

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 560  
T.A. No.

1987.

DATE OF DECISION 30.6.1987

Smt. Anita Sharma & Ors. Petitioner

Shri M.N. Sehgal, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.H. Ramchandani, Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. S.P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

*C. Ramakrishna Rao*  
(Ch. Ramakrishna Rao)

Judicial Member

*S.P. Mukerji*  
( S.P. Mukerji )  
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: DELHI

Regn. No. OA-560/87

Date: 30.6.87.

Smt. Anita Sharma & Ors.

... Applicants.

Versus

Union of India & Ors.

... Respondents.

For Applicants.

... Shri M. N. Sengal,  
Advocate.

For Respondents.

... Shri P. H. Ramchandani,  
Advocate.

COURT: Hon'ble Shri S. P. Mukerji, Administrative Member  
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

JUDGEMENT  
(Delivered by Shri Ch. Ramakrishna Rao)

The applicants are holders of Group A posts of Assistant Technical Advisers (ATAs)/Food & Nutrition Extension Officers (FNEOs). The duties assigned to them are *inter alia*:

- (i) To formulate proposals for the conservation and effective utilisation of food.
- (ii) To assess the patterns of consumption of food and to formulate programmes for the promotion of suitable dietary habits so as to improve the nutritional status of the people.
- (iii) To develop low cost balanced diets based on locally available food stuffs for different regions and to popularise the same.
- (iv) To undertake extension programmes for the dissemination of nutrition education, preservation of fruits and vegetables, etc, to the people.
- (v) To give technical advice in regard to standard and specification for foodstuffs, their processing, packing, etc.

2. The target of attack in this application is Office Order No. 17/87 CMT dated 15.4.87 (for short, the order) issued by the Department of Food, in the Ministry of Food and Civil Supplies, Government of India (Department, for short) transferring the applicants among others working at the places mentioned in Column No. 3 of the order to the places mentioned in Column No. 4.

*[Handwritten signature]*

3. Shri M.N.Sehgal, learned Counsel for the applicants strenuously contends that the applicants have been transferred to posts newly created at several places mentioned in the order and the creation of such posts was not done with the approval of the Minister Incharge of the department, according to the allocation of work between Ministers dated 20.5.1986 (annexure VII), Shri P.H.Ramchandani, learned Counsel for the respondents urges that in the present case new posts have not been created and on the basis of the recommendations of the Staff Inspection Unit(SIU) of the Ministry of Finance, the strength of the ATAs/FNEOs in the pay scale of Rs.2200-4000 was reduced from 33 to 27. According to him the said posts were on All India basis and it became necessary to redeploy them at different places in the country in public interest so as to obtain optimum utilisation of their services. Learned Counsel invites our attention to the following statement made on behalf of the respondents in their reply to the application:

"Prior to the present redeployment and transfers, there was considerable imbalance in the deployment of the FNEOs/ATAs. .... As a result of the redeployment now ordered, FNEOs/ATAs would cover 27 States/Union Territories as against the coverage of 13 States/Union Territories prior to the present redeployment. This would not only extend the technical supervision and guidance to several of the field units which did not have this benefit hitherto but also enable effective liaison and coordination with the Governments of the States not covered earlier in organising nutrition education programmes, and thereby make for better utilisation of these officers."

4. We have carefully examined the rival contentions. We are satisfied that the present case does not involve any creation of new posts but optimum utilisation of the ATAs/FNEOs by effecting transfers as set out in the order.

5. Shri Sehgal next contends that the order is vitiated by malafides. He developed his arguments thus: the en masse transfer of ATAs/FNEOs was made just before the expiry of the period of deputation of Respondent No.2 (R-2)

Joint Secretary (Admn.) 7. There has never been mass transfers of ATAs/FNEOs prior to the passing of the order and it was only done with a view to create chaotic condition in the department and to harass the applicants.

6. Shri Ramchandani, learned Counsel for the respondents submits that the order is in no way vitiated on the ground that it was passed on the eve of the expiry of the deputation period of R-2 and on account of this co-incidence is not open to challenge. According to him the fact that the ATAs/FNEOs were transferred en masse does not bear out the plea of malafides on the part of the respondents.

7. In our view, the allegation of malafides has to be proved by placing before the Court material-circumstantial or otherwise- of a cogent character/demonstrate that the orders were passed by the authorities concerned with oblique motives. The following observations of Raghava Rao J.in A.K.Gopalan, In re.-A.I.R.-1953 Mad-41, contains the tests for determining whether the action of the Government is bonafide or not;

"As to the law on the matter, I wish to make it clear that as I apprehend it, in the case of fraudulent execution of a statutory power, as in the case of fraudulent execution of a power to appoint under a deed or will or of any common law power, the fraud does not necessarily imply any moral turpitude, but consists in the exercise of the power for purposes foreign to those for which it is in law intended. Persons exercising such power by them cannot be held invalid except on proof of malafides, or indirect motive or of some improper conduct materially affecting such exercise." (Emphasis supplied)

The law as enunciated in the decision supra has been applied by the Supreme Court in cases where the power to transfer an officer is exercised by the authorities vis-a-vis Articles 14 and 16 of the Constitution of India. In E.P.Royappa v. Statement of Tamil Nadu A.I.R. 1974 S.C.555, Justice Bhagwati, J. (as he then was) speaking for the majority held:



"Articles 14 and 16 strike at the arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action as distinguished from motive inducing from the ante chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16." (Emphasis supplied).

