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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1642/1989.

Date of decision: 19-9-90

Shri S.M.Mukherjee .. Applicant.

Vs.

Director General, All India Radio .. Respondent.

O.A. No.882/1990.

Shri S.M.Mukherjee .. Applicant.

Vs.

Director General, All India Radio .. Respondent.

O.A. No.1391/1990.

Shri S.M.Mukherjee ... Applicant.

Vs.

Director General, All India Radio ..
Director^{and} of Estates. Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... In person.

For the respondents ... Shri P.H.Ramchandani,
Senior Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

Shri S.M.Mukherjee, an Assistant Engineer in
All India Radio, New Delhi has filed Original Application
No.1642/1989 (OA) aggrieved by an order of transfer from
New Delhi to Calcutta vide order dated 20.3.1989. This
O.A. was heard and decided by one of us (Hon'ble Shri
B.C. Mathur, Vice-Chairman (A)) as a Single Member Bench
on 26.10.1989 dismissing the O.A. and permitting the
applicant to make a representation against his transfer to

the competent authority. A Review Application was filed by the applicant complaining of certain procedural

shortcomings. The Review Application was heard by us and allowed on 13.8.1990. The order dated 26.10.1989 was

set aside and the O.A. was directed to be heard afresh.

Learned counsel for the respondents was granted time to file a reply to the O.A. and the applicant was granted

time to file a rejoinder, if any. The matter came before us on 4.9.1990 when we heard the applicant in person and

Shri P.H. Ramchandani, learned counsel for the respondent.

O.A. No. 882/1990 is by the same applicant.

The applicant is aggrieved by an order of stoppage of his salary with effect from 4.4.1990. This O.A. was filed on 7.5.1990. He had also made a prayer for an interim

order so that his salary could be paid. A Division Bench directed this O.A. to be heard by the same Bench which

was hearing the Review Application and further directed that since the applicant was getting his full salary till

the month of March, 1990, they directed his salary to be released by the respondents, on a provisional basis, till

further orders. This matter was also listed before us for admission on 4.9.1990. We have heard the applicant

in this case also. O.A. No. 139/1990 is also by the same applicant.

In this O.A. he has prayed that the respondent be directed to treat him as not a legally relieved gazetted officer since

the charge was not taken over from him and that the

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he himself suffered from high blood pressure. Another

grievance of his was that two other persons Shri O.P.

Aggarwal and Shri P.D.Saxena (at Sl.No.12 & 14) were

allowed to continue in their respective postings at

New Delhi whereas their names were also included in

the transfer order. He, however, alleged that many

A.I.R. Engineers posted in Delhi/New Delhi had never been

transferred during their service career of 25 years whereas

the applicant had already undergone 9 transfers. The

applicant's brother had met the then Minister of State

in the Ministry of Information and Broadcasting and had

submitted an application for the cancellation of the

transfer order of the applicant which was acknowledged

by the Private Secretary to the State Minister. The

3rd paragraph of the impugned order dated 20.3.1989 was said

to be hit by Article 14 of the Constitution and grossly

illegal, wrong, unjust and without jurisdiction. It

precludes the applicant from seeking the sympathy of the

employer even on compassionate grounds. He has alleged

discrimination in the treatment meted out by the D.G.,

A.I.R. in the case of Shri O.P. Aggarwal and Shri P.D.Saxena

whose names were mentioned in the transfer order but

subsequently allowed to continue in their respective

postings. Similar plea was also raised about Shri S.K.Garg,

Assett Station Engineer who was also transferred around

the same time as the applicant but the transfer order

was cancelled subsequently.

The applicant had prayed for the cancellation of the transfer order dated 20.3.1989 and for a direction to the respondent to revise the transfer policy and formulate a new policy based on ingredients of circumstances and the weightage to be given to the above. Lastly, it was prayed

that the respondent be restrained from transferring the

applicant till the Tribunal is satisfied that all the

Assistant Engineers posted in Delhi had more than 9 transfers,

as in the case of the applicant. He had also prayed for an

interim order against his transfer.

