

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 28th day of August 1997.

Original Application no. 47 of 1996.

Hon'ble Mr. S. Dayal, Administrative Member.

Mahendra Singh Lingwal, Accountant, All India Radio,
Radio Station, Rampur (UP).

... Applicant

C/A Shri Anurag Jauhari

Versus

1. Union of India, through Secretary Ministry of Information Broadcasting, New Delhi.
2. Director General, All India Radio, New Delhi.
3. Station Director, All India Radio, Lucknow.
4. Dr. Abdul Khalique, Station Director, All India Radio, Rampur.

... Respondents.

C/R Shri Amit Sthelekar.

ORDER

Hon'ble Mr. S. Dayal, Administrative Member.

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

2. The applicant has sought the relief of setting aside of transfer dated 02.01.96 and for continuation as Accountant in All India Radio, Rampur.

3. The case of the applicant as given in the application is that he is working as accountant in All India Radio, Rampur. He has alleged that the Station Director, Rampur, who is respondent no. 4 is corrupt officer and pressurises his subordinate to comply with his wishes. It is alleged that respondent no. 4 started ~~his~~ interfering in the discharge of applicant's duty with effect from the date he took over as Head of office on 01.04.95. It is alleged that the applicant was given a memo alleging acts of misdemeanor. The applicant was also given one more memorandum by respondent no. 4. The applicant alleges indecent behaviour on the part of the respondents towards his family members in his absence. He has stated that Shri Mukesh Chandra Sharma, clerk grade III and Shri Jitendra Kumar, Station Engineer, had also complained to superior authorities about conduct upon ~~behaviours~~ of respondent no. 4. He has also mentioned that his childrens are studying in educational institution in Rampur and a midterm transfer jeopardises their education. He alleges that the transfer was penal in nature and was malafide.

4. The argument of Shri Anurag Johri learned counsel for the applicant and Shri Amit Sthelekar learned counsel for the respondents have been heard. Pleadings on record have been considered.

5. The main ground on which the order of transfer has been challenged by the applicant are the malafides. Pleadings on record on the part of the applicant shows that respondent no. 4 who was the applicant's superior was not satisfied with his work. The applicant had also written to the higher authority against the behaviour of respondent no. 4. Some other officers of All India Radio, Rampur had also

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shown dissatisfaction with the way the respondent no. 4 conducted himself in his official duties. However, intemperate language of the applicant in calling respondent no. 4 corrupt shows that the applicant has chosen to lend colour to his allegations. Respondent no. 4 had been posted to Rampur on 02.04.95 as per averment of the applicant. Yet the pleadings suggest that differences with the applicant in the other members of his staff arose from September 1995 onwards. It is clear from the pleadings on record that the situation had become such that the applicant~~s~~ had to be transferred in order to maintain a semblance of discipline in the office. Under such^a situation, an authority superior to both the applicant and Respondent no. 4 decided to transfer the applicant. The transfer order of the applicant was made by the administrative officer of the Station Director of All India Radio, Lucknow in ^upersuance of memorandum no. 2(19)/SS/11/2447 dated 4/6.12.95 of Directorate General of All India Radio. There are no allegation of malafide against the Director General. Therefore, the complaint of the applicant is that his order of transfer suffered from malice can not be accepted.

6. Another ground stressed by learned counsel for the applicant was that the transfer was a mid term one because the children of the applicant were studying in local educational institution. In response the respondents in their counter reply have stated that Km. Rashmi Lingawal, who was studying in college was a ^{student was} college and studying in Moradabad and have denied that transfer affected the education of children. In any case, a transfer order passed on 2.4.95 can not be considered to be mid academic session transfer as admission to schools are done in April these days.

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Besides the exigencies of service in this case did warrant a transfer as has been concluded in the previous paragraph. This ground would be of no help to the applicant.

7. The learned counsel for the applicant has also raised a contention that the applicant was not heard before an order of transfer was passed. This contention is based on the premise that order of transfer was meant to penalise the applicant ~~the applicant~~ and a show cause notice was necessary before he could be transferred. The law of transfer as enunciated by the apex court in several recent judgments is that transfer is an incident of service and needed to be interfered with ^{by courts} only if malafides or violation of statutory rules was established. The respondents in this connection have cited the case of State of Madhya Pradesh Vs. S.S. Kourav and others A.I.R 1995 SC 1956. It has been laid down in this case that courts/tribunals are not appellate ~~forums~~ to decide on transfers made on administrative grounds and can not go into expediency of posting an officer at ^a particular place. The courts can also not go into the question of relative hardship caused by transfer. The contention of the applicant's counsel is, therefore, not valid. The judgement of the Principal Bench in O.A. 770 of 1987 decided on 27.04.88 has also been relied upon by the learned counsel for the respondents and the judgment also does ^{not lend support to} ~~validate~~ the contention of the applicant that he should have been heard before order of transfer was passed.


8. It may be mentioned that due to some error of communication, the respondents had not paid salary of the applicant for certain period and directions were given to continue the payment of salary to the applicant. The learned counsel for the respondents had assured the court that

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the mistake was inadvertent and that the applicant would be paid arrears and his salary regularly.

9. *However*, The application is dismissed as lacking merits.

10. There shall be no order as to costs.


Member-A

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