

Central Administrative Tribunal  
Principal Bench, Delhi.

REGN. No. OA 1543 of 1987 ... Date of decision 1.12.1987

Shri S.D. Kinra ... Applicant

VS.

Union of India ... Respondents

PRESENT

Shri Rajender Arya & ... Advocates for the applicant  
Shri Ravi Prakash

Shri N.S. Mehta ... Sr. Standing Counsel for the  
respondents.

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

This is a case under Section 19 of the Central Administrative Tribunals Act, 1985, against impugned orders dated 3.9.1987 passed by the Department of Tourism reverting the applicant from the India Tourist Office, Chicago, to New Delhi.

2. The brief facts of the case are that the applicant who is an Assistant Director in the Department of Tourism was posted as Manager, Tourist Office, Chicago, USA, in September, 1985. By the impugned order dated 3.9.1987 he was asked to report back by 31.10.1987. The case of the applicant is that this is an abrupt and arbitrary transfer order against the established policy, procedure and practice as laid down by the respondents where generally the postings have been for a minimum period of three years. The applicant has completed only 2 years in America. The applicant has some personal problems regarding the treatment of his son's ears. His son has a hearing deficiency of over 75% and he was examined by the specialists in U.S.A. in April/May, 1986 and has been advised for further check up in May, 1988. Earlier, he had been examined in India, but all medical treatment to restore hearing power did not produce any satisfactory results. The son of the applicant is also a student of 12th grade in Chicago and is in the mid of academic session ending June 30, 1988. If the applicant comes back

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to India now, his son will lose full one year. The applicant has also stated that his wife is ailing and has been advised bed-rest.

3. The Sr. Standing Counsel for the respondents, produced a copy of the guidelines issued by the Minister of State, Ministry of Tourism, which shows that the normal tenure of a person outside India should be two years. In case, however, after review, it is found that the officer has done outstanding work, it could be extended by one year. It has been stated that such a review was done and the applicant was not found suitable for such an extension. The learned Sr. Standing Counsel for the respondents also relied on the observations made by the Supreme Court in the case of **E.P. Royappa Vs. State of Tamil Nadu & Another - 1974(2) SCR 348** - where it has been held that "It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest."

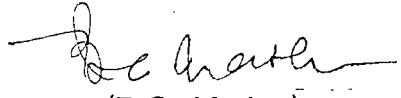
4. The learned counsel for the applicant says that everyone sent so far by the Ministry of Tourism to its offices abroad has not returned to India in less than three years. In fact, there are many who have been abroad for more than three years.

5. While the courts should not interfere in the postings and transfers of Government servants, as they are in the best position to know where to utilise their officers. However, in extreme cases, the circumstances of the family have also to be seen. The Supreme Court in 1986(2) SCALE - **B.V. Rao Vs. State of Karnataka** - have also held that since transfers can uproot a family, cause irreparable harm to Government servant, drive him to desperation, they have to be done carefully. The same judgment also speaks of disruption of education of children and leads to numerous other complications and problems. In **ATR 1987 (2) - B.C. Bohidar Vs. Union of India** - the Cuttack Bench of this Tribunal has also shown a lot of consideration to personal circumstances of a <sup>the applicant</sup> Government servant.

6. The applicant has asked for his retention in USA only till June, 1988 primarily on the ground of the medical check up and completion of Class XII examination of his son, although, according to the policy on postings abroad, the normal tenure has been kept at two years. In this case, the special circumstances of the applicant do warrant that he should be allowed to continue at Chicago for a few months more. His request cannot be considered as unreasonable. It was argued on his behalf that he has only one son and since his check-up has been ordered in May, 1988, he should be allowed to remain in USA till then for the check-up and future treatment of his son. His son should also not be disturbed in the mid academic session. I feel that these are reasonable requests specially as the extension asked for is for a short period only. There is a provision for extending the tenure by one year and in the special circumstances of this case, the following orders are passed:

- (i) The applicant should be continued in his present assignment at Chicago till 31st May, 1988.
- (ii) The applicant may be relieved from his present post on the 31st May, 1988 (A.N.), if the Department so decide.

The application is allowed partly and in the circumstances of this case, there will be no order as to cost.

  
(B.C. Mathur)  
Vice-Chairman