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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.599/2004

New Delhi this the 11th April, 2005

HON'BLE SHRI S.A.SINGH, MEMBER (A)

V.K.Handoo
S/o Shri S.N.Handoo
R/o 56-E, Block - R,
Dilshad Garden,
Delhi - 110 095.
(By Advocate: Sh. K.C.Mittal)

...Applicant.

Versus

Union of India & Others
Through

1. The Secretary,
Ministry of Information & Broadcasting,
Government of India, Shastri Bhawan,
New Delhi - 110 001.
2. The Chief Executive Officer,
Prasar Bharti Broadcasting Corporation of India
PTI Building, Sansad Marg,
New Delhi - 110 001.
3. The Director General,
Directorate General, Doordarshan,
Mandi House, New Delhi - 110 001.
4. Shri R.A.P.Rao,
Deputy Director General (Kashir Channel),
Directorate General, Doordarshan,
Mandi House, New Delhi - 110 001.
(By Advocate: Shri S.M.Arif)

...Respondents.

ORDER

By Shri S.A.Singh, Member (A):

The applicant, who is an STS officer of IB (P) S (Production) Doordarshan, was working as Deputy Director of Programs in Directorate General Doordarshan, Delhi and was posted out from Delhi to Agartala as Executive Producer, DDK, vide impugned order dated 27.8.2003. He was relieved from the Directorate w.e.f. 6.10.2003, vide impugned order dated 6.10.2003.

2. The applicant is aggrieved by his posting to Agartala and prays for quashing and setting aside of orders dated 3.2.2004 and 27.8.2003. Further, he prays that the
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respondents should be directed to continue him in Delhi in the capacity of the Executive Producer / Deputy Director (Programs).

3. The main grounds of the applicant for seeking relief are that because of malafide of respondent no 4 he has been unfairly shunted out without following any policy / guidelines / procedure. The malafide is apparent from the fact that even though there are 23 posts of Executive Producer / Deputy (Programs) lying vacant in the Directorate he has been picked and chosen for this transfer. During his career of 29 years he has been transferred ten times on postings throughout the country, which he has willingly accepted. The applicant pleaded that he has barely stayed for five years in Delhi on two different positions: as Assistant Station Director and on promotion as Executive Producer / Deputy Director Programs with a stay of just two years in Kashir Channel. He has been transferred, whereas officers of the same rank and cadre who have stayed in Delhi for 10 to 15 years been allowed to continue. Even his juniors have been left untouched.

4. The applicant filed an additional affidavit to support his contention that Respondent No.4 was malafide and had engineered his transfer to Agartala by influencing the then DG. Respondent no 4 was annoyed because the applicant had been regularly bringing to his notice grave cases of mismanagement and irregularities in the 'Kashir Channel'. Respondent no. 4 threatened that he would teach the applicant a lesson. He influenced the then DG, Shri S.Y.Qureshi, just before he relinquished charge, to issue orders transferring him to Agartala. These orders were kept secret so that the applicant could not make a representation. Moreover, the transfer order contains a single name- that of the applicant. It is clearly a colorable exercise of power by the DG at the behest of DDG, Respondent No.4.

5. Moreover, applicant's representation has been rejected on the ground that he was absent on 06.10.2003, i.e., the date on which the relieving order was issued. It would be apparent from the computerised attendance record that he was present on that date even then the relieving order was served on him on 07.10.2003.

6. The order of transfer is malafide because His representation has been rejected without application of mind and in a routine manner.

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6. This was strongly contested by the respondents stating that the services of the applicant have all India transfer liability and that transfer had not been made on the basis of any allegation. There was no documentary proof to substantiate the same. Moreover, when the applicant filed the OA, there was no allegation against Respondent No.4 (DDG) and only when this was pointed out that the applicant filed an additional affidavit. The transfer order of the applicant was in public interest and there was no malafide in this regard. The Director-General (DG) is an outsider, an I.A.S. officer, who did not know the applicant personally, therefore, it cannot be contended that the Director-General acted in a malafide manner. Moreover, it cannot be maintained that a junior officer like DDG can guide him.

