

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 174 of 1988
T.A. No.

DATE OF DECISION 22.9.1989

K.C. MALIK _____ Applicant (s)

Shri B.S. Mainee _____ Advocate for the Applicant (s)
Versus
Union of India & Others _____ Respondent (s)

Shri P.P. Khurana & Shri B.S. Gupta 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri K.C. Malik, Tele-communication Office Assistant, Office of Telecommunication District Engineer, Rohtak, against impugned order No. Memo. AO/Rohtak/Genl dated 30.10.1987, passed by the Accounts Officer, Office of the Telecommunication District Engineer, Rohtak, transferring the applicant from Rohtak to Kerala Circle.

2. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as a Telecommunication Office Assistant at Rohtak on 1.8.1980 and has been working there since then. His work was satisfactory and the applicant was cleared from Efficiency Bar vide letter dated 3.10.86 (Annexe A-2 to the application). During the course of working in the Office of the Telecommunication District Engineer, Rohtak, the applicant as also other staff of that office detected and pointed out a number of financial mal-practices going on in the office of the Telecom.

They also took objections to the heavy drain in the National exchequer which, to some extent, reduced the said wastage of revenue. The large-scale corruption and embezzlement in the Deptt. of Telecommunication District Engineer, Rohtak, was also reported in the newspapers. The said action of the applicant and his colleagues offended Shri Budh Prakash, Telecommunication District Engineer (T.D.E.) who was a party to the large scale embezzlement of Government money. In the month of August, 1987, Shri Budh Prakash, T.D.E. wanted to provide a telephone at the residence of Shri Raghbir Singh Hooda who was a leader of the Telecommunication Employees Union and was living in a village called Rurki at a distance of 13 KMs from Rohtak, which was objected to by the applicant as ~~the~~ dealing clerks the proposal was against the extant rules. Brushing aside the objections of the applicant, the T.D.E. installed the telephone at the residence of Shri Raghbir Singh Hooda, but the objection of the applicant provoked the T.D.E. and after the said incident, Shri Budh Prakash made up his mind to remove the ~~and~~ applicant and his colleagues from the scene and from his illegal activities. Shri Budh Prakash, T.D.E., Rohtak, lodged a false and fabricated complaint against the applicant and some others of the Telephone Deptt. The applicant was suspended by the T.D.E. on 22.8.87. When the applicant came to know that some warrants had been obtained by the Police to arrest the applicant in pursuance of a false F.I.R. lodged by Shri Budh Prakash, the applicant surrendered in the court on 16.9.87. The applicant thereafter remained in police custody upto 25.9.87 and thereafter in the judicial custody upto 28.10.87 when he was released by the High Court, Chandigarh. Respondent No. 3, Telecommunication District Engineer, Rohtak, revoked the suspension order of the applicant on 30.10.87 forenoon and issued orders of his transfer from Rohtak to Kerala Circle on the same date (Annexures A-4 and A-1 respectively). The transfer orders were not served on the applicant when he fell ill on 31.10.87 and continues to be on sick list and has already forwarded Medical Certifications and leave applications to the Deptt. (Annex. A-5).

The transfer orders are illegal, punitive, arbitrary, mala-fide and void, abi-initio, inter-alia on the grounds that the impugned orders are founded on the basis of malice and bad faith and are the result of personal influence having been exercised by Shri Budh Prakash, TDE, who had filed two false criminal FIRs against the applicant at Rohtak. The impugned transfer orders are punitive and have been passed as a matter of punishment without holding any inquiry and without giving any opportunity of being heard to the applicant and are in colourable exercise of powers.

3. The learned counsel for the respondents argued that the applicant has been transferred in the interests of public service under Rule No. 37 of the P&T Manual Volume IV. When an employee is transferred under Rule 37 by the respondent authorities, the transferred employee does not suffer from any civil consequences. His pay is protected under the Rules and his seniority is kept in tact. The transfer of the applicant has been done without any malafide intentions as alleged by the applicant. The impugned order of transfer dated 30.10.87 is purely an administrative order and is not punitive in character. The transfer order has been issued in a normal course and there is no illegality or element of punishment in issuing the impugned orders dated 30.10.87. The applicant was relieved on the date of issue of transfer orders and struck off the strength of Rohtak Division. The applicant has submitted his medical certificate in order to avoid his transfer. The applicant cannot claim retention at a particular place as a matter of right and can be transferred anywhere in India in public interest under Rule No. 37.

4. In the file produced by the respondents regarding complaint against four employees of N.W. Circle, Ambala, it was alleged that four employees of the office of the D.E.T. Rohtak, including the applicant, attacked Shri Budh Prakash, D.E.T., Rohtak, on 22.8.87 in which Shri Budh Prakash received head injury and a finger of his left hand was fractured. GM Telecom, Haryana, visited Rohtak alongwith Director, Telecom, on 23.8.87. The matter was also enquired into by the Vigilance Officer of the Haryana Circle. The

Telecommunication Board transferred the four officials, including the applicant, out of the Rohtak Circle. Shri K.C. Malik was transferred to Kerala Circle. It appears that the Telecommunication Engineering Services Association also wrote to the Minister for Communications complaining against some persons regarding indiscipline and violence in the offices in Haryana. The transfer orders of some of the concerned staff was stayed by the Minister, but the transfer of the applicant was not stayed although the wife of the applicant as well as an M.P. had also requested for cancellation of the applicant's transfer on compassionate grounds. The D.D.G. Vigilance had given a note to Secretary, Telecommunication, saying that four officials had to be transferred out of the Haryana Circle under Rule 37 of the P&T Manual for wilful assault and it was felt necessary that to retrieve situation and to enforce discipline it was necessary to give administrative support to the officers by transferring the applicant and others. It appears that the matter was also considered by the late Minister of Communications who did not agree to the cancellation of the transfer orders in the interests of service.