8. Applying the tests exigible from the judicial dicta referred to above, we do not find any allegation in the present case that R-2 had any ill will against the applicants or he imported any impermissible or extraneous consideration in the matter of effecting the transfer of ATAs/FNEOs covered by the order. The circumstances relied upon by Shri Sehgal are much too tenuous to support the plea of malafides and we, therefore, reject the same.

9. Shri Sehgal challenges the order on the ground that it was passed at the level of R-2 without obtaining the sanction of the Secretary-Incharge of the department and as such it has no legal validity. Shri Ramchandani however, submits that the order does not rest on the decision of R-2 but it was passed after being put up to the Secretary.

10. We have perused the confidential file relating to the posting/transfers of ATAs/FNEOs and we find therefrom that the proposals were put up by Director (P) on 3.4.87 to R-2, who in his turn marked it to Secretary (F). From the noting dated 10.4.1987, it appears that R-2 discussed the matter with the Secretary and purport of the discussion was set out therein. The matter also seems to have been further discussed by the Secretary on 14.4.87 and the order was issued only thereafter. We are, therefore, satisfied that the order is not the outcome of the decision taken at the level of R-2

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as alleged by the applicants but as a result of the discussion held by the R-2 with the Secretary Incharge of the department.

11. It is usually expected of the Secretary to record a note of his own but the practice has long existed that Secretary being too busy with other important and pressing matters may not have the time to do so and he may leave it to the officer who discussed the matter with him to incorporate the gist of the discussion <sup>on the file</sup> and follow up the matter in the light thereof. We find nothing objectionable in this procedure which is based on expediency and any noting made at the level of very senior officer of the status of Joint Secretary in the Department/Ministry must be given its full value. It is pertinent to note that the representations made by the applicants against the order transferring them were actually marked by R-2 to the Secretary (F), who noted; "I agree with J.S." and signed underneath. This puts the matter beyond doubt because unless the matter was discussed and approved earlier by the Secretary, <sup>it</sup> could not have had his concurrence at a later stage in the context of the representations made by the applicants regarding their transfers.

12. Shri Sehgal next contends that the nature of the duties performed by the applicants is such that knowledge of the language <sup>prevalent</sup> at the places where they are posted is essential for the discharge of their duties. Shri Ramchandani, on the other hand, submits that the role of ATAs/FNEOs is of a supervisory/advisory nature; that the demonstration officers working under them actually conduct the training and educational programmes in rural and urban areas and these officers come in direct contact with the people and not ATAs/FNEOs; and as such knowledge of local language is not a must for the discharge of the duties of the applicants. Shri Ramchandani also invites our attention

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to the fact that the posts of ATAs/FNEOs being on All India basis the incumbents thereof are liable to be transferred to any place in the country and it is specifically stated so in the appointment letters of the applicants.

13. In our view, even if the applicants are not familiar with the local language, it will not in any way hamper the discharge of their duties. Further being members of an all India service they are bound to obey the orders of transfer. As observed by the Supreme Court in B.Varadha Rao Vs State of Karnataka, 1986-A.T.C.-558;

"An order of transfer does not ipso facto vary to the disadvantage of a government servant any of his conditions of service.....

Transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service. No government servant can claim to remain in a particular place or in a particular post unless, his appointment itself is to a specified, non-transferable post. Therefore, a transfer order per se made in the exigencies of service does not result in alteration of any of the conditions of service, express or implied, to the disadvantage of the concerned government servant. However, a transfer order which is mala fide and not made in public interest but made for collateral purpose with oblique motives and in colourable exercise of power is vitiated by abuse of power and is open to challenge before court being wholly illegal and void."

It is thus clear that a Government servant is amenable to transfer unless his letter of appointment excludes from its purview the right of the Government to transfer him. This decision also reiterates the view that a transfer order is open to challenge only on the ground of malafides which as already stated by us is not present in the instant case.

14. Shri Sehgal vehemently contends that the guidelines contained in the Office Memorandum (O.M.) dated 10.12.82 issued by the Department have not been observed inasmuch as considerations such as the spouses living together at the same place, education of school going children, have not been taken into account by the department while passing the order. Shri Ramchandani invites our

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attention to the provision in the guidelines issued by the department wherein it is stated:

"Husband & Wife teams may be kept together as far as possible, of course, within the framework of the maximum stay of 6 years or 4 years as the case may be, at one place." (Emphasis supplied)

He also relies on the O.M. dated 3.4.1986 issued by the department of Personnel and Training wherein it is clearly stated:

"As far as possible and within the constraints of administrative feasibility", husband and wife may be posted at the same station." (Emphasis supplied)

Shri Ramchandani, therefore, urges that it is not imperative to keep both husband and wife at the same place, if it is not possible to transfer the spouse to that station. So far as the education of children is concerned, he submits that the order has been issued in the month of April to enable the person transferred, among whom the applicants figure, to make suitable arrangements in the matter of educating their children at the places where they have been posted.

