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

* * * *

Date of Decision:

21.X.92

OA 1403/92

NARENDRA NARAIN SHARMA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant

... SHRI H.S. TAK,
proxy counsel for
SHRI PARMANAND KATARA.

For the Respondents

... SHRI M.L. VERMA.

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

J_U_D_G_E_M_E_N_T

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

The applicant has assailed the order dated 6.5.92 transferring him from Bhopal to Obra. The applicant has claimed the relief that the impugned order of applicant's transfer from Bhopal to Obra be quashed.

2. The applicant is employed as Assistant Station Director All India Radio, and was last posted at Bhopal. The respondent No.3, Smt. Meenakshi Misra, Assistant Director (Commercial).

All India Radio, is also posted at Bhopal. Earlier the applicant was posted as Assistant Director on promotion at Indore w.e.f. 30.7.90. He remained at Indore till 13.5.92. The wife of the applicant was employed at Bhopal as a Teacher in a Govt. Higher Secondary School. She is staying there alongwith the daughter Km. Bhavna, who is said to be a heart patient and needs a constant watch and nursing having a pace maker grafted in the heart. The applicant was transferred to Bhopal and he took charge in the same capacity in All India Radio on 14.5.92. Smt. Meenakshi Misra, respondent No.3, who was posted at Bhopal for the last six years was ordered to be transferred to Obra from Bhopal. She got the said order changed and as a result that transfer was cancelled and instead the applicant was transferred telegraphically from Bhopal to Obra by the impugned order ignoring all these facts. Since the applicant has not received relieving letter, he has not handed over charge.

3. The respondents contested the application and stated that the transfers are effected according to the guidelines contained in the transfer policy, but departures here and there takes place on compassionate and other grounds. The applicant was transferred on compassionate ground to Bhopal on account of the service of his wife at Bhopal and on the ground of the illness of his daughter. But he has been transferred vice Smt. Meenakshri Misra, who has been transferred to Obra. However, it was subsequently found that Smt. Meenakshi Misra

has been physically handicapped and she could not be compelled to move out of Bhopal. In view of this, the order of transfer effected on respondent No.3 was cancelled and instead the applicant was diverted to Obra. The retention of Smt. Meenakshi Misra has been on compassionate ground because of her own physical disability. The transfer of the applicant to Obra has been done in public interest.

4. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The applicant, in the rejoinder, has not disputed the fact that Smt. Meenakshi Misra is not physically handicapped. The applicant has been posted from Indore to Bhopal on compassionate ground. When this transfer was effected on 6.5.92, respondent No.3 made a representation on 13.5.92 to the Director General and explained her problems. On consideration of the representation the authority considered that it would not be proper to transfer her ^{from} Bhopal because she is a patient of Chronic Arthritis and had undergone ^{both} lateral knee joint replacement operations and was required to go for a regular check-up. Thus, the order of transfer of Smt. Meenakshi Misra has been cancelled, as a result of this cancellation the applicant has to be diverted to Obra. In fact, the applicant has not been transferred to accommodate Smt. Meenakshi Misra. But the vacancy which was being caused by the transfer of Smt. Misra was no longer available to the applicant so he was transferred to Obra not because of any malafide action but in the public

interest. The learned counsel for the respondents stated that there was an urgent need of sending a Senior Programme Officer in view of its commissioning in the near future. This fact is not denied by the applicant in the rejoinder. The transfer order therefore of the applicant in fact is from Indore to Obra. The learned counsel for the respondents has referred to the authority of Gujarat Electricity Board Vs. Atma Ram (AIR 1989 SC 1433) where it has been held by the Hon'ble Supreme Court that the employee who has been transferred should join at the place of transfer and thereafter make representation highlighting his grievances to the administration. In the present case, the applicant has all India service liability and in fact he has been transferred from Indore to Bhopal on the consideration of his request that his wife is a Teacher at Bhopal and his daughter is ill. The applicant, therefore, was accommodated while considering his transfer to Bhopal but since the vacancy was not available, as the incumbent transferred respondent No.3 happened to be a physically handicapped person, so the applicant has to be sent to another station Obra. The representation of the applicant has been considered by the respondents but it could not find favour with the authorities. The transfer order dated 6.5.92 goes to show that the applicant was transferred from Indore to Bhopal and Smt. Meenakshi Misra, respondent No.3, was transferred from Bhopal to Obra. The telegraphic order of transfer of the applicant from Bhopal to Obra is dated 18.5.92.

