

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 26th day of May 1997.

Original Application no. 968 of 1996.

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

Latoori Singh, S/o Shri Mombeer Singh, R/o 3/17, Radio Colony Anoop Shaher Road, Aligarh.

... Applicant.

C/A Sri M. Sirajul Haq

Versus

1. The Union of India through the Secretary Ministry of Information and brood casting, New Delhi.
2. The Chief Engineer (North Zone) (Sri Vigyan Prakash) Akashwari and Doordarshan, Shahjahan Road, Jam Nagar House, New Delhi.
3. The Superintendent Engineer (HPT) All India Radio, Aligarh U.P.

... Respondents.

C/R Sri Amit Sthelekar.

ORDER

Hon'ble Mr. S. Dayal, Member-A .

This application has been made under section 19 of the Administrative Tribunals Act, 1985, ^{for} setting aside of the order of transfer dated 19.08.96.

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2. The applicant was working as Senior Technician on the establishment of All India Radio, Aligarh and was transferred to the establishment of All India Radio at Bikaner in the same capacity.

3. The arguments of Shri Sirajul Haque for the applicant and Shri Amit Sthelekar for the respondents have been heard.

4. The grounds on which the transfer is sought to be set aside are that his wife is sick, ^{that} and the childrens are studing in ~~the~~ schools in Aligarh, that the applicant belongs to Scheduled Caste community and should be transferred only rarely and for very strong reasons and that the transfer is not in public interest. It is also claimed that the transfer was motivated by malice because his wife was a witness in a criminal case and the respondent no. 5 wants her to be shifted. It has been stated in the rejoinder affidavit that Mr. Kali Charan was transferred from Aligarh to Bikaner by order dated 22.09.95. He had filed an application against his transfer in the Tribunal. He was allowed transfer back to Aligarh without staying even for a single day in Bikaner. Similarly Shri Ramesh Chandra, was transferred from Aligarh to Delhi on 09.11.95, but has filed an application in the Tribunal for continue to stay in Aligarh. He has been ~~given~~ transferre^{from}d back to Aligarh ~~to~~ Delhi by order dated 19.08.96. Both Shri Kali Charan and Sri Ramesh Chandra were allowed to stay in Aligarh because of the

sattlement made out of court.

5. The respondents have stated in their counter reply that the order of transfer was passed in persuance of the order of Chief Engineer (North Zone), Akashwani and Doordarshan, New Delhi. It is said that the order was in public interest and is not violation of any rules. They have stated that just because the applicant's wife is a witness in criminal case, it does not create any entitlement in favour of the applicant to stay in Aligarh. It is stated that the adequate medical facilities exist in Bikaner and that the applicant can retain the quarter in Aligarh till the academic session was over. The respondents have also stated that the accused in criminal case was one Sri Bacchan Lal who is no longer posted in Aligarh but was transferred to Delhi and had joined in May/June 1996. The present Superintendent Engineer is not facing any trial in the criminal case. It is stated that Shri Pradeep Kumar Sharma and Shri Suresh Ram have been promoted and posted to Aligarh and are awaiting vacancies one of which would be available when the applicant leaves the charge of his post.

6. The law of transfer is quiet settled now. The scope of judicial review in cases of transfer is quite limited. Any interference of the official should be warranted only if the transfer have been made against the statutory provision or as patently mala fide. The main ground is that he belongs to scheduled caste community. It is the contention of the applicant that the transfer of scheduled caste official should be made very rarely and

for very strong reasons. It has also been contended that the scheduled caste officer should not be transferred too far off places. The basis of these contentions are circular of the Railway Board and of Department of Personnel and Training which are contained in the brochure of scheduled caste and scheduled tribes. It has also been contended that Jodhpur Bench of Central Administrative Tribunal in OA 532 of 1992, decided on 18.09.92, have held that any order of transfer made should not be violative of guidelines contained in circular. The law on transfer as laid down by the Apex Court ~~has~~ is not consistent with the ratio of the judgment of Jodhpur Bench of the Central Administrative Tribunal cited before me. The Apex Court in Union of India and others vs. S.L. Abbas has laid down that transfer in contravention in any administrative guidelines do not come within scope of judicial review. The officials ~~of~~ in such cases have to give representation before ~~their~~ administrative superiors and abide by the decision on representations.

7. Second contention of the applicant is that the transfer is malafide because his wife was witness in a criminal case filed on 23.08.95 against respondent no. 3 in crime no. 1780/96, u/s 354/506 I.P.C and the transfer has been made with oblique motive of preventing the applicant as witness. The applicant has not presented facts correctly on this issue. The criminal case no. ~~is~~ 1770/95 and ~~not~~ 1780/96. It is true that the wife of the applicant was witness to ^{alleged} molestation of wife of Sri Ramesh Chandra by the accused Shri B. C. Chhan Lal who was working as ^{Engineer} Superintending ~~at~~ that time. The annexure

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no. 6 is an order in discharge application filed by accused Shri Bacchan Lal in which Sri Kali Charan and his wife Smt. Rajesh and Rani, who is probably the wife of the applicant in this case, are stated to have come on ^{hearing} the ^{showing of the} complaint in that criminal case. The applicant himself was not ^a witness. The order of transfer is dated 28.08.96 while the date of incident leading to that criminal case was 23.08.95. The transfer order has been passed by the Chief Engineer Akashwani and Doordarshan, New Delhi, vide order no. 26/1996 dated 19.08.96 and this has been mentioned in the impugned order itself, which was issued by the office of the Superintending Engineer of Akashwani, Aligarh. Hence the respondent ^{no 3 who} is Superintending Engineer in this case was not ^{the} authority ^{for} passing the order of transfer. It has also been mentioned by the respondents in their reply that no case was pending against ^{the present} superintending engineer. Shri Bacchan Lal had been transferred out of Aligarh and had joined his new post in Delhi in May/June 1996. Therefore, the ground of malafide raised by the applicant against his transfer is not tenable.

8. The applicant has raised certain other problems which he would face if the transfer order is effected. The first is education of his children. Since the academic session has already ended at the time this order is pronounced, the applicant does not have this ground available to him for setting aside his transfer. Similarly the illness of his wife and the dependents of his parent on the applicant would not be valid ground for judicial review of applicant's transfer, in the light of ratio

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laid down by the apex court in S.S. Kundra vs. State of M.P. ^{to the effect that} ~~had passed~~ the transfer made without consideration the personal difficulties would ^{only} be violative of administrative guidelines and can not be interfere^d with by the Court of Law.

9. The ground of discrimination raised by the applicant in dissimilar treatment given to Shri Kali Charan and Shri Ramesh Chandra would also not be the ground for setting aside the transfer of the applicant.

10. The relief asked for by the applicant is, therefore, not admissible and application is dismissed.

11. There shall be no order as to costs.


Member-A

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