15. We have given anxious thought to the rival contentions As aptly observed by Khalid J. of the Kerala High Court (as he then was) in R. Pushpakaran Vs. Chairman, Coir Board (Kerala) 1979(1) SLR-309:

"An order of transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts". This is the human aspect of the matter."

These observations were cited with approval by this Tribunal in its decision in K.K. Jindal Vs. General Manager, Northern Railway and Ors. AIR-1986-C.A.T.-304. It is, therefore, inherent in the very concept of transfer that the person transferred from one station to another has to face several

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personal/domestic problems but if it is done in public interest and not by way of punishment or on extraneous considerations, he can have no grievance. The personal/domestic difficulties facing the applicants were duly considered by the respondents their representations were examined and ~~the~~ representations in the light of the guidelines contained in the O.Ms. referred to in paragraph 14 referred to above. The subsequent representations filed by the applicants were also duly examined and from the confidential file placed before us on behalf of the respondents, it appears that in transferring the applicants they have been as considerate as possible, though the applicants may feel aggrieved by the administrative decision. In our view it is not open to us in these proceedings to reappraise the merits and demerits of the order.

16. In the present case the facts which necessitated the order being issued by the department have already been adverted to by us in the foregoing paragraphs. We may also extract the following statement from the reply filed on behalf of the respondents which further amplifies the object and purpose of issuing the order;

"In redeploying the FNEOs/ATAs, it was necessary to transfer all those who had been at a particular station for a long time so as to familiarize them with the working of the field units in other parts of the country and thereby broad-basing their experience and enabling them to discharge their supervisory role better which is clearly in the larger public interest."

We are, therefore, satisfied that the order was passed in public interest.

17. Shri Sehgal next contends that as many as 7 out of 20 covered by the order were interchanged from the posts where they were holding to the posts to which they were transferred and this was done in violation of the ban on rotational transfers imposed by the O.M. dated 23.4.1981. Shri Ramchandani, on the other hand, submits that the order under challenge is not in the nature of rotational transfer.

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18. We have examined the rival contentions. We are not inclined to label the order as effecting any 'rotational transfer' within meaning of that expression as understood in administrative parlance.

The order has been passed, as already observed by us, for optimum utilisation of the ATAs/FNEOs and in so doing there might have been an interchange of the ATAs/FNEOs in a few cases. This in our view, does not vitiate the order.

19. Shri Sehgal challenges the order on the grounds that there is no office of Food and Nutrition Board (Nutrition Division) at Hapur and Lucknow to which places applicants No.1 and 2 have been transferred and there is no sanctioned post of ATAs/FNEOs in Jammu where applicant No.3 is posted.

20. Shri Ramchandani invites our attention to the reply filed on behalf of the respondents in paragraph 6.12 in which it is stated;

"In the redeployment ordered, inter alia one post of FNEO/ATA has been assigned to Jammu & Kashmir with headquarters at Jammu, one post to Uttar Pradesh with headquarters at Lucknow and one to the Indian Grain Storage institute at Hapur to take care of the Institutional training on nutrition education to be started at the Institute. It is also submitted that the Department of Food of which Nutrition Division is a part has offices at each of these places and necessary instructions as to the office from where the applicants have to operate, were issued vide the Department's letter dated 23.4.1987 addressed to the regional Deputy Technical Advisers who are the controlling officers of the NFEOs/ATAs including the applicants in their respective regions (Annexure R-1)."

We do not find any substance in the challenge of applicants 1,2 and 3 as we find the explanation contained in the reply extracted above to be convincing.

21. To sum up, the present case does not involve any creation of new posts but only optimum utilisation of the post of ATAs/FNEOs necessitated on account of the reduction of the strength of FNEOs/ATAs from 33 to 27. The order was passed in public interest though it might have entailed personal inconvenience to the applicants, which the respondents to the extent feasible, have tried to alleviate.

*Ad*

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The applicants have not succeeded in establishing the allegation of malafides levelled against the respondents and as such the order does not suffer from any infirmity.

22. Shri Sehgal has filed written arguments on behalf of the applicants which are by and large a recapitulation of the oral arguments. We have gone through the same before delivering the judgement.

23. For the reasons given in the foregoing, we uphold the validity of the impugned order and direct the applicants to join duty at the places to which they have been transferred on or before 1.9.1987.

24. In the result, the application is dismissed. There will, however, be no order as to costs.

Ch. Ramakrishna Rao

( Ch. Ramakrishna Rao )  
Judicial Member

S.P.

( S.P. Mukerji )  
Administrative Member