

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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6

15.07.1992

O.A. No. 774/92

Shri Birbal
Vs.

...Applicant

Central Public Works Department & Anr.

...Respondents

CORAM

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

For the Applicant

...Sh.B.L. Babbar

For the Respondents

...Sh.M.L. Verma

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

JUDGEMENT (ORAL)

The applicant, Assistant Engineer (Civil) posted in PWD Division-I has assailed the impugned orders of transfer dt. 21.8.1990, 20.3.1992 and the order dt. 24.3.1992. The applicant is said to be transferred from PWD Division I to Guwahati Aviation Sub Division, Guwahati. The said order of transfer is assailed on the grounds, firstly that taking into account the seniority at the station, the persons, who have got longer years of stay than the applicant as they are working for the periods from 10 to 15 years, have not been transferred, while the applicant has been singled out by this order of transfer, so the order of transfer is arbitrary and violative of Article 14 of the Constitution. That there was no exigency of

service nor any public interest was involved in transferring the applicant to such a distant place; that the wife of the applicant is seriously ill on account of Tuberculosis. That the applicant's wife is getting treatment at Delhi and the doctor is conversant with the diagnosis and can give better and effective treatment rather than a new one at the transferred place. That the relieving order of the applicant has also been issued to the prejudice of the applicant by the Executive Engineer (Civil) dt. 20.3.1992 in the middle of the academic session of the children getting education in the institution at the place. However, this ground goes away because the applicant mentioned that the session would be over by July. It is also said that the transfer order is passed on extenuous consideration.

2. The respondents contested this application stating in the reply that the applicant has been transferred in the public interest in the exigency of service. The applicant has All India transfer liability and the grounds like illness in the family, education of the children, suitability of the climate and of the like nature are paramount in every case and ^{if} these are considered, then to be equitable, one should

be transferred at any point of time. It is also stated that the request of the illness of his wife was also considered and the place of transfer was changed from Guwahati to Siliguri. Guwahati is the capital of a state and T.B. hospitals namely, Lokapriya Gopinath Bardoloi Memorial and American Baptist Mission can give better effective treatment to the applicant's ailing wife. The stay of the applicant at Delhi has also been for a considerable period, not less than 10 years. It is for the administration to find out the place of posting considering the suitability of a person at a particular place and the choice cannot be entirely left on the employee himself, though due consideration is to be accorded and that has been done in the present case. The applicant has also filed rejoinder to the counter and also stated that he may be considered, if at all for a posting nearby Lucknow, Meerut, Dehradun, Kanpur, Aligarh, Jaipur, Chandigarh. He has also stated during the course of the arguments that in any case a direction be made to the respondents to consider his representation dt. 29.6.1992 and a copy of the same has been shown at the time of hearing.

3. I have heard the learned counsel for the parties at length and have gone through the record of the case. The scope of interference in the order of transfer has now been categorically defined in the various decisions of the Hon'ble Supreme Court. In the case of Gujrat Electricity Board, AIR 1989 SC 1433, it has been held that the transfer is an incidence of service and a transfer unless it is malafide or in breach of the statutory rules cannot be interfered with. There is a recent case of Ms. Shilpa Bose Vs. State of Bihar, 1992 (Feb.) SCC Labour and Service cases. Here too, the judgement of the Patna High Court was reviewed by the Hon'ble Supreme Court and it was laid down that the order of transfer should be rarely interfered with unless there is malafide. The Full Bench decision in the case of Kamlesh Trivedi Vs. ICAR & Another, AIR 1988 (2) CAT 116 has also been to the same effect. It also lays down that the transfer is an incidence of service and the administration can itself look out who is the best person at a particular place to get the maximum out of him if he is not reduced in his rank, status and emoluments.

4. Regarding the argument of the learned counsel that certain persons, who have got longer stay have not been touched

and the applicant has been chosen. The learned counsel for the respondents has referred to the decision of Amarnath Vaish Vs. Union of India, 1987(4) ATC 606 and another Full Bench decision of Jodhpur Bench, 1989(2) ATLT p-1 (M.V.Ram Chander Vs. Union of India). Having gone through the law laid down by the Full Bench, it cannot be said to be a discrimination to the prejudice to the applicant, who has already been here for more than 10 years in comparison to other colleagues, who have got a bit more stay. There may be also unequals among equals. Though every person is to be treated as alike, but in order to give effective direction to the administrative orders, there is bound to be to some extent an act which in the eyes of the other may be not so equitable and just on the touch stone of equality. These minor diversions cannot be subject to judicial review. I am in full agreement with the law cited above. In the case of H.N. Kritania, reported in 1989 (3) SCC 455, the ratio is also to this effect that the transfer order should only be interfered with when they are not passed in a bonafide manner or are malafide, i.e., to accommodate some other person or to resort to transfer instead of pursuing an enquiry or to lower down the incumbent in his status at the new place of posting. Thus I do not find that the ground

taken by the applicant of retention of his certain senior colleagues at the station and transferring the applicant is in any way arbitrary or unjustified.

5. The illness of the wife has also been taken by the applicant. The ^{disease} ~~disease~~ with which she is being treated is T.B. Though the respondents have already considered the request, yet in view of the authority of Narender Nath Vs. UOI, 1990(3) CSJ Calcutta p-451, the illness of the family, education of the children and such similar grievances cannot be a ^{ground} ~~hurdle~~ for striking down an order of transfer. Regarding the education of the children, the ground goes away by its own expression in the grounds of the application as the session by July ends in every academic institution and so the applicant cannot agitate his transfer on this ground. Thus the present application is devoid of merit. However, before ~~imparting~~, it shall be open to the respondents to reconsider if they so desire with a humanitarian approach in the factum of the illness of his wife and if ⁱⁿ their opinion is such which requires some ^{reconsideration} ~~not to move~~, then this order will not be a hurdle in reviewing the order of transfer already passed. In the circumstances, the parties shall bear their own costs.

Jomana
(J.P. SHARMA)
MEMBER (J)
15.07.1992