

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 1831/92

DATE OF DECISION : 10.9.92

AIR & Doordarshan Engineers' Association & Anr.

...Applicants

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Shri B.S. Jain

For the Respondents

...Shri P.H. Ramchandani

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

JUDGEMENT

Shri A.B. Mathur is working as Director Engineering, Directorate General, All India Radio, New Delhi and by the impugned order dt. 6.5.1992, he has been transferred on promotion as Chief Engineer (East Zone), AIR, Calcutta. The applicant No.2 is the President of AIR and Doordarshan Engineers' Association; applicant No.1 also assailed this order through its Secretary Shri Arun Kumar. The relief claimed in this application is with regard to applicant No.2, i.e., transfer to Calcutta be quashed issuing a direction to the respondents to post the applicant No.2 at Delhi at least for

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a period of two years.

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2. By the Memo dt. 6.5.1992, five persons who were working in Junior Administrative Grade of Indian Broadcasting (Engineering Service) were promoted to officiate in the Senior Administrative Grade of the service with effect from their date of joining and assuming charge at the respective places of posting. Dr. V.K. Singh, who was working at Bombay has been transferred to New Delhi. Shri P.B. Nair, who was working at Alleppey, has been transferred to Bombay, Shri Manohar Lal working at Delhi has been retained at Delhi, Shri A.V. Swaminathan working at New Delhi has been transferred to Madras and lastly the applicant working at New Delhi has been transferred to Calcutta, as said above, all as Chief Engineers. The learned counsel for the applicant has filed the photocopy of the transfer policy dt. 4/7th August, 1981 and his case is that there is a violation of this transfer policy in the case of the applicant and he has been discriminated in as much as Shri V.K. Singh has been brought back to Delhi within a short period. It is further stated that Shri V.K. Singh has been in Delhi throughout his service career except for the period of eight months in Srinagar and five months in Bombay.

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It is also stated that Manohar Lal has been mostly in Directorate and he is in Delhi since 1980, i.e., at least for two years as against the stay of the applicant, i.e., 8 years in Delhi only. Thus the transfer order is arbitrary and discriminatory. It is further stated that applicant No.2 is the elected President of AIR, Doordarshan Engineers' Association. He has been elected as President as he was expected to be more effective because of his posting at New Delhi. It is further stated that his transfer has been effected because he has been fighting for the redressal of the grievances of the members of the association and recently for getting relief to the family of Shri Manchanda, who was killed by the terrorists in Punjab, so the impugned order has been passed in a malafide manner.

2. The respondents contested the application and stated that applicant No.1 has no locus standii in the present case and associations are not expected to take up the individual cases. They are meant to take up issues in general for the benefit of the group to which they normally cater. The transfer of applicant No.2 is not against the transfer policy.

Further a transfer on promotion is not arbitrary, punitive or discriminatory. The transfer policy is only in the nature of guidelines and is applicable only in the cases of normal transfers and not to transfers on promotion. Applicant No.2 has been posted in various offices of AIR, Delhi from June, 1966 to 1978 (12 years) and from August, 1984 to May, 1992 (8 years). Thus out of total service of twenty eight and a half years, he has been posted in Delhi alone for twenty years. Further applicant No.2 has worked for 23 years at A-category station and he has been posted in all once in category-C station. Neither Srinagar was a difficult station when he was posted there nor Khampur which is situated in the centre of Delhi. It is further stated that technically, applicant No.2 has been transferred only five times during his service career as transfer within the same station cannot be considered to be a transfer in the real sense of the term.

The posting of applicant No.2 has been done in the public interest and public interest has precedence over the family problems. The service carries all India transfer liability and transfers are incidence of service and have to be resorted to not only to give wider experience to the individuals, but also in the larger public interest. Even in the guidelines, it

is specifically laid down that these are subject to exigencies of public service. Further it is stated that comparison cannot be drawn in the matter of transfers. As regards Shri V.K. Singh, during his total service of 22 years, he was on deputation for 11 years and this deputation period cannot be taken as a posting in Delhi. The Chief Executive of the said association is General Secretary, who is already posted in Delhi along with other office bearers of the association posted in Delhi and the General Secretary can adequately watch the interests of its members and can consult the President of the association as and when necessary. Nowhere it has been made obligatory to post the President of the association in the headquarters. It is the privilege and prerogative of the department to post its employees at stations where their services are to be profitably utilised in the best interest of the organisation and it is not open to an employee to ask for his posting of his choice unless he is serving at a difficult station of All India Radio. Thus according to the respondents, the applicant has no case.

3. The applicant has also filed the rejoinder reiterating the same facts averred in the application. The learned counsel

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for the applicant has also moved an MP after the close of the arguments for summoning certain records, but the material on file is sufficient to give an effective decision and the record of other persons desired by the applicant cannot add any merit to the case of the applicant which is to be judged on its own facts. Firstly regarding the power of the Tribunal or the Court in the matter of such transfers has been clearly laid down by the Hon'ble Supreme Court. In the recent decision in Ms. Shilpa Bose Vs. State of Bihar, AIR 1991 SC 532, the Hon'ble Supreme Court held that there should be least interference with the orders of transfer and these have to be only interfered with when these are arbitrary, without any valid basis ^{or} ₁ malafide. The Hon'ble Supreme Court also in the case of Union of India Vs. H.N. Kritania, Judgement Today 1989(3) SC p-131 held that there should be least interference with the orders of transfer and these should not be interfered unless they are violative of the statutory instructions. The guidelines issued of the transfer policy cannot be equated with the statutory instructions. The service conditions of the applicant are of All India ^{Service +} liability of service and he can be posted anywhere in India. The post of

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Chief Engineer cannot be said to be an unimportant post and the respondents have the privilege and prerogative to post the applicant where his services can be best utilised. As regards the various inconveniences likely to be suffered by the applicant, these are to be considered by the governmental authorities. The illness of the family or the disturbance of the family or its members are the natural consequences of transfer which are likely to arise in every case and cannot be special to the applicant himself.

