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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 673/1990

Date of decision: April 23, 1990.

Dr. R.K.Mehta ... Applicant.

Vs.

Union of India & Anr. ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicant ... Shri B.B.Raval, counsel.

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

We have heard learned counsel for the applicant
Shri B.B.Raval.

The Original Application has been filed against an order of transfer issued by the General Manager, Northern Railway for the transfer of the applicant, Dr.R.K.Mehta, Sr.DMO/SSB to Pratapgarh in the same capacity. Although the order had been passed a month back, it is stated that the order would be effective when Dr. B.B. Agarwal, Sr.DMO/ DLI, Sarai Rohilla joins at Shakurbasti and relieves the applicant. On behalf of the applicant it was urged that an effort was made to ask some other Dr. to take charge from the applicant but she having declined, it is possible that some another Dr. may be asked to take charge. Dr. B.B. Agarwal, Sr.DMO/ DLI, Sarai Rohilla is also not inclined to come to Shakurbasti. He, therefore, urged that an interim order may be passed to protect the applicant's

interest also.

The applicant's case is that he is posted as Senior Divisional Medical Officer at Railway Health Unit at Shakur Basti, Delhi. He had a good record of service and has received several certificates and cash award. The applicant was transferred on promotion on 19.6.1989 and posted to Delhi Main Hospital where he took over the same day. However, within two days, he was transferred to Shakur Basti vide Northern Railways Headquarters Order dated 21.6.1989. The applicant went and reported there and took charge. Now he is proposed to be transferred to Pratapgarh. He has stated that he is willing to be transferred anywhere but for the present he is faced with the following circumstances which require his presence in Delhi or in surrounding areas:

- (i) His wife is working as a Sr. Post-Graduate Teacher in Kendriya Vidyalaya, Tagore Garden, New Delhi.
- (ii) His two children are studying in Kendriya Vidyalaya in Classes VIII and X.
- (iii) The applicant has an old orthopaedically handicapped aunt aged 80 years who has adopted the applicant as her only son and is totally dependent on him. She requires frequent renal dialysis which cannot be given to her at Pratapgarh.
- (iv) The applicant has started construction of his house at NOIDA after permission had been accorded by the G.M., N.R. and which needs his personal supervision.

The applicant submitted a representation in these lines to the General Manager (P), N.Rly, Baroda House, New Delhi

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on 19.3.1990. The applicant's case was also favourably recommended by D.R.M., New Delhi through a D.O. letter addressed to Dr.S.M.Choudhary, C.M.C., Northern Railways, New Delhi. The representation of the applicant was, however, turned down by the General Manager, N.Rly., New Delhi vide letter No.730-E/135/EIA dated 9.4.1990 addressed to the Divisional Railway Manager, N.Rly, New Delhi.

Aggrieved, the applicant has come before this Tribunal.

The contention of the learned counsel for the applicant is that in the rejection order following three reasons have been given:

1. Dr. Mehta can get his children admitted at new place of his posting.
2. He is a good Doctor and can show his worth at new place of posting.
3. As and when he wants to construct his house he can take leave after joining new place of posting.

The applicant's grievance is that the General Manager had not considered the other aspects of the matter viz., his wife's posting in Delhi, his aunt's condition which requires frequent renal dialysis and, lastly, that he had started construction of his house and it is half way through. The General Manager has not referred to the first two matters at all and in regard to the third matter was under impression that the construction has not yet started.

The first question to be considered is whether the Government servant appointed to a particular cadre of

transferable post. has a right to object against his transfer. The Supreme Court in a recent decision in the case of GUJARAT ELECTRICITY BOARD & ANR. Vs. ATMARAM SUNGOMAL POSHANI. (1989 (3) J.T. 20) laid down:

"Transfer of a Government servant appointed to a particular cadre 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..."

There is no dispute that the respondent 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 within the State of Gujarat. The respondent had no legal or statutory right to insist for being posted at one particular place."

In that case the applicant was relieved from his duties at Surat on 30.3.1974 but he did not join at Ukai till the impugned order of discharge was issued on May 27, 1974. Proceedings were started under the Gujarat Electricity Board, Conduct, Discipline and Appeal Procedure.