In their reply to the O.A. it was stated that

along with the applicant, 14 other officers were also

transferred and that representations against the order

of transfer were considered by the respondent. In

respect of paragraph 3 of the impugned order dated

20.3.1989, it was stated that this was incorporated in

the order to expedite the transfers of the officers

concerned for the timely completion of T.V. Projects.

In spite of the instructions, representations were received

and duly considered. No representation was received from

the applicant but an application was received from his

brother and a reply thereto was given at the level of

the Minister of State for Information and Broadcasting after

detailed consideration. It was stated that every transfer

case is considered on merits and decided keeping in view

the exigencies of public services. The applicant has

been transferred as he had been in Delhi for the last

12 years as against the prescribed tenure of 4 years.

The plea of the applicant that there is no mechanism

to get the vital information furnished by the employees

verified has no foundation as all necessary information is

available with the Directorate. The applicant had been

transferred after taking all facts into consideration.

The representation made by the applicant's brother against

the transfer of the applicant was duly considered at the

level of the Minister of State in the Ministry of Information

& Broadcasting and was rejected. Lastly, it was submitted

that the applicant is not entitled to any relief and the

Application may be dismissed with costs.

The applicant had filed a rejoinder where he has

reiterated his earlier stand and stated that the pleas

taken in the reply of the respondent were not correct.

It was pointed out that he had taken charge as Assistant

Engineer in the year 1983 and in the year 1989 he had

completed only 6 years and as such the allegation that he

had completed 12 years in Delhi was totally wrong.

Certain facts about other Engineers, Assistant Engineers

etc. were mentioned in the rejoinder. The applicant

ought to give a rejoinder to the reply on the grounds

raised by the respondent.

We have heard the applicant and Shri P.H. Ramchandani,

learned counsel for the respondent. We have also perused

his application, the reply by the respondent and the

rejoinder along with their annexures.

The principal question in this O.A. is about the

order of transfer of the applicant from New Delhi to

Calcutta. He is also aggrieved by the 3rd paragraph of

the impugned order of transfer which indicated that no

representation against the order of transfer to be

entertained. His stand is that this shut out any

representation being made or the consideration of his case

even on compassionate grounds. In the first place, he

challenged the authority of the D.G., A.I.R. to bar the

entertainment of any representation. He urged that every

Government servant had a right to make a representation

to the statutory authority and this could not be barred.

His other contention was that he had too many transfer

orders in 28 years of his service and that he was in a very

difficult situation at home where his aged mother lay

in bed with fractured leg. His son has a very poor vision

and his children were receiving education in Delhi

and as he was suffering from high blood pressure.

Admittedly, the applicant is in Government service

and transfer is an incident of his service. The Supreme

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in the
Court / Case of GUJARAT ELECTRICITY BOARD & ANR. Vs.

ATMARAM SUNGOMAL PESHANI (37, 1989 (3) SC 20) laid

down the law of transfer in the following words:

"Transfer of a Government servant appointed to a particular class of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, even the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules..."

There is no dispute that the applicant was holding a

transferable post and under the conditions of service

applicable to him, he was liable to be transferred and

posted at any place in the country. In the GUJARAT

ELECTRICITY BOARD & ANR case (supra) the respondent

Atmaram Sungomal Peshani was a Technical Assistant with the

Gujarat State Electricity Board. He was promoted to the

post of Deputy Engineer. He was transferred to Ukai

Sub-division and was relieved from his duties at Surat.

He made a representation to the Additional Chief Engineer and of course was not heard. He did not file any legal order for cancelling his transfer order on the ground that his

mother who is 70 years was ailing and it would cause great

inconvenience to him if he was required to join at Ukai.

