

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00478/2020

Reserved on: 20/01/2021
Pronounced on: 03/02/2021

C O R A M

HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Dr. Prabhat Narayan Jha, Son of Sri Rup Narayan Jha, Programme Executive, All India Radio, Bhagalpur (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. Union of India through the Secretary, Ministry of Information and Broadcasting, Government of India, Shastri Bhawan, New Delhi-110001.
2. The Director General, Ministry of Information & Broadcasting, Government of India, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001.
3. The Chief Executive Officer, Prasad Bharti, Ministry of Information and Broadcasting, Government of India, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001.
4. The Deputy Director of Admn.(P), Office of the Director General, Ministry of Information & Broadcasting, Government of India, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi-110001.

.... Respondents.

By Advocate(s): - Mr. H.P. Singh

ORDER

Per S.K. Sinha, A.M:- Applicant has preferred this OA aggrieved with his transfer vide order dated 16.10.2020 of Directorate General,

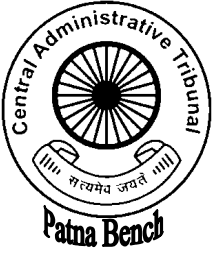
All India Radio transferring 22 officials (Annexure A/1). The reliefs prayed for in the OA read as under:-

“8.1) That your Lordships may graciously be pleased to quash and set aside the impugned order of transfer dated 16.10.2020 as contained in Annexure A/1 qua the applicant.

8.2) That the respondents be further directed to allow the applicant to continue at Bhagalpur without any disturbance.

8.3) That the respondents be further directed to grant all consequential benefits in favour of the applicant.

8.4) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant. ”



The applicant also requested for interim relief to stay the impugned transfer order.

2. The respondents contested the OA on the ground of maintainability and filed a short reply. No Rejoinder to the Written Statement was filed by the applicant

3. Indisputable facts in this case are that the applicant is a Programme Executive in All India Radio posted at Bhagalpur since 07.06.2019 and a departmental enquiry (DE) is being held against him under Rule 14 of the CCS (CCA) Rules, 1965 since 2012. The allegations in DE relate to his earlier posting at Bhagalpur. The applicant was transferred from Bhagalpur to Darbhanga in 2012 and later to Purnea. The charge memo was issued on July 18, 2012 after the applicant had joined AIR, Darbhanga. In June 2019, he was again transferred from Purnea to Bhagalpur. The Inquiry Officer in the DE



submitted his inquiry report in 2015 holding the charges as not proved. However, the Disciplinary Authority did not agree with the finding and directed the IO to conduct the inquiry further on some additional points. The IO after conducting further inquiry submitted his Inquiry Report (IR) on 8.06.2016 in which he held the charges as proved. The applicant was asked to give his representation on the IR and he approached the Tribunal with OA No. 888/2016. During the pendency of the OA, Respondents directed to hold de-novo enquiry on 17.04.2017. The applicant brought this fact to the notice of the Tribunal through MA No. 392 of 2017 in the OA 888/2016 and the Tribunal dismissed the OA on 21.10.2019 with liberty to the applicant to take appropriate course in light of new facts. The applicant filed before the Tribunal another OA No. 1185 of 2019 which is still pending for adjudication. The departmental inquiry against him is still continuing. On 16.10.2020, the AIR Directorate issued order for transfer of 22 officers which included the transfer of applicant from Bhagalpur to Cuttack.

4. The applicant has pleaded in the OA that his transfer vide the impugned order was premature as he had joined Bhagalpur on 07.06.2019 less than one and half years before the order. The applicant has alleged that the respondents wanted him to withdraw the OA pending before the Tribunal but he did not agree to their demand and so the respondents have transferred him from



Bhagalpur as a punitive measure. He is being deprived of the 2nd MACP due to pendency of the disciplinary inquiry. The applicant has also pleaded that in the month of October 2020, he (the applicant) got infected with coronavirus and was advised to avoid exertion and movement (Annexure A/3). Applicant has mentioned that he has only 2 years and 2 months of service left for retirement. His eldest daughter is registered for Class 12 Board examination in CBSE and the examination is going to be held in March, 2021. Shifting to Cuttack would impact the education of his daughter. Further, his father is 90 years old and dependent upon him. He is required to take care of his family including the education of his daughter. He preferred a representation before the Director General, All India Radio on 21.10.2020 mentioning his personal difficulties and requesting for transfer to the AIR unit at Purnea which is his home town. The applicant has put reliance on the Supreme Court Judgement in the case of **Director of School Education Vs O. Karuppa Thevan**, reported in 1994 (28) ATC SC 99.