5. The ground taken by the learned counsel for the applicant is that the transfer order is arbitrary and discriminatory and violative of Article 14 of the Constitution of India. However, this ground has no basis. No particular discrimination has been made out in the applicant's ^{case by} / the said order of transfer. The case of the applicant cannot be compared on the ground of equity with Smt. Meenakshi Misra because that is a case of handicapped person, a physical disability is attached to her. The applicant himself applied for his transfer on compassionate ground but when the case came of Smt. Meenakshi Misra, the applicant raised the plea of discrimination. On the basis of equity and fair play, the case of respondent No.3 was rightly considered sympathetically by the authorities and the exercise of that right cannot be said to be a colourable exercise of power by the authorities.

6. The learned counsel for the applicant also argued that the action of the respondents is arbitrary but it is not so. The case of the applicant was duly considered by the authorities for transfer from Indore to Bhopal where he has joined only two years before the order of transfer. But in the special circumstances of the case, this transfer to Bhopal has to be revised as he was coming in the vacancy of Smt. Meenakshi Misra who for the reasons stated above could not move out of Bhopal. Further, for two years the wife of the applicant had already lived at Bhopal and also she got proper nursing and care done of the ailing daughter. So, it cannot be said that the

problem with the applicant was of recent origin and he has not been fairly considered.

7. The learned counsel for the applicant also referred to the authority of Mrs. Vineeta Prasad Vs. Vice Chancellor, Patna University (1992 (2) SLJ 27). It was a decision of Patna High Court and the facts of the present case is totally different. The respondent No.3 had made a representation on 13.5.92 to the Director General, All India Radio, who has revised the transfer order dated 6.5.92. Thus, the case cited by the applicant has totally different facts which are not applicable to the present case.

8. The learned counsel has also suggested certain alternatives of posting one or the other persons in place of the applicant or posting of respondent No.3 or some other person in place of the applicant but it is for the employer to judge as to whom can be suitable for a particular place and the respondents have given in their reply that the senior person is required to be posted at Obra and further, the station is to be commissioned in the near future. This stand of the respondents, therefore, reasonable gives a stand to decide the posting of an efficient person at Obra.

9. The learned counsel for the applicant has also argued that the applicant has been transferred twice within three days but it is not so. It is only the earlier order of 6.5.92 that has been revised and the transfer of the applicant shall be for

all purposes from Indore to Obra while de-facto it is from Bhopal to Obra.

10. The learned counsel for the respondents has referred to the authorities of M/s Shilpa Bose Vs. State of Bihar (AIR 1991 SC 532) where the Hon'ble Supreme Court has held that the orders of transfer should be least interfered with and only on the ground when it is arbitrary or malafide. The same view has been expressed by the Hon'ble Supreme Court in the case of UOI Vs. H.N. Kritania (JT 1989 (3) SC 131).

11. In view of the above facts and circumstances, the order of transfer does not call for any interference. However, while disposing of this application it appears that the applicant had made a representation on 20.7.92 that he may be retained at Indore for such further period as may be deemed proper or he may be adjusted at Bhopal itself as on 31.7.92 a vacancy on the post of ASD is likely to fall vacant on the retirement of one Shri Iqbal Mezid. The respondents may consider this representation of the applicant or any other request on the ground that the daughter of the applicant is also heart patient and needs constant nursing and care which can be better done by the applicant rather than his wife who is also a Teacher in a School.

12. The application is, therefore, disposed of with the following directions:-

a) The order of transfer dated 6.5.92, as revised by the order dated 18.5.92, needs no interference and the relief in that regard is rejected.

b) The respondents may consider the representation of the applicant on any vacancy which has fallen vacant at Bhopal and post him on compassionate ground at that place but this should not be taken as a direction but only a humanitarian ^{approach} post on compassionate ground of the daughter and the serving wife at Bhopal of the applicant.

c) In the alternative, the respondents shall be free to retain the applicant at Indore for such period as may be deemed proper irrespective of the above order.

In the circumstances, the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 21.4.95
MEMBER (J)