His application was rejected and he was directed to join

at Ukai. He, however, did not do so. Instead, he filed a

Civil Suit at Baroda challenging the validity of the order

of transfer. The Chief Engineer by another order discharged

the respondent from service in accordance with Service

Regulations. That order also was challenged by the respondent

The learned Single Judge of the High Court quashed the

order of termination but declined to grant the applicant

consequential relief. Two appeals were filed against the

order of the Single Judge before a Division Bench which

dismissed the appeal of the Electricity Board but allowed

the appeal of the employee granting the consequential

benefit. The Electricity Board went up in appeal to the

Supreme Court. The appeal was heard and allowed. The order

of the Division Bench and that of the learned Single Judge

of the High Court were set aside and the respondent's

Petition was dismissed. The principles decided in the above

case are fully applicable to the present case.

In another decision UNION OF INDIA Vs. SHRI H.N.

KIRTANIA (JT 1989 (3) SC 131), the Supreme Court held that

they found no justification for the High Court for entertain-

ing a writ petition against the order of transfer made against

an employee of the Central Government holding transferable

post. The Lordships observed:

"The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. ... Transfer of a public servant on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides."

The above decision is binding on all Courts and Tribunals throughout India under Art. 141 of the Constitution.

It is not in dispute that the applicant was holding a transferable post. Under the conditions of service applicable to him, he was liable to be transferred and posted at any place within India. He had no legal or statutory right for being posted at one particular place of his choice.

The applicant wanted his transfer order to be cancelled on a variety of grounds. His stand was that by inserting paragraph 3 in the impugned order, his right to make a representation against the order of transfer had been taken away and this was clearly in violation of Article 14 of the Constitution. He referred to the right of a Government servant to make a representation against an order of transfer. The Supreme Court itself had recognised the right of a Government servant to make a representation against an order of transfer. It is, therefore, clear that there is a right of a Central Government employee or an employee of the All India Radio/Doordarshan to make a representation, if necessary, against an order of

make
transfer. The applicant did not make a representation to
the Director General, All India Radio. But his brother
moved an application on his behalf to the then Minister
of State, Ministry of Information and Broadcasting in
April, 1989, which was ultimately replied by the
Private Secretary to the State Minister to the effect that
it was not possible to cancel the order. It is, therefore,
obvious that it was not a matter where the applicant had
not moved an authority even superior to the respondent,
the Director General, All India Radio.

Even otherwise, when the order dated 26.10.1989
was passed by a Learned Single Member, he had allowed
the applicant to make a representation to the respondent
at that stage. It appears, no representation was made
following the order dated 26.10.1989.

In the reply of the respondent it was stated that
paragraph 3 was inserted in the transfer order to expedite
the transfers of the officers concerned for the timely
completion of T.V. Projects. This indicates that the
transfers were ordered on ground of public interest.

The Supreme Court has held that where the transfer orders
are made in public interest, these cannot be interfered
with by the High Court or the Tribunal. If a representation
is made and rejected, the applicant has no other option
but to proceed to the place of posting, otherwise, he
would have to face the consequences. This too has been
made clear by the Supreme Court.

In view of the above, the law laid down by the

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Supreme Court in the aforementioned decisions, it is no longer open to a Central Government employee holding a transferable post to question his transfer unless it is contrary to some statutory rules or is mala fide. There is no allegation of mala fide against anyone in particular and in any event, nobody has been named by name, which is imperative in case of allegations of mala fides.

Shri P.H. Ramchandani, learned counsel for the respondent contended that the impugned order is not void.

Paragraph 3 is severable and does not vitiate the order of transfer. The order of transfer is neither non-est nor unconstitutional.

The other point that has been raised is about discrimination in the treatment of the applicant as against other employees in the A.I.R. who were treated differently in matters of transfer and postings. We do not think that it will serve any purpose to examine the allegations in this

respect for each transfer when made on the ground of public interest will stand on its own. Besides, it is not evident

from the material on record that the facts and circumstances of any two employees were exactly the same and that they were treated differently. Under the circumstances, we do not think that the ground of discrimination can be gone into.