5. The respondents have pleaded that the transfer of applicant was in accordance with the transfer policy of Ministry of Information and Broadcasting, Government of India dated 14th July, 1981 which is also reflected in AIR Manual Part- 1. The policy lays down that the transfer of officials in AIR would be regulated on the principles mentioned therein subject to the exigencies of public service. A

Programme Executive in All India Radio has country wide transfer liability. A disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 is being held against the applicant for alleged financial irregularity during his earlier posting at AIR Bhagalpur. The Vigilance Section of DG: AIR, in view of the pending DE, advised to move the applicant out of Bhagalpur to a post of non-sensitive nature.



Accordingly, the transfer proposal of applicant was placed before the Transfer Recommendation Committee and based on their recommendation he has been transferred from AIR Bhagalpur to AIR, Cuttack.

6. After the admission of OA, we heard the rival counsels.

7. Shri M.P. Dixit, learned counsel for the applicant, submitted that the impugned order does not mention any ground(s) for the premature transfer of the applicant whether it was on administrative ground or in public interest or it was a routine transfer, though, in the same order, it is mentioned that Amit Kumar is shifted to DDK, Ranchi from AIR, Bhagalpur due to exigency of work. In June, 2019 the applicant was transferred from Purnea to Bhagalpur and in less than one and half years he has again been transferred to Cuttack whereas the normal tenure for Bhagalpur is four years. The applicant has now less than two years to retire and the Transfer Policy requires that an official having less than two years to retire, should be transferred close to his hometown. In this case the applicant is being

sent to a place several hundred kilometers from his hometown. The learned counsel also mentioned that the departmental proceeding for which the charge memo was served in July, 2012 is still being continued by the respondents which is causing him mental harassment and also depriving him of the due promotions and financial benefits. Learned counsel also highlighted the personal difficulties faced by the applicant that he had got infected with coronavirus in the month of October, 2020 and was working from home since then. He mentioned that class 12 examination of the applicant's daughter was scheduled to be held in May-June, 2021 and his movement will disturb the education of his daughter. Also, the applicant was required to take care of his aged father.



8. The Id. counsel for applicant referred to the order of Hon'ble Supreme Court in **Ramadhar Pandey Vs. State of UP** [1993 Supp (3) SCC 35] in which Hon'ble Supreme Court has held that in the absence of specific mention of public interest in the order and in the absence of a counter affidavit or other relevant records the court is left with no option than to conclude that no public interest is involved. The Id. counsel also mentioned the judgement of Hon'ble Supreme Court in **Director of School Education, Madras and Others Vs. O. Karuppa Thevan & Anr.**, setting aside the transfer order on the ground that it was made during the academic year. He also referred to the order of CAT, Lucknow Bench dated 02.07.1997 in OA 319 of 1996 in which

the transfer order was quashed on the grounds that transfer on disciplinary ground to ease out inconvenient staff is not permissible.

9. Shri H.P. Singh, learned counsel for respondents, informed that the representation of the applicant has been rejected by the Directorate in view of the Vigilance Unit's recommendation to post him to a non-sensitive post. He also mentioned that the applicant had been relieved from AIR Bhagalpur on 14.12.2020 to report for duty at AIR Cuttack. To a specific query from us regarding the reasons for which the applicant was transferred to Bhagalpur in 2019 when a departmental proceeding was pending against him, learned counsel submitted that a vacancy had arisen at Bhagalpur and the applicant had completed 4 years tenure at Purnea. The ld. counsel averred that the applicant's transfer to Cuttack in less than one and half year was in the exigencies of public interest to complete the departmental proceeding smoothly and fairly and that it is not a punitive transfer. Based on the report of Vigilance Committee a proposal was sent to the Transfer Recommendation Committee and on their recommendation the transfer order was issued. To a specific query whether there was any report of applicant's misconduct at Bhagalpur in the last one and half years, the learned counsel replied in negative. He submitted that the transfer policy of any department works only as a regulatory framework and does not bestow any justiciable right to the employees. He urged that law on transfer is



well settled with several judgements of Hon'ble Supreme court and referred specifically to the Hon'ble Apex Court judgment in the case of **S.C. Saxena Vs. Union of India** (2006 Vol. 9 SCC 583) in which the Hon'ble Apex Court held as under:



“a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...”