5. The learned counsel for the respondents cited the case of P. Fulgunan & Others Vs. Secretary, Ministry of Communications and Others - SLJ 1989(2) CAT 377 - where it was held by the Madras Bench of the Tribunal that to improve efficiency in administration, transfer is not a penalty. In that case, transfer orders had been challenged in 34 original applications on the ground that the transfers were made with malafide intentions as a vindictive act on the part of the respondents. The respondents in that case had also instead of launching into a disciplinary domain, had decided on transfers in the exigency of service and in public interest. The applicants in that case had urged that the transfer was clearly a penalty and had been imposed in contravention of Article 311 of the Constitution and that an employee who misbehaves has to be proceeded against after giving him an opportunity of defending himself. In a similar case, Deep Narayan and Others Vs. Union of India- SLJ 1989(1) CAT 331 - where the employees are reported to have indulged in large scale manhandling of officers and PMG, an atmosphere of mistrust was created and the applicants were

transferred, it was held by the Patna Bench that in such a situation, transfer was a necessity and unavoidable administrative exigency although the allegation was that the transfer was punitive in nature, specially as the applicants had been transferred to distance^t places.

6. Confidential File No. 257-134/87-STN dealing with the transfer of the applicant was examined by me and also shown to the learned counsel for the applicant. The contention of the learned counsel that if the applicant and others had really beaten up Shri Budh Prakash and others, it was a ~~s~~very serious matter and a severe punishment would be indicated and not a transfer, but since the allegations could not be established, a short cut procedure of transferring the applicant to a long distance has been adopted to avoid enquiry and not facing inconvenient facts which have been pointed out by the applicant from time to time against Shri Budh Prakash. He also said that inspite of the fact that FIRs were lodged against the applicant and that he was in detention, ~~but~~ nothing could be proved against him and, therefore, the malafide on the part of the respondents is quite clear. He also ~~s~~tated that under normal circumstances, the applicant could not have been transferred from Haryana to Kerala which by itself is enough to establish that the respondents have acted arbitrarily and in colourable exercise of power.

7. I have gone through the pleadings on behalf of the applicant and the arguments by the learned counsel on both the sides. the order of transfer has been made in the interest of public service under Rule 37 of the P&T Manual Volume IV. The Rule provides that all officials of the Department are liable to be transferred to any part of India and the transferred employee does not suffer from any civil consequences. After going through the file dealing with the transfer of the applicant, it is quite clear that there was a lot of indiscipline in the officer and it became necessary for the competent authorities to shift some persons whom they thought were responsible for creating indiscipline. Under normal circumstances, transfer to a very long distance and without giving a chance

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to the transferee to explain his case would be considered arbitrary and vindictive, but if it is done in the larger interests of the Department when the transferred employee does not suffer from any civil consequences like losing seniority or pay, in certain circumstances such a transfer can be justified in the interests of service.

8. In this case malafide has been alleged against Shri Budh Prakash but as he has not been made a party and as nothing has been established against him, the plea of malafide against the respondents would not also arise. However, the transfer order of the applicant from Haryana to Kerala is extraordinary.

9. The question, however, is whether the courts should interfere in a transfer order passed in public interest. In **Union of India and Others Vs. H.N. Kirtania - Judgements Today 1989 (3) S.C. 131** - the Supreme Court have held that there is no valid justification to interfere in orders of transfer made against an employee of the Central Government holding a transferable post. A Central Government employee holding a transferable post is liable to be transferred from one place to the other in the country and has no legal right to insist for his posting at any place of his choice. The Court has held that 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 the statutory rules or on ground of mala fides. In the circumstances, it has to be seen whether the present transfer of the applicant can be termed as illegal on grounds of violation of any statutory rules or on ground of mala fides. As far as the statutory rules are concerned, the Telecommunications Board have the authority to transfer an employee anywhere in the country. Rule 37 of the P&T Manual is clear on this point. The impugned order of transfer is an administrative order and the order of transfer itself is not punitive in character and has been issued in the normal course without any element of punishment or causing any stigma on the applicant. It has also to be examined whether the transfer order can be considered as mala fide specially as FIRs were lodged against the applicant, but no case could be established

against him. In the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another - 1989 (1) SLJ 641 CAT - the Full Bench of this Tribunal has held that transfer is not a penalty and if the competent authority considering overall circumstances even after a disciplinary action feels that the transfer is required, it can certainly so order. In this case, the Tribunal held that the authorities have vast discretion and if transfer in public interest is a mere violation of guidelines, it would be immaterial unless malafide has been claimed and fully established. In the present case, the transfer order alleges no misconduct or attaches any stigma on the applicant. It cannot be said that the competent authority has exercised powers for settling any scores, but it appears to have been done in the interest of enforcing discipline.

10. In view of the clear decisions of the Supreme Court in H.N. Kirtania's case and the findings in the case of Shri Kamlesh Trivedi, I see no reason to interfere with the orders of transfer. The application is, therefore, rejected ^{and} there will be no orders to cost.

- *B.C. Mathur*
22/9/88
(B.C. Mathur)
Vice-Chairman