Shri P.H. Ramchandani contended that conduct of the applicant is also to be seen. He neither makes a representation after the order of the single Member on 29.10.1989, nor complies with the order of transfer even after the rejection of the application made to the then Minister of State, Ministry

of Information and Broadcasting. He stated that this amounted to an abuse of the judicial process. Further, he had obtained interim orders from the two different Benches of the Tribunal in regard to payment of his salary and continuance in the Government accommodation. He urged that if the transfer is valid, the applicant must go and report to the place of posting. He urged that the facts and the circumstances of the case does not entitle the applicant to any relief.

The applicant narrated his tale of woe, in particular,

his children's education, mother's illness, his high blood

pressure problem and frequent transfer orders. The fact of the

matter is that in 28 years service, this was his 9th transfer

which is not too many. Secondly, according to his own showing,

he had been in Delhi for 6 years continuously and was liable

to be transferred. The upshot of the matter is that the

applicant being a Central Government employee holding a

transferable post was liable to be transferred anywhere in the

country in the public interest. We have noticed in the

present case that the applicant was directed to make a represent-

ation even after the order of 26.10.1989 but he had not filed

the same. However, it is established that a representation was

made to the then Minister of State for Information & Broadcast-

ing, which was disposed of by saying that it was not possible

to cancel the order. Even though he did not make a representation

to the Director General, All India Radio, yet his representation

to an even higher authority was considered and decided.

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We are not satisfied that any case is made out on any of the legal grounds submitted by the applicant for the cancellation of his transfer order.

The O.A. merits to be rejected and we dismiss the same accordingly. There will be no order as to costs.

O.A. 882/1990. We have heard the applicant. He has prayed for three reliefs. Firstly, the D.G., AIR be directed to withdraw "stop salary order" immediately and to pay arrears due w.e.f. 1.4.1990; secondly, the Directorate of Estates be directed not to evict the applicant during the period the case is sub-judice; and, thirdly, the respondent be served with a notice of contempt of Court for taking action against the applicant during the pendency of the Review Application.

As seen above, we have already passed order dismissing the O.A. 1642/1989 which was against the order of transfer dated 20.3.1989. Consequently, the applicant was required to join his place of posting. Since he had not done so, the respondent could pass an order stopping the payment of his salary from 1.4.1990. The second relief asked for about the eviction from the Government premises also cannot stand for the same reason. The third relief regarding taking contempt of court proceedings against the respondent cannot be made in this O.A. as it was a separate matter altogether.

We are satisfied that no case has been made out for admitting this O.A. This O.A. is accordingly rejected at the admission stage. The interim order passed in

the above O.A. on 15.5.1990 regarding the payment of salary is withdrawn.

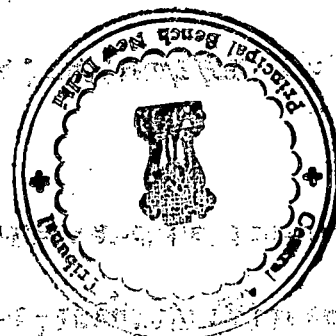
O.A. 1391/1990. This O.A. was filed on 9.7.1990. The applicant has prayed that the D.G., A.I.R. be directed to treat the applicant as "not a legally relieved gazetted officer" since the charge was not taken over from him, and secondly, the communication from the D.G., A.I.R. that the applicant has been relieved from New Delhi on 24.4.1989 or that he is working in Calcutta from April, 1989 was false and void and he prayed for the withdrawal of the eviction notice.

There was a transfer order dated 20.3.1989. The applicant did not comply with the order and stayed on in Delhi. His case is that he was not legally relieved of his charge and consequently, he continued and he is entitled to continue at Delhi.

We have dismissed the O.A. No.1642/1989 against the order of transfer today. The question raised in this case is one of fact as to when he was relieved of his charge. We decline to go into the question of fact as to whether he was relieved from New Delhi on 24.4.1989. We are not satisfied that any question of law has been made out for interference. We, therefore, decline to issue notice to the respondent and this O.A. is accordingly dismissed at the admission stage. The interim order dated 20.7.1990 is also vacated.

Before we conclude, we think, it will be in the

Section Officer
Principal Bench, New Delhi
Tribunal



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