

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. Nos. OA 1123, OA 1306 and OA 1827 of 1987.

Date of decision: 15.3.1989

Shri Lachman Das,

Applicants

Shri Suresh Karan &

....

Shri Subhash Hari

VS

Union of India

Respondents

PRESENT

Shri M.N. Krishnamani, counsel for the applicants.

Shri P.P. Khurana, counsel for the respondents.

CORAM

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

There are three applications. These applications have been filed by S/Shri Lachman Dass, Suresh Karan and Subhash Hari against their transfer orders from Delhi to Mt. Abu and Bombay. All the applicants are working as Cipher Assistants in the Directorate of Coordination (Police Wireless) in the Ministry of Home Affairs and although there are different orders of transfer, the points raised are common and as such, a common order is being passed in all the three cases.

2. The main case of the applicants is that according to the guidelines for transfer, the Cipher Assistants who have been longest in Delhi should be transferred first, but two Cipher Assistants, namely, Smt. S. Agarwal and Smt. Asha Marwah have been in Delhi since 11.11.1969 which indicates a much longer stay of these two ladies and they should have been transferred out of Delhi before the applicants could be transferred. The learned counsel for the applicants stated that the respondents are neither following the policy of longest stay in Delhi nor of seniority in the cadre whereas in para 6.4 of the counter, they have stated that the transfers are made on the basis of longest stay in a particular place. It has further been said that the two Cipher Assistants have been kept in Delhi on the basis of their sex which is discrimi-

natory under Article 15 of the Constitution. No special provision has been made under Article 15(3) for application to women or children. It would, therefore, be unconstitutional and illegal to keep the two lady employees in Delhi on the basis of sex and transfer the male employees outside Delhi.

3. The learned counsel for the respondents said that no discrimination has been made as such and even the lady employees had been transferred out of Delhi, but on their representation the matter was reconsidered and it was found that on administrative considerations, it would not be convenient to transfer the lady employees outside Delhi. According to the respondents, the cases of the lady employees were considered on operational grounds and they were kept in Delhi. There were also security reasons involved as it was necessary to call the Cipher Assistants at any time of the day or night. It was from the administrative angle that the lady employees who had the longest stay in Delhi were not transferred.

4. It is true that normally the guidelines should be followed by the Departments, but these guidelines are to be implemented by the Departments concerned and the court normally would not interfere in transfer orders which are in exigencies of service or on administrative grounds. In the case of J.R. Raghupathy Vs. State of Andhra Pradesh - AIR 1988 S.C. 1681 - the Court held that the guidelines are merely in the nature of instructions issued by the Government for regulating the manner in which they should formulate their proposals, but these guidelines have no statutory force and these have also not been published in the Official Gazette. The guidelines are merely departmental instructions. In the case of B. Vardha Rao Vs. State of Karnataka & Others - A.T.R. 1987 (1) S.C. 396 - 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 incidence 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." It has also been held by the Supreme Court in Shanti Kumari Vs. Regional Director

Health Services 1981 S.C. 1577 & in Rabinder Nath Gupta Vs. Union of India 1987 (3) SLJ 447 - that in the matter of transfer for the sake of exigencies of administration, courts are not to interfere. Where Government servants carry a liability for transfer to any party of the country, they are liable to be so transferred unless a definite malafide is established.

5. It is a well-established law that normally courts should not interfere in matters of transfers issued in public interest unless some serious irregularity or malafide can be established. In the impugned transfer orders it is clear that the transfer of the Cipher Assistants has been done in public interest and no malafide can be attributed to the respondents in this matter. The question of applying Article 15 of the Constitution in this case would not arise as no rules have been framed by the respondents discriminating between men and women employees. These transfer orders are purely administrative orders. In these circumstances, there is no reason to interfere with these orders. The applications are dismissed. There will be no order as to costs.

15-3-87
(B.C. Mathur)
Vice-Chairman