

Central Administrative Tribunal
Principal Bench
Delhi.

Regn.No. OA. 1651 of 1988

Date of decision: 4.11.1988

Shri Harsh Vardhan

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri J.S. Bali and Shri S.S.Tanwar, Advocates for the
applicant.

Shri M.L. Verma, Advocate for the respondents.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against impugned order No. Estt/1/27/88-AG dated the 27th July, 1988 passed by Respondent No.2 transferring the applicant out of Delhi.

2. The brief facts of the case are that the applicant, Shri Harsh Vardhan, was appointed as an Assistant on a temporary basis under the Director General of Security (Secretariat) Service on the basis of an examination and was considered as a fresh directly recruited Assistant (vide order dated 6th April, 1988 issued by the Directorate General of Security, Office of the IG SFF (Cabinet Secretariat)). Earlier, the applicant was working as an L.D.C. under the S.S.B. Directorate. The applicant joined the new appointment on 8.4.1988 and has been transferred to Headquarters Estt. No.22 vide orders dated 22.7.1988 in public interest. The applicant states that he was earlier working in the S.S.B. as an L.D.C. and is now appointed in the SFF as a fresh recruit after a fresh medical fitness certificate, his total service in the present post at Delhi is only about four months. His wife is working in the office of the Delhi Development Authority as a U.D.C. and he has been allotted Government accommodation and if he is transferred out of Delhi, his family would be rendered homeless. The transfer order was served on him in absentia when he was on medical

leave. The case of the applicant is that the transfer is against the normal guidelines pertaining to transfer of Government servants. His father had made a request for cancelling the transfer order, but he was informed that it could not be cancelled in view of the policy guidelines on departmental transfer, but these guidelines have not been spelt out. The general guidelines can only be the longest stay in a particular place or being the seniormost or the juniormost at a particular place. The other consideration could be the age of the applicant so that after a particular age, he is not transferred, but there is also the consideration of public interest which must be spelt out.

3. Shri J.S. Bali, counsel for the applicant, argued that there have to be certain principles which must be known to the persons and if these cannot be explained to the applicant, at least the respondents should satisfy the court that the transfer is in public interest. He cited a case of the Kerala High Court - All India SLJ 1984(1) p. 157 - E.K. Nair Vs. The Supdt. of Post Offices, Cannanore - where it was held that "if any person is singled out for a treatment not generally meted out to all and that treatment is challenged as unfair it is the duty of the authority who effects such treatment to place before the Court the circumstances under which and the reasons for which termination is resorted to and if called upon to show the material which was available to enable the authority to infer so that too must be placed before the Court." The judgment of the Kerala High Court further quotes "There is nothing like unfettered discretion immune from judicial reviewability." Shri Bali said that if there are policy guidelines on departmental transfers, these should be known and the guidelines have to be on a rational basis. He said that there were at least two Assistants, namely, Shri M.S. Garg and Shri O.P. Sharma, who were working as Assistants in Delhi much before the applicant. Similarly, there were three U.D.Cs (the applicant has never worked as a UDC) who have been in Delhi for a much longer period. Besides, there are vacancies in Delhi and

the applicant could be easily adjusted in Delhi on compassionate grounds. The applicant's wife recently gave birth to a child and has an elder son aged 5 years.

4. The respondents have stated that the applicant is working in a highly sensitive Department dealing with the security of the State. There are four organisations, namely, the SSF, SFF, ARS and CIA - all under the D.G. Security. This is a common Department in the Cabinet Secretariat and all persons are inter-transferable within the organisations.

5. The learned advocate for the applicant also raised the point that the applicant was not even allowed joining time to which Shri M.L. Verma has replied that the applicant was not denied joining time, but he was just transferred and because of the sensitive nature of the work, even the place of posting has not been mentioned in the transfer order. He cited several cases in support that transfer orders in public interest should not be interfered with by the courts and even if a person has worked in a particular place for only a few months, if the public interest requires, his posting at some other place, this has to be accepted. He, however, said that the applicant has been working in the same organisation since 1976 and merely because his wife is working in the D.D.A., it cannot be said that he would be kept in Delhi all the time. Transfer is an incidence of service and the appointment order dated 6.4.88 clearly stated that the applicant was liable to serve in any part of India. The following cases were cited:

1. A.T.R. 1987(1) S.C. 396 - B. Vardha Rao Vs. State of Karnataka & Others. In this case, the Supreme Court held that "a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

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Shri Verma said that it was specifically mentioned in the transfer order of the applicant that he was liable to be transferred anywhere, the applicant has no case against his transfer order.

