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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No.1937/93

Date of decision: 6.10.1993.

Shri P.K. Saxena & Others

...Applicants

Versus

Union of India & Others

...Respondents

Coram:- The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. B.K. Singh, Member (A)

For the applicants Shri S.D. Kinra, Counsel.

For the respondents Shri A.K. Sikri, Counsel.

判决(口头)
(Hon'ble Mr. J.P. Sharma)

The applicants in this case jointly filed this application and prayed for the grant of interim relief that pending final decision of the application a direction be issued to respondent No.2, i.e., Chief General Manager (Telephones) Mahanagar Telephones Nigam Limited, New Delhi to hold the operation of transfer of the applicants to the Himachal Pradesh Circle in abeyance.

2. A notice was issued to the respondents to file their counter-affidavit. The learned counsel for the respondents filed the counter-affidavit today in the Court with a copy to the applicants' counsel and that has been taken on record. The learned counsel for the applicants insisted that he need not file any rejoinder at this stage and the matter of interim relief be considered and decided, as his clients are suffering grave injustice at the hands of the respondents. We would have desired to dispose of the application on merits, but, in view of the fact that the arguments of the learned counsel were confined only to the grant of interim relief, we are not discussing

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the merits of the matter, as the same may not be taken as an expression or opinion at the initial stage.

3. For the grant of ad interim injunction the law is akin to the grant of interim order ⁱⁿ to the writ jurisdiction under Article 226 of the Constitution of India before the High Court. That jurisdiction of issuing injunction is not in pari materia with the provisions of injunction under Order 39 of the Code of Civil Procedure. In the writ jurisdiction the interference in the administrative matters are confined in a limited scope.

4. On the above guidelines the matter was considered on the three touchstones of *prima facie* case, balance of convenience and irreparable loss likely to be suffered by non grant of the injunction and in this case by staying the transfer of the applicants from Delhi Circle to Himachal Pradesh by the order dated June, 1993.

5. The first ground adduced by the learned counsel for the applicants is that the respondents have no established guidelines or regulations in affecting transfer and as such a direction in this regard is mandatory but this is not the stage nor occasion to decide this contention. A *prima facie* case of course is made when certain relevant issues are necessary to be decided and are made out by the parties coming for relief. But, besides being a *prima facie* case, the other

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two conditions have also been specified regarding balance of convenience and a loss which cannot be compensated in any event of the matter monetarily or otherwise being called irreparable loss. In this case the contention of the respondents' counsel that the applicants have already been relieved on 27.8/1.9.1993 has not been rebutted by the learned counsel for the applicants though he emphatically asserted by showing a pay slip of one Gulshan Rai that he was paid the salary in the month of September, 1993. That is not the issue here. If one of the applicants has been chosen to procure the salary for the month of September will not affect the administrative order of ~~transfer~~ passed by the competent authority and placed on record by the respondents. In a case where a person has already been relieved of the job, an injunction can only be in the mandatory form which cannot be granted as an interim relief.

6. The other aspects argued by the learned counsel for the respondents is that the transfer has been effected in public interest taking into account the persons having the longest stay has been ~~revealed~~ ^{observed}. Here the question whether the applicants fall within that category cannot be scrutinised at the initial stage of the grant of injunction. In any event, if the applicants convince on this aspect, at the time of final hearing that can be seen, adjudicated upon on the basis of the extant precedents and law on the point.

7. The learned counsel for the applicants also argued on the strength of the case of S.K. Jain decided by the Principal Bench relying on the decision of Union of India Vs. H.N. Kritania. The facts of the case may differ unless the ratio of the case is similar. The ratio of the case of H.N. Kritania is that the order of transfer should not be interfered unless they are violative of the statutory rules and are passed in "malafide manner". There are certain averments in the pleadings the respondents have had "malafide intentions". What malafide intention they had has been the order of reversion in order to affect the order of transfer dated June 9, 1993, but *which is an administrative emergency by which no bias or malice can be judged.*

8. In view of the above facts and circumstances and the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. M.P. Thomas where the decision of the Ernakulam Bench passed in OA-1058/91 on July 21, 1991 was reversed in a matter of transfer by a detailed order, we are not inclined to grant any interim relief, as prayed for by the applicants. We have also considered the matter that one Shri D.K. Shukla was also transferred from U.P. to H.P. Circle and the respondents have by the order of July 21, 1993 stayed his transfer. It is for the respondents to take work from their employees to their liking at the place best suited for that person. The employee has no choice except to agitate the matter on the point of "malafide". That issue shall be decided at the time of final hearing.

9. At this stage, Shri S.D. Kinra, learned counsel for the applicants rose from his seat and showed his unwillingness to the order of

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interim relief and stated that he does not want to press this O.A. any further. In view of this, the O.A. itself is dismissed, as not pressed any further. No costs.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA) 6.10.93
MEMBER(J)