Ld. counsel stated that the applicant rather than joining the place of transfer has opted to knock the doors of Tribunal. It is against the law. The charges in the disciplinary proceeding against the applicant involve financial irregularity which was the reason for the advice of the Vigilance Unit. Ld. Counsel averred that the OA has no merit and deserves to be dismissed.

10. Having considered the submissions advanced by counsels, it is time to advert to the merits of the OA. It is worth mentioning that on the last date of hearing, i.e. 20.01.2021 we made a specific query whether the applicant had been relieved from his present office and we got contradictory response from the rival counsels.

11. It is a settled law that transfer is an incidence of service and an employee has no right to demand posting to a specific place. The employer is the best judge how to utilize the services of its employee. In the case of **State of U.P. Vs. Govardhan Lal** reported in

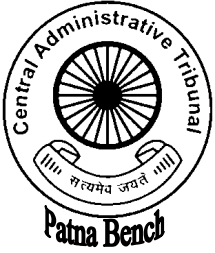
AIR (2004) SC 2165, Hon'ble Supreme Court observed that unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with. However, it is incumbent upon the employer to ensure that the power of transfer is exercised professionally, honestly and reasonably.



12. In the instant case, the respondents have averred that the applicant was transferred from Bhagalpur to Cuttack in the interest of public service to complete the ongoing departmental proceeding smoothly and fairly. They have also held that the transfer was ordered with the recommendation of the designated committee as per the transfer policy (Annexure R/1).

13. The applicant, on the other hand, has raised the issue of his transfer being premature and ordered without consideration of his impending retirement in two years and during mid-academic term when his daughter's Class 12 exams are due in a couple of months. The applicant has also highlighted personal problems especially relating his own infection with coronavirus in October 2020 and the care of his 90 years old father. The application has also questioned the respondents' wisdom in continuing the departmental enquiry against him for the last more than eight years and consequently depriving him of due promotions and financial benefits.

14. The transfer policy (Annexure R/1) which the respondents claim to have followed in ordering the applicant's transfer was issued by the Ministry of Communication & Broadcasting on 14th July 1981. The policy lays down in the beginning itself that **"subject to exigencies of public service, the transfers of personnel employed in All India Radio should henceforth be regulated by the following principles:"** and thereafter lists xxvi principles. Para 2 of the policy requires that the laid down principles should be implemented as objectively as possible and if any exception is required to be made , it should be got approved at the highest level in the Directorate.



15. A reading of the Transfer Policy reveals that the impugned transfer order is in violation of its three principles enumerated at (ii), (xxi) and (xxv) as below.

a. The principle at (ii) defines the normal tenure for different stations and offices of AIR and DDK and reads as under.

"(ii). The normal tenure at stations, offices categorized as 'A' & 'B' will be four years and at stations/offices categorized as 'C' will be two years."

Annexure to the Transfer Policy carries the list of AIR stations /offices and Doordarshan Kendras etc. categorized as 'A', 'B' & 'C'. Bhagalpur appears at serial 6 of the stations falling under category 'B' of the annexure which means that the normal tenure for AIR employees at Bhagalpur is four years. The applicant has been transferred in less than one and half years.

b. The principle at para (xxi) relates to the posting /transfer of officials who are within three years of reaching the age of superannuation and reads as under :

“xxi). Members of staff , who are within three years of reaching the age of superannuation, will, if posted at their home town, not be shifted there from, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible.”



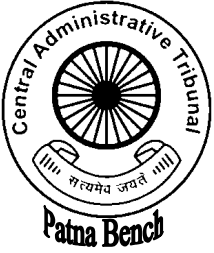
The applicant is due to attain the age of superannuation in two years. In his representation, submitted after the issuance of impugned transfer order, the applicant requested for transfer to Purnea, which is his home town. The above principle requires that the applicant should be posted at Purnea or to a station near his home town. Thus, the impugned order is not in agreement with this principle too.

c. The principle at (xxv) concerns with the education of children and reads as under:

xxv). Transfers will as far as possible be synchronized with the end of the academic year so that the education of children does not suffer.