7. The applicant has already joined at Agartala, hence the OA has now become infructuous. The allegation that he has been transferred only because he pointed out certain irregularities in the Kashir channel was wrong. In fact, he was transferred in the exigency of the service and also because he was the most suitable candidate for the post. It is not always possible to transfer an officer having the longest stay in a station. The applicant has been transferred because DDK Agartala was running without a Executive Producer for a long time. It is true that there is an acute shortage of Program Officers of I.B. (P) Service in Doordarshan therefore posts of Executive Producers / Deputy Directors of Programs are vacant in many Kendras. However, in Agartala there is only one post of Executive Producer and it needed to be filled for smooth functioning of the Kendra. The applicant was suitable for the post; as such he was transferred and posted as Executive Producer DDK Agartala, in public interest and in exigency of service. Moreover, he has an all India transfer liability and thus has no grounds to file the present OA.

8. The applicant contested the above averment of the respondents stating that their conduct shows that this was a punitive order and it had been passed without following principles of natural justice and hence was colourable exercise of power.

9. I have heard the counsel for the parties and gone through the records including additional affidavit and reply of respondents. The main ground of the applicant for seeking relief is that the transfer order was punitive in nature. The applicant pointed out irregularities in the Kashir Channel, which annoyed the DDG who colluded with the

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Director General to get him transferred. He had been transferred even though persons junior to the applicant had been retained. Moreover, the applicant had in his entire career of 29 years been transferred ten times on postings throughout the country, which he has willingly accepted. He had only spent 5 years in Delhi, while many others had spent over 10 years and they were spared. It was thus a policy of pick and choose and against the principles of natural justice.

10. Respondents on the other hand have pleaded that the applicant has been transferred in exigency of service and in public interest; moreover he has an all India transfer liability. DDK Agartala has a single post of Executive Producer, which had been lying vacant for a long time and it was required to be filled for smooth running of the Kendra. The applicant being suitable for the post was transferred to Agartala. There are, thus, no grounds for challenging the transfer order. Further, the applicant had not made any allegation of malafide in the Original Application against the Deputy Director General (DDG), but when this was pointed out he filed an additional affidavit; which is an after thought.

11. The respondents also argued that transfer being an administrative matter the scope for judicial review is severely limited. The Tribunal would be justified in interfering only in cases of malafides or infraction of any professed norms or principle. The applicant has failed to show any such infirmity.

12. It is not contested that the applicant has an all India transfer liability. The basic argument of the applicant is he should not have been transferred when there were juniors who had been in Delhi for 10 to 15 years. He had been in Delhi for five years only. The reason for picking the applicant was that he had annoyed respondent no 4 by pointing out irregularities in the Kashir Channel.

13. We know from the case of **Basudeo Tiwary v/s Sido Kanhu University & Ors** (JT 1998 (6) SC 464) that, *'the burden of malafide is heavy on the person who allege it; the alleging of malafide are often more easily made than proved and the very seriousness of such allegations demand proof of a high order of credibility'*. The notes written by the applicant in the course of his normal duties and put on record in the OA for proving malafide can hardly be said to be proof of a high order. It has also been held in the case of **M Sankaranarayanan, IAS v State of Karnataka & ors** (1993(1) SCC 54) that


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inference of malafide cannot be drawn from mere differences of opinion between the officer transferred and the authority transferring him. I therefore do not find merit in the argument of malafide.

15. I also do not find merit in the contention of the applicant that he should not have been picked for transfer when persons with longer stay in Delhi were available. It is an established administrative jurisprudence that in the case of transfer the employee has no choice in the matter, as it is a condition of service and the tribunal should not interfere unless there are strong and pressing grounds. The applicant has not shown any such grounds. In the case of **Union of India v Abbas (1993 (2) SLR 585(SC))** it has been held that who should be transferred where, is a matter for the appropriate authority to decide.

16. As the question of malafide or violation of any statutory provision has not been made out by the applicant I see no reason to interfere.

17. In view of the foregoing, the OA being without merit fails and is dismissed. No costs.


(S.A. Singh)
Member (A)

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