

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 20.07.92.

OA 1251/92

K.P. GIRISH

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... Self

For the Respondents ... Shri J.C. Madan,
proxy counsel for
Shri P.P. Khurana.

1. Whether Reporters of local papers may be *yes*, allowed to see the Judgement ?
2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)).

The learned counsel for the respondents has produced a departmental file for perusal of the court. Applicant in person argued the case. He is aggrieved by the order of transfer dated 29.4.92 and of 4.5.92 transferring the applicant from Trivendrum to Bombay. The applicant has claimed the relief that the aforesaid impugned orders of transfer be set aside and a direction be issued to the respondents to retain him at RVTI Trivendrum.

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The brief facts of the case are that the applicant was working as a Training Officer on adhoc basis in RVTI New Delhi and was transferred to Bombay in November, 1988. However, on 30.9.90 he was transferred to Trivendrum from Bombay. From Trivendrum he was again transferred to Bombay on 29.4.92. During this course of this posting at Trivendrum, the wife of the applicant got employment at Trivendrum. The adhoc promotion of the applicant as Training Officer appears to have been subsequently regularised. Earlier to his working at Delhi he was working as Assistant Training Officer at Bangalore from where he came on adhoc promotion to Delhi. The case of the applicant is that the present order of transfer is malafide and that within a period of 4 years he has been shifted from place to place. The applicant has also submitted that he had approached the Principal Bench in another OA 530/88 seeking remedy against the applicant's unjust reversion. It is the case of the applicant that by an interim direction in that case the order of reversion was stayed and according to the applicant, the Director of Apprentice Training was not pleased and on these basis the transfer was effected from New Delhi to Bombay. It is further stated that the transfer order is not in public interest or in exigency of the service and is malafide and to harass the applicant and his family.

The respondents contested the application and stated that in fact as a result of SIU report of the Ministry of Finance, one Training Officer in Secretarial Practice was in excess of the revised strength so the applicant was transferred to Bombay. The transfer of the applicant from RVTI Bombay to RVTI Trivendrum was on regular promotion and that the present transfer from Trivendrum to Bombay again has become necessary in view of the serious complaints and allegations against the Training Officer i.e. the applicant while working at RVTI Trivendrum.

It is further stated that the present transfer is in public interest as well as in interest of the administration and in the exigency of the service.

I have given a careful consideration. The main emphasis of the applicant is on the fact that the respondents cannot have double standards. In the reply to the representation the applicant has preferred, he was told that his transfer has been in public interest as well as in interest of the administration but while filing the reply to the application in para 4(h) the respondents have stated that the transfer has been because of various complaints against the working of the applicant in the Training Institute. Further, it is also stated that

disciplinary proceedings are contemplated and a charge-sheet is likely to be issued for a major penalty. The applicant has referred to the authority of 1991(2) ATJ 266 as well as in the authority of Devinder Nath Vs. UOI 1989 (11) ATC 226 Calcutta. The ratio of both these judgements is that when a person is likely to be proceeded against departmentally then the transfer should not be effected as a punitive measure. I am in fully agreement with the view taken by the Bench in both these cases.

However, I find that the applicant by virtue of the job he has to perform, he has to remain posted in his Institution where training is imparted to women. The lady Principal is Head of that Institution. The departmental file placed before the Bench by the respondents go to show that not one or two but a number of written complaints have been addressed against the applicant, that file also shows that the complaints against the applicant have also gone upto the level of the Prime Minister of India and copy thereof to various dignitories. I do not find worth repeating the allegations or accusations levelled against the applicant in those complaints. I am also not going to judge the correctness or falsity of the accusation and allegations in those complaints. I am also not prejudiced by looking at those

complaints. Fundmentally and basically a teacher should be of a charector both in personal and professional life. Any raising of finger or any pointer towards his personality motivated or otherwise makes the presence of that person in that Institution not for the purpose of his posting but only giving rise to further such complaints. When the Institution is run by a Head then the writing of the Head means something. In the application by the applicant he has not written a single sentence to make out that the Head of this Institution was prejudiced against him. The applicant, ofcourse, out of civility, argue that he did not like to wash the dirty lenin in the public but according to law, if there is something against a person who makes animus based approach, then that should be mentioned as a fact and non mention of that fact will give rise to adverse inference against the person not alleging that fact. I am not on the point to judge whether the Head of the Institution has harboured certain extrenous grudge against the applicant but I am on the record of the case. The posting of the applicant himself, in such a situation, where the trainees themselves, have levelled as per the departmental record perused by me, as well as the Head of the Institution allegation of corrupt character shows that the applicant is a persona non grata.

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As regards law referred to by the applicant I find that the observations in the Full Bench Decision of Kamlesh Trivedi Vs. ICAR, reported in Full Bench Decision Vol.I, Bahri Bros. 1989 Addition page 80, even a transfer on the basis of the complaints it cannot be said that such a transfer is bad or attaches stigma to such an employee. Para 13 of the same is reproduced below:-

"It is, therefore, clear that K.K. Jindal's case is not an authority for the proposition that when complaints are received and the exigencies of service require that a transfer be made, an inquiry must necessarily be held into the complaint before transfer is ordered. Nor did it lay down that if a transfer is made on receipt of a complaint, it would necessarily be deemed to be penal in nature. All that it laid down was that a finding as to misconduct and a finding which attaches stigma to the employee not preceded by an inquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer."

Since the departmental file reveal unpalatable accusation against the applicant and the reply filed by the respondents also goes to show that still no departmental enquiry has been instituted and is contemplated so any observation made in this judgement should not be taken to speak on either side of any such departmental proceedings for inquiry.

The respondents, of course, in their administrative exercise of power can transfer the applicant. What is not desired is that it should not be a colourable exercise or arbitrary or inequitable

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use of power. To my mind, in the present circumstances, looking to the job of the applicant has to perform and seeing to the Institution where he has to perform this job the transfer of the applicant cannot be said to be arbitrary or malafide.

I have taken into account hardship likely to be suffered by the applicant as his wife is already employed in Trivendrum but when both spouses are in employment it is not necessary that every point of time they have to be posted together.

In view of the above facts, I find that the present application does not deserve any interference and the same is dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)
20.07.92