore, the D.G. took the decision of transferring the applicant in public interest as according to him, the services of the applicant could be better utilised at Bombay than at Delhi where the post has become non-functional.

9. It is quite clear that the applicant is liable to be transferred anywhere in the country and when he was appointed at Delhi, he was informed in no uncertain terms that he was liable to be transferred and cautioned that in case he had any reservations about his transfer, he should not accept the post. It has not been established that the transfer order

has been passed to settle scores nor has any malafide been established as such. There could be malafide in law if any irregular action had been done. The claim that the applicant should have been promoted in 1979 or 1980 cannot be examined at this stage as that would be time-barred. This is also not the issue at the moment. I am also not concerned with the two other OAs pending in the Tribunal. They are not related to the question of transfer of the applicant. The DG is in the best position to decide where and how best he can utilise the services of different employees under him and if he feels that the post at Delhi has become non-functional and that the services of the applicant can be utilised better at Bombay, the court need not interfere in such transfers which would be considered in public interest. As such, I see no reason to interfere with the present transfer order. The application is dismissed. There will be no orders as to cost.


4.7.89
(B.C. Mathur)

Vice- Chairman