In another decision UNION OF INDIA AND OTHERS Vs. H.N.KIRTANIA (1989)3 SCC 445), one Shri H.N.Kirtania, who was in the employment of the Central Government, under the Central Passport Organisation and was posted as Public Relations Officer in the Regional Passport Office, Calcutta was transferred to Jaipur under an order dated 14.9.1985. He was relieved on March 15,1985 with a direction to report for duty to the Regional Passport Office, Jaipur. He, however, did not join duty at Jaipur and instead proceeded on leave for a month. During this period he had filed a writ petition in the Calcutta High Court assailing the validity of his transfer. A learned Single Judge issued an order on April 12,1985 restraining the Central Government authorities from giving effect to the order of transfer and release. An application for vacating the interim order was filed on behalf of the appellant was but the same not disposed of. Meanwhile, contempt proceedings were initiated against the authorities at the instance of the respondent (Shri H.N.Kirtania) on the allegation that he was not allowed to rejoin his duty at Calcutta. Notice was issued on the contempt application and further direction was issued for paying all arrears of salary to Shri Kirtania within three weeks. The Union of India filed an appeal before a Division Bench of the High Court against the order of the learned Single Judge with an interim stay application. The said application was dismissed by the Division Bench. Thereupon the Union of India & Ors. approached the Supreme Court. Their Lordships had this

to say:

"After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. 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. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made 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. There was no good ground for interfering with the respondent's transfer."

We may also refer to another case between the same parties decided by the Supreme Court on July 12, 1989 and reported in (1989) 3 SCC 447). This case arose out of a transfer of the pending writ petition from the Calcutta High Court to the Calcutta Bench of the Central Administrative Tribunal. The Tribunal held that the order of transfer was not mala fide or unfair, and there was no ground for interfering with the transfer order. After recording that finding the Tribunal directed the appellants (Union of India) to pay all arrears of salary with allowances to the respondent (Shri H.N.Kirtania) with a further direction that no release order should be issued to the respondent unless all his emoluments are paid to him. Union of India & Ors. approached the Supreme Court and

their Lordships held:

"After hearing learned counsel for the parties we find that the Tribunal acted in excess of its jurisdiction in issuing impugned direction. The Tribunal recorded positive findings that the transfer order was legal and valid and it was not vitiated by any unfairness, or mala fide, thereupon it should have dismissed the writ petition. It had no jurisdiction to issue further directions regarding the release order and the payment of emoluments..."

In view of the above decisions, it is clear that a Central Government employee who is on a transferable post has no option but to abide by the orders of transfer except when the order is contrary to statutory rules or is mala fide. In case he has a particular difficulty, he may make representation to the authority concerned and await its decision.

Learned counsel contended that there are two aspects of the matter which are to be considered in this regard. Firstly, there was nothing to indicate that the transfer order was passed in public interest or on administrative grounds. He urged that the decision of the Supreme Court would be applicable only in those cases, which were passed in public interest or on administrative grounds. Secondly, he urged that the General Manager, N.Rly, who considered the representation did not take into consideration two vital aspects which were causing him enormous problem, viz. the condition of his aunt and starting of the

construction of the house in NOIDA which was half way through. Of course, he has other problems about his wife working as a Sr. Post-Graduate Teacher in Kendriya Vidyalaya, and the education of his two children in classes VIII and X which was not available at Pratapgarh.

Learned counsel also urged that it is not open in judicial review to look for the reasons in shape of affidavit or otherwise. He referred to the decision in the case of MOHINDER SINGH GILL AND ANOTHER Vs. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS ((1978) 1 SCC 405) and to the observations of Bose, J in the case of COMMISSIONER OF POLICE, BOMBAY Vs. GORDHANDAS BHANJI (AIR 1952 SC 16) wherein it was held:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

In the present case there are two orders. Firstly, the order of transfer and, secondly, the order of the General Manager, N.Rly. rejecting the representation of the applicant. There is no other material on the record to be considered in this regard. There is no affidavit or any other order for consideration. Consequently, there could be no quarrel with the proposition laid down:

"Public orders, publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given..."

This question does not arise. However, the observations made by Bose, J. are applicable in respect of the second sentence "Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed .. The order of transfer is a public order made by a public authority and is meant to have public effect and also affects the actings and conduct of the persons whom they are addressed. It is, therefore, to be deemed to be an order in public interest. A person on a transferable post can be transferred as and when his services are required elsewhere.

Their Lordships in the case of GUJARAT ELECTRICITY BOARD & ANR. (supra) have clearly indicated that if a person has difficulties or problems, he can make a representation. In the present case, a representation was made and the same has been disposed of. There is no allegation of mala fides, as such the order has to be complied with. Once the representation has been rejected, the applicant must proceed to the place of posting, report for duty and if he requires leave for attending to urgent personal work, he may apply for the same. The Tribunal will not excise its jurisdiction to entertain such an Application where the order is not without jurisdiction, nor contrary to statutory rules, nor mala fide. The prayer of the applicant for a direction to the respondents for posting him in Delhi area is also not maintainable.

This Tribunal does not sit as a court of appeal against the orders passed by the General Manager, N&Rly. and as such, keeping in view the observations made by their Lordships in three recent cases cited above, we are of the view that this is not a fit case for interference. The application fails and it is dismissed in limine.


(I.K.RASGOTRA)
MEMBER (A)
23/4/41


(AMITAV BANERJI)
CHARMAN
23.4.1940

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