

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 946/90
T.A. No.

199

DATE OF DECISION 08.06.1990

<u>Shri G.K. Vohra</u>	Petitioner
<u>Dr. D.C. Vohra</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India through the Secretary, Min. of Information & Broadcasting & Others</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

(The judgment of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is working as a Producer in the All India Radio, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for issuing a direction to the respondents to allow him to serve at Delhi because of his being a heart patient and because his wife is also working at Delhi and for deleting his name from the order dated 23.4.1990 whereby he has been ordered to be transferred from Delhi to Jalandhar. The application was filed in the Tribunal on 21.5.1990 and it was heard on the same day. The Tribunal issued an interim order directing the respondents to maintain status quo as regards the continuance of the applicant in his present post. Notice was issued to the respondents

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returnable on 3.6.1990. On 4.6.1990, Shri P.H. Ramchandani, the senior counsel appeared on behalf of the respondents and opposed the admission as well as the continuance of the interim relief granted by us.

2. We have carefully gone through the records of the case and have heard the learned counsel of both parties. In our opinion, the present application could be disposed of at the admission stage itself.

3. There is no dispute between the parties regarding the facts of the case, which are briefly as follows. The applicant joined the service of All India Radio in 1964 as Staff Artist. He is presently working as Producer. In March, 1984, he suffered a heart attack requiring hospitalisation for 2 weeks. Since then, he is having periodical check ups and receiving medical advice and treatment from the Ram Manohar Lohia Hospital, New Delhi. His wife is also working in Delhi. His aged mother and mother-in-law are totally dependent on him and there is no other adult male member in the family to share the family responsibilities of taking care of them. According to the applicant, the impugned transfer from Delhi to Jalandhar would disrupt his family life and cause avoidable misery and dislocation. He has ~~genuine~~ genuine difficulties in complying with the transfer order at this stage. He has contended that the impugned order of transfer is contrary to the transfer policy contained in the Office Memorandum issued by respondent No.2 on

23.4.1987 and ~~of~~ the Office Memorandum issued by the Department of Personnel & Training on 3.4.1986. The former OM provides, inter alia, that every officer must serve at a difficult station at least once in his career "except in cases where there are genuine difficulties or cases covered under exceptions provided in the transfer policy". The latter OM embodies the Government's general policy that husband and wife should serve at the same station. The impugned order is also discriminatory because other officers with no similar problems have been retained in Delhi.

4. The applicant made a representation to the respondents on 24.4.1990. He has been verbally informed that it has been turned down and that he should keep himself in readiness to move on transfer from Delhi, immediately.

5. The respondents have not filed their counter-affidavit. The learned counsel of the respondents opposed the admission of the application as well as the continuance of the interim relief granted by the Tribunal. He stated that the representation of the applicant has been rejected on 17.5.1990. The fact that the applicant had a heart attack in 1984 does not, according to the learned counsel of the respondents, afford any immunity to him from transfer. He is for the last 26 years at Delhi. The respondents had sought option from the applicant as regards his posting outside Delhi in reply to which the applicant had indicated that

it should be to any station where there are medical facilities. The applicant has alleged malafides and colourable exercise of power in the grounds to the application. Adverting to this, the learned counsel of the respondents stated that the applicant has not substantiated these allegations.

6. There is no doubt that the applicant is holding a transferable post. That being so, in the absence of any malafides or violation of any statutory rules, the order of transfer cannot be called in question. It is for the respondents and not for the Tribunal to consider the genuine difficulties of the applicant and to take a decision. The legal position has been clearly laid down by the Supreme Court in its recent decisions in Gujarat Electricity Board and Another Vs. Atma Ram Saugomal Poshani, 1989(3) JT 20 and Union of India & Others Vs. H.N. Kirtania, 1989(3) SCC 455.

7. In the case of Gujarat Electricity Board, the Supreme Court observed that 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 has a legal right for being posted at any particular place. Transfer from one place to another, is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and

efficiency in public administration. The following observations made by the Supreme Court are pertinent:-

"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 a 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 respondents had no legal or statutory right to insist for being posted at one particular place".

8. In Kirtania's case, the Supreme Court observed as under:-

"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 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 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 respondent's transfer".

9. In the light of the aforesaid pronouncements of the Supreme Court, we see no justification to interfere with the action taken by the respondents. There is no merit in the present application and the same is dismissed at the admission stage itself.

10. We, however, direct the respondents to give ^Q to the applicant, a reasonable time/ say upto 30th September, 1990 to arrange his affairs at Delhi and to comply with the ^Q

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transfer order. The interim order passed on 21.5.1990 will stand vacated thereafter.

The parties will bear their own costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER(A) 8/6/90

P. K. Kartha
8/6/90
(P.K. KARTHA)
VICE CHAIRMAN(J)