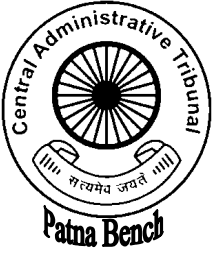
The applicant in his representation to the DG, AIR mentioned that his daughter was in Class XII and registered for the Board Examination with CBSE and that the examination was due to be held in the month of March, 2021. He also mentioned that it would be

difficult to move to Cuttack during mid-session and requested to cancel the transfer order till the Class XII CBSE examination of his daughter. However, the respondents rejected the representation of the applicant. Hence, the decision of respondents to reject the representation was not in accordance with this principle.



16. The respondents have asserted that the impugned transfer order has been issued in interest of public service to ensure smooth and fair conduct of the ongoing departmental proceeding. However, this assertion is contradicted by the fact that the applicant was transferred to Bhagalpur from Purnea less than one and half years ago while the departmental enquiry against him has been continuing since 2012. It is a relevant question that if the applicant's presence at Bhagalpur is found prejudicial to the conduct of departmental enquiry then why was he transferred there from Purnea in June 2019? No allegation of misconduct/irregularity against the applicant in last one and half years i.e. during his current tenure at Bhagalpur has been mentioned by respondents in their pleadings. The Counsel for respondents also, to a specific query from us, mentioned at Bar that there was no adverse report relating the conduct of applicant at Bhagalpur in last one and half years. So, the basis on which the Vigilance Unit of AIR Directorate advised to transfer the applicant

from Bhagalpur to a non-sensitive post is not clear to us from the pleadings or submissions. In the absence of any logical and comprehensible basis on which the Vigilance Unit rendered its advice, we are compelled to think that it was done in a routine way without going into the relevant facts and the provisions of Transfer policy.

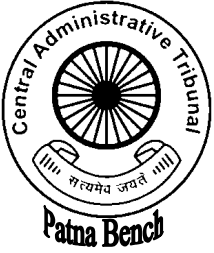


17. The rejection of the applicant's representation also reflects the respondents' indifference towards the principles of Transfer Policy. The applicant, in his representation, while highlighting his premature transfer, impending retirement in about two years and daughter's class XII CBSE Board examination due in March 2021, requested for (i) cancellation of the transfer order till completion of his daughter's exams, and (ii) transfer to Purnea, his home town. Both these requests are in agreement with the principles of Transfer Policy. But the respondents rejected the representation keeping in view the Vigilance Unit's recommendation to post the applicant out of Bhagalpur. We have already questioned, in above paras, the basis on which the Vigilance Unit made this advice.

18. Hence, going by the above discussions, the respondents have shown disregard towards principles of the Transfer Policy. Also, their contention that the applicant was transferred from Bhagalpur to Cuttack in exigencies of public service to ensure smooth and fair conduct of departmental enquiry gets contradicted by the fact that

the applicant was transferred to Bhagalpur less than one and half years back and that there is no charge of any misconduct against the applicant during his current posting.

19. While the law on transfer is settled through a score of judgements, Hon'ble Supreme Court in its Judgement in the **Director of School Education, Madras and Others Vs. O. Karuppa Thevan & Anr. , 1994 (28) ATC 99**, set aside the transfer order on the ground that it was made during the mid-academic term.



Further, Hon'ble Supreme Court in **Ramadhar Pandey Vs. State of UP** [1993 Supp (3) SCC 35] held that in the absence of specific mention of public interest in the order and in the absence of a counter affidavit or other relevant records the court is left with no option than to conclude that no public interest is involved. In the instant case while the respondents, in their pleadings and through the counsel's submissions, have stated that the transfer was ordered in exigencies of public service, but the facts contradict this assertion, as discussed in above paras.

20. In the end, we did find that the transfer of applicant from Bhagalpur to Cuttack has been ordered without considering the principles of Transfer Policy (Annexure R/1) and without any exigency of public service. The ends of justice will be served if the transfer order of the applicant is set aside. Hence, the impugned order (Annexure A/1) to the extent of transfer of applicant from Bhagalpur to Cuttack is quashed and set aside. The OA is thus allowed. However, this order will not be an impediment in the respondents

transferring the applicant from Bhagalpur in accordance with the Transfer Policy in light of fresh developments.

21. No order as to costs.

[Sunil Kumar Sinha]
Administrative Member
Srk.

[M.C. Verma]
Judicial Member

