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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1720 of 1987 **198**
T.A. No.

DATE OF DECISION 22.4.1988

Shri D.K. Singh

Petitioner

Shri R. Venkataramani

Advocate for the Petitioner(s)

Versus

Union of India and another

Respondent

Mrs. Raj Kumari Chopra

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 ?


(B.C. Mathur)
Vice-Chairman

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA.1720 of 1987 Date of decision 22.4.1988

Shri D.K. Singh Applicant

Vs.

Union of India and another Respondents

PRESENT

Shri R. Venkatramani ... Advocate for the applicant.

Mrs. Raj Kumari Chopra ... Advocate for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order No. WSC/DLH/Admn.1(12)/3434 dated 11.11.1987 passed by the Development Commissioner of Handlooms, Ministry of Textiles (Respondent No.2) ordering the transfer of the applicant from Delhi to Varanasi.

2. The brief facts of the case are that the applicant was appointed as Occupational Attendant by Respondent No.2 on 1.10.1975 and was promoted as Dyer on ad hoc basis with effect from 8.2.1979 alongwith 9 other Occupational Attendants. According to the applicant, although his promotion was ad hoc, it was not a stop gap arrangement. He was also entrusted with the work of Technical Assistant (Dyeing), which is in a higher grade. He was reverted to the post of Occupational Attendant with effect from 14.8.1984. By another order dated 10.8.84, his regularisation as Dyer was approved. It was stated that vacancies of Dyers were available at Guwahati, Indore, Bombay and Agartala and the memorandum stipulated that persons refusing promotion will not be entitled for promotion for one year. Even though more than two years had already passed since the issue of the said memorandum on 9.2.87, the applicant made a representation to the Director, Co-ordination,

at Bombay praying for consideration for promotion to the post of Dyer. His representations to the Director, Coordination, for considering him for promotion to the higher grade have not been replied to, but in the meanwhile Respondent No.2 passed an order transferring him from Delhi to Varanasi and one Shri Ram Bachan Lal (Respondent No.3), also an Occupational Attendant, was transferred from Varanasi to Delhi. It has been stated by the applicant that he went to see Respondent No.2 in his office on 12.11.1987 in connection with his order of transfer and he was informed by the respondent that he was being transferred because of involvement in Association's activities. Respondent No.2 advised the applicant to stop all Union activities. The case of the applicant is that he is a Joint Secretary of the All India Weavers' Service Centre Staff Association, Bharat Nagar, Delhi, which had been given a provisional affiliation by the INTUC. The applicant has also stated that he is doing Intermediate (Class XI and XII Science) course at Delhi and he is required to attend practical classes at Delhi. If he is transferred out of Delhi, he will have to discontinue his studies. The applicant's two daughters are also studying in Class III and Class V in Municipal Corporation Model School at Bharat Nagar, Delhi. These daughters ~~are studying~~ ^{studying} Punjabi as their third language, taught in Delhi. The applicant fears that at Varanasi it may not be possible to get a school offering Punjabi as a third language and the girls may not be able to cope with Urdu or Sanskrit which is offered as a third language. It is also stated that Shri Ram Bachan Lal, transferred to Delhi from Varanasi, has also made a representation to the respondents for cancelling the order of transfer from Varanasi to Delhi.

3. The respondents in their reply have stated that the applicant is not an office-bearer of any recognised Union and as such cannot be given any facility on the basis of his activities of the

Union. The transfer of the applicant and of Shri Ram Bachan Lal in his place has been done in public interest (Annexure III to the application) and as these transfers are done in normal course and as the services of the applicant are transferable, there is no case for interfering in the transfer. It has been stated that the ad hoc promotion in 1979 as Dyer has no relevance to the present case. Similarly, the post of Technical Assistant is a very senior post requiring specific technical qualification of a degree or diploma in Textile Chemistry. The statement of the applicant that his transfer to Varanasi is vindictive because of his Union activities is wrong and denied. It is stated that the transfer has been done on administrative grounds in the interest of the Department and the exigencies of service. The children of the applicant are studying in primary classes and good schools are available at Varanasi and the children ^{here} can study in their mother tongue, namely, Hindi. Similarly, the problems of Shri Ram Bachan Lal have no relevance to the applicant's case for continuing in Delhi.

4. It has been mentioned on behalf of the respondents that the applicant had himself asked for his transfer to Varanasi on three occasions and the Department was contemplating to accede to his request for his transfer at the earliest opportunity. His transfer to Varanasi could not materialise earlier as there was no vacancy at Varanasi during this period. Having made a request for transfer to Varanasi, the applicant never made another request that he was no longer interested in the transfer to Varanasi. The repeated requests of Shri D.K. Singh were before the Department before the orders of transfer were issued. The applicant has brought this point only when the matter came to court.

5. The applicant has pointed out that he did make representations in 1980, 1981 and 1982 for his transfer to Varanasi in the context of his father's illness who had since expired in 1985. As

his request made several years back was not granted, he had felt that his request had been rejected. It is further not correct that there was no vacancy at Varanasi because Respondent No.3 had actually been transferred to Varanasi in 1984 when his father was still alive.