In the case of Shanti Kumari Vs. Regional Deputy Director of Health Services, Patna Division, the Hon'ble Supreme Court has clearly laid down that any grievance of a civil servant in the matter of transfer has to be considered by the governmental authorities. Further in the case of B. Vardha Rao Vs. State of Karnataka, the Hon'ble Supreme Court has held as follows :-

"It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular place or in a particular post unless, of course, his appointment itself is to be specified, ~~he~~ transferable post."

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4. The Hon'ble Supreme Court has also considered the matter in the case of Gujrat Electricity Board Vs. Atma Ram Songmal, reported in 1989 (2) SCC 602 where the applicant should make a representation and join the place on which he has been transferred and pursue his matter administratively. It is further laid down that the transfer is an incidence of service and should be lightly interfered with by the Courts.

5. The learned counsel for the applicant, however, referred to the case of E.P. Reyappa Vs. State of Tamil Nadu, AIR 1974 SC p-555. After going through the authority, the Hon'ble Supreme Court observed that where the operative reason of the said action as distinguished from the motive operating from the inner chamber of mind legitimate and relevant and is outside the area of permissible consideration, it will amount to malafide exercise of powers. Further it has been held that transfer to accommodate another person will amount to colourable exercise of power. The facts in the present case are totally different. The posting of the applicant has not been shifted because of accommodating any other person. The applicant has been transferred on

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promotion as Chief Engineer. The applicant has remained posted for over twenty and a half years in Delhi itself. Thus the stay of the applicant in Delhi has been for a score of years and most of the time he remained posted in A-category stations. The learned counsel for the applicant has also referred to the decision of the Ernakulam Bench of the Central Administrative Tribunal in the case of P.N.R. Nair Vs. Union of India, 1991 (1) SLJ 372 where the petitioner of that case has served for seven years in Kerala and was sought to be transferred. But the transfer was cancelled on the ground that he remained posted outside Kerala for 20 years and comparing his case with other similarly situated persons, he could not have been shifted. That case applies on the particular facts of that case. Even if comparing the applicant with that petitioner, Shri Nair, the stay of the applicant in Delhi has been about 20 years, so on that account also, the authority relied by the learned counsel cannot help him. The learned counsel for the applicant has also referred to the decision in the case of Management of Syndicate Bank Vs. Workmen, reported in AIR 1966 SC 1238, but that case related to a malafide transfer order and the transfer was for some ulterior

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purposes like punishing an employee for his trade union activities. Here in this case, no specific instance except an averment that the applicant No.2 pursued the case of the deceased Manchanda would not by itself make the transfer order punitive. The applicant has been given due promotion as Chief Engineer and in that capacity he has been transferred. He has not been by-passed. The learned counsel has also referred to the case of Kamlesh Trivedi Vs. Indian Council of Agriculture and Another, reported in 1988 ATC 253. The authority goes against the applicant in as much as it specifically lays down that the guidelines are only persuasive in nature and not mandatory. The learned counsel has referred to para-6 of the said report, but that was in context with the facts of that case. In that authority, the case of B. Vardha Rae referred to above of the Hon'ble Supreme Court has also been referred to.

6. The applicant in order to have a judicial <sup>re-
view</sup> _^ view of the administrative action of transfer has to show that the transfer is malafide or is ^{altering} _{altering} the service conditions of the applicant or that the statutory guidelines are being infringed or that the transfer is frequently done. Now analysing the

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facts of the present case, the applicant has been transferred on promotion as Chief Engineer and he has already remained posted for about twenty and a half years at Delhi. His emoluments in no way are being reduced. His contention that he projected the case of Shri Manchanda does not show that the respondents have taken ill of the same as it is well known that all the staff members of AIR in various parts of the country have taken the matter and passed a resolution condemning the terrorist attack on late Shri Manchanda. This is not new to the applicant No.2 himself. Applicant No.1, General Secretary, who is the Chief Executive, has projected the matter and he has not been transferred. Applicant No.2 has rather been promoted. Thus it cannot be said that there was any bias or prejudice against the applicant by virtue of the association applicant No.1 projecting the case for the relief for the family of late Shri Manchanda. The emoluments of the applicant are not being reduced and rather they are being enhanced. He is being posted at a capital city of West Bengal, i.e., Calcutta.

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7. The learned counsel for the applicant has laid mere emphasis for comparing the case of the applicant with Dr. V.K. Singh. However, in the case of transfer, no comparison can be drawn unless such person has been transferred to accommodate the applicant. That is not the case here. Dr. V.K. Singh has also been promoted. It is a fact that Dr. V.K. Singh has remained for 5 months at Bombay and thereafter he has been shifted to New Delhi. It is for the respondents to utilise the services of Dr. V.K. Singh and it cannot be questioned that why Dr. V.K. Singh was not made Chief Engineer at Bombay and while Shri P.B. Nair from Alleppey has been posted at Bombay from Alleppey. The discrimination stressed by the learned counsel for the applicant does not to my mind come within the scope of interference in view of the various decisions of the Hon'ble Supreme Court referred to above.

8. In view of the above facts and circumstances, the present application is devoid of merit and is dismissed along with the MP filed after the arguments were concluded, leaving the parties to bear their own costs.

Domestic
10/9/52
(J.P. SHARMA)
MEMBER (J)