**2. A.T.R. 1987 (1) C.A.T. 353 - Amar Nath Vaish
C Vs. Union of India & Others.**

This is a case of the Jodhpur Bench of the Tribunal where it has been held that the transfer policy guidelines are not mandatory. "The question as to whether or not the transfer of a certain public servant is to be made in the exigencies of service or in the interest of service/public interest is to be decided by the competent authorities as per its subjective satisfaction. Mere factum of certain officers being retained would not make it a case of either arbitrariness or hostile discrimination so as to attract the frown of Articles 14 and 16(1) of the Constitution."

**3. 1987(1) A.T.L.T. 307 - Gokul Chandra Nag Vs.
State of Orissa & Others.**

In this case, the State Administrative Tribunal of Orissa held that "Government, as employer, has unfettered right to transfer Government servants and any instructions issued by Government for regulating the transfer of Government servants are only advisory and not directory or mandatory."

**4. 1986 (2) SLJ 278 - Sudhir Prasad Jain Vs. Union
of India.**

In this case, the Principal Bench of the Tribunal has held that "transfer orders passed in administrative interests where the allegations are malafide have been made but no proof rendered, cannot be assailed."

**5. 1987 (2) SLJ 625 - Nimai Chand Panda Vs. Union
of India & Others.**

In this case, the Cuttack Bench of the Tribunal has held that where the transfer is on administrative

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grounds, even if the juniors have been retained and the Tribunal was convinced that the transfer was on legitimate administrative grounds, the order could not be interfered with. Although in this case, to avoid hardship to children, the transfer was postponed to May i.e. the end of the education session.

6. In SLJ 1987 (2) p. 44 - G.S. Bhullar Vs. The Allahabad Bank, Calcutta, the Punjab and Haryana High Court held that "transfer in the same grade and on post having similar status cannot be challenged".

6. The learned counsel for the applicant reiterated that if Government have issued any guidelines, it would be meaningless if these were not followed by them. The applicant had been transferred from SSB to SSF only a few months ago and no guidelines could possibly allow such transfers when the normal tenure generally is three years at one place. He quoted Shri K.K. Jindal's case of the Principal Bench where it² said that there should be no arbitrariness in the matter of transfers and this is established as three UDCs and two Assistants who have done a much longer stay in Delhi continue at the same place. He cited the case of Shri Charanjit Lal Vs. Union of India & Others - ATR 1987 (1) CAT 393 - where it has been laid down that the order of transfer must conform to the rules if any and the order of transfer cannot be arbitrary or discriminatory. He said that if guidelines are not observed, reasons must be given. Shri Bali said that he had alleged mala-fide against Respondent No.2, firstly because he was responsible for delaying the appointment order of the applicant. His name was recommended by the Coordination Cell on 19.2.88 but Respondent No. 2 issued the relevant order of appointment on 6.4.88, delaying it by 1-1/2 months and in the meantime a junior of the applicant, Shri G.K. Dean, who joined on 24.3.88,

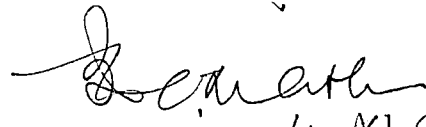
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became senior. This position is also explained in the appointment order dated 6.4.88 that the seniority and financial benefits of the applicant will be reckoned from the date of his joining duty as a fresh directly recruited Assistant. Shri Verma said that this was not the correct position as seniority has to be determined according to rules and the seniority of the individual will continue to be maintained according to the merit list of the successful candidates irrespective of the date of joining. As such, the is not in any way adversely affected.

7. Another point of harassment by the respondents was raised by Shri Bali was that the applicant was relieved while he was on medical leave and was not allowed any joining time. However, Shri Bali did not press the allegation of malafide.

8. Whether the applicant was in service under the respondents since 1976 or from April 1988 only when he was directly recruited as an Assistant may not be very relevant when the transfer order is in public interest. One has to see that there is no arbitrariness in such transfers, but the Department in which the applicant is working deals with the security of the State and the respondents would be in the best position to judge who should be posted to different places. The Kerala High Court's case cited by Shri Bali deals with the termination of the services of the applicant in that case and, therefore, it cannot be of very great relevance in the context of the present transfer order. Normally, the guidelines must be observed, but guidelines cannot be mandatory and if public interest demands, a transfer cannot be challenged on the grounds of arbitrariness in an organisation which is dealing with the security of the State. There is no doubt that a transfer order entails a lot of hardship to a Government servant and his family, but in an organisation dealing with the security of the State

such considerations cannot override public interest. In the circumstances, the application is rejected. There will be no order as to costs.


(B.C. Mathur) 4.11.82
Chairman