

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 1330/91
T.A. No.

199 1

DATE OF DECISION 23.9.91

Harmesh Chandra

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)

Versus
Union of India & Others

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J.)

JUDGMENT

The applicant by this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, (hereinafter referred as 'Act'), prays for quashing the order of transfer passed by the respondents directing him alongwith the post to be transferred from Delhi to Bombay (Annex. A-11). Though in the O.A. multiple reliefs were sought for by the applicant, but on 20.6.91, the counsel for the applicant contended before the Bench that he does not want to press relief Nos. 1, 2 and 3 and they be accordingly deleted from the O.A. This step was taken by the counsel for the applicant on objection from the respondents that the O.A. is not maintainable in view of the multiplicity of cause of action and the reliefs claimed. They also objected that the relief claimed with regard

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to the transfer from Delhi to Bombay cannot be said to be incidental to the other reliefs claimed in the O.A.

2. On 6.6.91 an ex-parte order in favour of the applicant was passed directing the respondents not to relieve the applicant for a period of 14 days from his post at Delhi. On 20.6.91, the respondents who appeared on notice on interim relief, were heard and since then the interim relief was directed to be continued till further orders. On 28.8.91, the matter was finally heard on admission and interim relief and also on M.P. No. 1864/91. M.P.

No. 1864/91, which was filed by the applicant, contained two more prayers. The first prayer was that the facts which are contained in the M.P. be taken as part of the O.A. The second prayer was that the respondents be directed to produce three relevant files. In view of the withdrawal of relief Nos. 1, 2 and 3; it would be futile to direct the respondents to produce these files. Consequently, this prayer is rejected. The facts contained in the M.P. should have been brought in the O.A. by the applicant by amending the O.A. itself. The contentions raised in the M.P. cannot be directed to be the part of the pleadings of the parties. Furthermore, the applicant has filed his rejoinder and he should have incorporated the contentions in the M.P. in the rejoinder. Hence, this prayer is also rejected. The M.P. stands disposed of thus.

3. The applicant joined service in the Films Division at New Delhi as L.D.C. on 4.5.62 and was promoted as Superintendent, a promotional post, on 6.12.85. The applicant was subsequently promoted as Assistant Administrative Officer by order dated 10.4.90 with Bombay as his posting (Annex. A-9). According to the applicant, the impugned order of transfer is malafide, biased and in colourable exercise of power. Annexure A-10 was passed on 29.12.88 by which the headquarters of one post of the Assistant Administrative Officer from Films Division Bombay to Films Division, New Delhi, was transferred alongwith the incumbent, Shri H.B. Sharma. On 26.4.91, another order was passed reshifting the headquarters of the said post of the Asstt. Administrative Officer from

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Films Division, New Delhi, to Bombay with effect from 1.5.91 along with the incumbent. Consequently, the applicant, who is Asstt. Administrative Officer in the Films Division, New Delhi, was directed to be transferred from New Delhi in the same capacity to the Films Division, Bombay, with effect from 1.5.91. Annexure A-11 also contains an endorsement that the transfer of Shri Harmesh Chandra is being passed in public interest and it is this order which is being challenged in this O.A.

4. The applicant on receipt of Annexure A-11, the impugned transfer order dated 26.4.91, filed a representation (Annexure A-12) dated 30.4.91 addressing the same to the Secretary, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi.

5. The respondents, on notice, filed their written statement and contended that the applicant on 6.12.85 joined the post of Superintendent at Bombay when there was no vacancy available in Delhi. They further narrated long history in their return in reply to the averments of the applicant made in the O.A. which need not be considered as stated hereinabove. They further contended that the competent authority does not bear any animus against the applicant and whenever whatever transfers are made, they are made in the public interest while taking great care not to inflict any injury or inconvenience upon the official concerned in the process. With regard to the transfer order, they contended that it was public interest which demanded that the applicant should be transferred to Bombay as there was no alternative but to issue the said transfer order by the competent authority. They further contended that the impugned transfer order (Annexure A-11) has been issued purely in public interest without any malafide intention. They also maintain that the representation dated 30.4.91 (Annexure A-12) presented by the applicant was considered and was ultimately rejected.

6. We have heard Shri B.B. Raval, learned counsel for the applicant, and Shri P.P. Khurana, learned counsel for the respondents.

The law with regard to transfer of a Government servant from

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one place to another stands well settled and crystallised. In the case of **Shanti Kumari vs. Regional Deputy Director, Health Services, Patna** (AIR 1981 S.C. 1577), the apex court observed "Transfer of servant a Government /may be due to exigencies of service or due to administrative reason. The courts cannot interfere in such matters." It was further held that if the order of transfer is a breach of Government instructions, then it is the authorities who will look into the matter and redress the grievance of the employee. In the case of **Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani** (AIR 1989 S.C. 1433), the apex court observed:

"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, a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on 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."

In the case of **Union of India and others vs. H.N. Kirtania** (1989 (3) S.C.C. 445), the apex court concluded "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." The law can be summed up thus, by us, that transfer in the case of an employee holding a transferable post is an incident of service and that the guidelines regarding transfer do not clothe the employee with any right. If manifest discrimination is seen in dealing with a particular individual, judicial intervention becomes unavoidable and justified. Generally, the Tribunal will not interfere in routine administrative matters of the Departments like transfers. But once it is seen that even in such matters there is glaring partiality and lack of objectivity, the judicial conscience will not permit to let the partiality and lack of objectivity to be perpetrated. Though the facts were different

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in the case of P.N.R. Nair vs. Union of India & Ors. (1991 (1) SLJ (CAT) 373), yet the law was rightly followed as laid down by the above mentioned apex court judgments. It is obvious that unless there are pressing and strong grounds and unless the transfer order violates the statutory rules, or is proved to be mala fide, it cannot be interfered with.

7. On perusal of the record, there does not appear an iota of evidence which may point out that Annexure A-11, transferring the applicant from New Delhi to Bombay with the post, was passed with malafide intentions by the respondents. For proving malafide, grounds and evidence have to be laid which may persuade the judicial conscience to doubt the integrity of the employer in passing the transfer order. Mala fide cannot be presumed and we/ unable to subscribe to the contentions of the applicant that the respondents have passed the transfer order with malafide intentions. The authorities have a right to exercise their discretion one way or the other in passing transfer order of its employees and we cannot find any fault with the concerned authority for not having exercised discretion in favour of the applicant. In the circumstances and facts of the case it cannot be held that there was any malafide on the part of the concerned authority in passing the order of transfer. The order of transfer cannot be struck down on this score.

8. Consequently, we dismiss this O.A. containing the prayer to quash the transfer order at Annexure A-11 dated 26.4.91 transferring the applicant from New Delhi to Bombay alongwith the post. The interim order of staying the transfer of the applicant from New Delhi to Bombay, passed by this Tribunal, on 6.6.91, and then continued, stands vacated. Parties shall bear their own costs.

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(P.C. JAIN)

MEMBER (A)

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(RAM PAL SINGH)

VICE-CHAIRMAN (J)