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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.-2470/90

DATE OF DECISION: 7.12.1990 .

SHRI P. MATI LAL

....

APPLICANT

VERSUS

UNION OF INDIA & ORS.

....

RESPONDENTS

SHRI J.C. SINGHAL

: COUNSEL FOR THE APPLICANT

SHRI P.H. RAMCHANDANI

: SENIOR COUNSEL FOR THE
RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

J U D G E M E N T

(Delivered by Hon'ble Mr. T.S. Oberoi, Member(J)).

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of Railway Board's Wireless No.E(O)III-90PM/130 dated 22.11.1990 (Annexure A-1 to the OA), and consequently directions for the respondents to continue applicant's present posting at Delhi for a reasonable period or until his promotion necessitates a transfer else where.

2. The respondents were ordered to be given notice regarding admission and interim relief prayed for, by the applicant, vide order dt. 28.11.1990, passed by the Bench of this Tribunal. Shri P.H. Ramchandani, Senior Counsel has put up appearance on behalf of the respondents. He, however, chose to address arguments

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only.

3. The learned counsel for the applicant while highlighting the personal difficulties of the applicant such as, his son having suffered a brain haemorrhage recently, and consequently his requirement to attend periodically, All India Institute of Medical Science, in connection with his treatment, and also applicant's wife having under gone a knee operation, and hence necessity for the applicant to remain at Delhi, besides other aspects, such as having been recently transferred to Delhi (about 13 months ago), after his stay at Gorakhpur, Vijaywada, for nearly 3½ years, and certain other colleagues of the applicant, both seniors and juniors, being stationed at Delhi, for comparatively much longer spells, details of which were mentioned in Annexure A-5 and A-6, the learned counsel for the applicant prayed for retention of the applicant, at Delhi itself, as otherwise, he would be hard hit, both financially as well as from the point of view of his personal inconvenience and other family circumstances. The learned counsel for the applicant also referred to a number of rulings, both of Hon'ble Supreme Court as well as of various Benches of this Tribunal, to stress his point that any transfer against a well - set policy by the respondents, is nothing short of malafides, though he has refrained from specifically using this term, in the matter of his transfer.

The rulings cited by the learned counsel for the applicant included the following:-

- (a) 1974(2) SCR 348 (E.P. Roy Vs. State of Tamil Nadu & Others.
- (b) ATR 1986 CAT 304 (K.K. Jindal Vs. Northern Railway etc.
- (c) ATR 1986 SC 1955 P.1956 (B.Vardha Rao Vs. State of Karnataka).
- (d) ATC 1988(7) P.253 (Kamlesh Trivedi Vs. ICAR etc.).

4. We have also heard the learned counsel for the respondents who pleaded that the law on the subject of transfer is fairly clear by now, as set out by Hon'ble Supreme Court in 1989(2) Scale, P.26 (Union of India & Ors. Vs. H.N. Kirtania) and 1989(2) SCC P.602 (Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani).

5. The learned counsel for the respondents emphasised that transfer is an incident of service, and it, by and large, lies with the department concerned to see the exigencies and administrative necessity, to fit in, any officer, as per requirements.

The learned senior counsel for the respondents further emphasised that besides his present stint of 13 months in Delhi, and before the spell of about 3½ years of his being away from Delhi, the applicant had been in Delhi for well over 9 years, or so, and therefore, had a considerable period of service at this station, and accordingly, his grievance viz-a-viz some other offices, regarding their longer stay in Delhi, mentioned in Appendix A-5 & A-6 to application, is not very apt. As regards the personal

difficulties pointed out by the learned counsel for the applicant, the learned senior counsel for the respondents pointed out that the applicant was given a hearing by the Chairman of the Board, but considering all aspects in view, applicant's plea for retention in Delhi could not be accommodated.

6. We have given our careful consideration to the rival contentions, as briefly mentioned above. We have also carefully perused the citations referred to by both the sides, together with some of the documents referred to by the learned counsel for the applicant, and enclosed with the OA. In Union of India & Ors. Vs. H.N. Kirtania (ibid), it was inter-alia held that transfer of a public servant made on administrative or in public interest, should not be interfered with, unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on grounds of malafides. Again, in Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani (ibid), it was held that transfer is in incident of service and no government servant has legal right for being posted at any particular place, and that whenever, a public servant is transferred, he must comply with the order but if there be 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. It was further held ^{that} if 'the

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transfer order is not stayed, modified or cancelled, the concerned public servant, must carry out the order of transfer. In the instant case, the applicant on getting clue about his transfer, had sought an interview with the concerned superior officers, who had, ^{as} put forth by the learned counsel for the respondents, given proper hearing, but could not accommodate the applicant's request, presumably because of administrative exigencies.

7. In the impugned order, besides the applicant, 12 other officers have been transferred, and therefore, it cannot be said that the applicant has been singled out, or has suffered any hostile discrimination, at the hands of the respondents. After carefully considering all aspects and attendant circumstances of the case, we are of the firm view that no interference by us, in the impugned order, is called for. We accordingly reject the application. Since, transfer alone has been called in question, in the present application, and nothing by way of relief survives, the application stands finally disposed of, at the admission stage itself.

(P.C. JAIN)
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MEMBER(A)

(T.S. OBEROI)
(T.S. OBEROI)
MEMBER(J)