6. A number of cases were cited by the learned counsel for the applicant and the respondents in favour of their contentions. The applicant has relied upon the policy of the Government that Class III and Class IV officials shall not be generally transferred from one place to another. The Supreme Court in the case of **B. Varadha Rao Vs. State of Karnataka & Others - 1986 (3) SLR 60** - has observed that unscheduled transfers can uproot a family and cause a lot of harm to a Government servant. In this case the Supreme Court has made a distinction between persons occupying superior posts and those holding Class III and Class IV posts. While in the case of superior posts, continued posting at one station or one department of the Government is not conducive to good administration, the position in respect of Class III and Class IV employees stands on a different footing.

In the case of **K.K. Jindal Vs. General Manager, Northern Railways - 1986(2) SLR - 69** - the Tribunal has held that it has to be seen that the transfer order passed is ^{whether} as a vindictive measure and is a colourable exercise of power so as to throw the applicant out of the scene and leave the Staff Union with no spokesman for vautilating the grievances of the fellow workers.

7. It has been argued by the learned counsel for the applicant that if impugned order was in public interest, it could not be a routine transfer. In any case, the transfer order does not make any reference to the request of the applicant for his transfer to Varanasi made in 1980. A number of other cases were also cited where it has been shown that in the case of Class III and Class IV employees a lot of consideration has to be shown in the matter of transfer even though theoretically there may be ^{full} power resting with the authorities for making these transfers.

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8. Mrs. Raj Kumari Chopra, the learned counsel for the respondents, said that the contentions of the applicant in paras 1 to 8 of his application were irrelevant and unrelated. The applicant has tried to make out a case that he was transferred because of Association activities, but this cannot be accepted as there was really no Association as such. There has been no malafide proved by the applicant and there has been no discrimination shown in the matter of transfer. It has been held, according to her, that in the case of **P.N. Bahuguna** the Principal Bench felt that a Secretary of a recognised Union also had no right for staying at one place for all times and there are a number of judgments saying that even Class III and Class IV employees can be transferred in public interest. She cited the case of **Tribhuvan Nath Pande Vs. Union of India - AIR 1953 Nagpur 138** - where it was held that the posting of an officer is entirely at the discretion of the authorities. She also cited the cases of **G.K. Tarun Vs. Judicial Commissioner of the State of Ajmer - AIR 1957 Rajasthan 230** -- and **J.P. Ray Vs. State of Orissa - SLJ 1981(1) 506** - which establish that transfers can be done at the discretion of the authorities and that normally orders of transfer are outside the scope of courts. Administrative authorities have to see many things and a variety of factors weigh with the authorities to decide the question of transfer. Where the discretion is with Government and transfer is in the exigencies of service, it becomes a subjective opinion of the Government and as transfer is an incidence of service, the courts should not interfere in this. The applicant had failed to file any affidavit alleging malafide on behalf of the respondents. She also cited the case of **A.M. Agarwala Vs. Union of India - SLR 1981(2) 407** - which establishes judicial review of relationship between employers and employees cannot be a subject matter for judicial review. She also pointed out that Respondent No.3 has already joined at New Delhi and there cannot be two persons working against the same post.

9. The learned counsel for the applicant stated that he brought out the case of denial of promotion only to show that the

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applicant was being harassed. He had ^{mention and claim} brought out the meeting of the applicant with Respondent No.2 wherein he has specifically brought out that the transfer was due to Union activities although there is no affidavit as such, but a verification was given while making this statement. It is important to note that the transfer ^{it} order is in public interest and at the same time ^{is} claimed that it is a routine transfer. The way applicant has been transferred and the haste with which he has been relieved indicate that the respondents have abused ^{their} authority and have tried to harass a lowly paid Government servant.

10. After going through the papers and hearing the arguments, it is quite clear that the transfer of the applicant from Delhi to Varanasi was certainly not on the basis of his request. The respondents took no action when he really wanted to go to Varanasi due to his father's illness. It is also incorrect to say that he could not be transferred at that time as there was no vacancy because Respondent No.3 was transferred to Varanasi in 1984 when the request of the applicant was pending with the respondents. It is true that the Union or the Association to which the applicant belongs was not a recognised Union; nevertheless, the activities of the unrecognised Unions can be embarrassing to the authorities. While it is true that normally courts should not interfere in the matter of transfers and these should be left to the authorities concerned, the courts must see whether the transfer order is innocuous or punitive. In the present case it appears more likely that the applicant was transferred because his presence in Delhi could be embarrassing to Respondent No.2. Merely by saying that the transfer was in public interest, it cannot be so automatically. In the case of ^{employment} Class III and Class IV no great public interest is normally served by transferring him from one place to another, specially when it disturbs the education of the children in mid session. The respondents certainly had the discretion to transfer the applicant to Varanasi or ^{any} another other place, but their claim that the applicant ^{was}

transferred at his own request has been proved to be wrong and I am inclined to accept the applicant's plea that his transfer order has been vindictive and without any strong justification. In the circumstances, the impugned order deserves to be quashed and I do so. The application is allowed. There will be no order as to costs.

B.C. Mathur
22/4/88
(B.C. Mathur)
Vice-Chairman