

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABA D BENCH
ALLAHABAD

Original Application No. 324 of 1998

Allahabad this the 27th day of August 1998

Hon'ble Mr. S.K. Agrawal, Member (J)

Sudama Yadav (Chaukidar), aged about 33 years,
S/o Shri Hari Nath Yadav C/o Office of the Director
of Advertising and Visual Publicity, Ministry of
Information and Broadcasting, Varanasi Ekai, Varanasi.

Applicant

By Advocates Sri K. Kant.
Sri C.P. Yadav,
Sri K.K. Tripathi.

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, New Delhi.
2. Director General, Directorate of Advertising and Visual Publicity, P.T.I. Building, Janpath/Sansad Marg, New Delhi.
3. Field Exhibition Officer, Directorate of Advertising and Visual Publicity, Govt. of India, C-27/106, Jagat Ganj, Varanasi.

Respondents

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. S.K. Agrawal, Member (J)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order of transfer dated 16/3/98 by which the applicant was transferred from Varanasi to Etanagar.

2. In brief, the facts of the case as stated by the applicant are that the applicant was appointed as Chaukidar in the Directorate of Advertising and Visual Publicity, Ministry of Information and Broadcasting and joined on 29.1.1990 at Agartala where he stayed till 30/10/1992. Thereafter, he was transferred to Lucknow vide order dated 30/10/1992 (annexure-2) but this order was not given effect and the applicant was transferred to Delhi where he joined the duty in pursuance of the order dated 07/12/92. Thereafter, vide order dated 31.7.96, the applicant was transferred from Delhi to Varanasi and vide impugned order dated 16.3.1998, the applicant was transferred from Varanasi to Etanagar. It is submitted that the impugned order of transfer was issued at the instances of Sri M.C. Bhardwaj who has lodged a false F.I.R. against the applicant, which on investigation was found false and final report was given in that case but Shri Bhardwaj is an influential person and by exercising his influence, the applicant was transferred to Etanagar. It is further submitted that applicant has school going children. The applicant's younger brother Sri Jai Prakash Yadav is also a student of Intermediate class and his final year examination will start from 27/3/98, therefore, the transfer of the applicant in mid session will cause irreparable injury to the applicant. The applicant filed representation to the concerned authorities to consider his case but nothing was done. It is also submitted that applicant's transfer to Etanagar is a punishment transfer. Etanagar is known as a difficult station and the applicant was posted at this station once therefore, to transfer him again at a difficult station is against the transfer policy issued by the respondents, Union of India and on this count alone, the impugned order

of transfer is liable to be quashed. Therefore, on the basis of averments made in this O.A., the applicant makes a prayer to quash the impugned order of transfer.

3. The counter-affidavit has been filed by the respondents. In the counter, it is stated that petitioner is holding a transferable post and he is liable to be transferred at any place as per terms and conditions of the appointment order. The impugned order of transfer was passed after the approval of the competent authority. The petitioner was initially engaged as daily wager and thereafter his services were regularised and considering the willingness of the applicant, he was appointed at the Field Exhibition Unit, Agartala as regular Chaukidar w.e.f. 07/2/1990. Sri M.C. Bhardwaj is a group 'C' employee and has no role to play in the present transfer of the applicant. The allegations against Sri Bhardwaj is baseless and irrelevant. It is also stated that impugned order of transfer is neither illegal nor malafide and the impugned order of transfer is not a punishment to the applicant. It is stated that impugned order of transfer has been issued in the administrative exigencies. The applicant filed a representation dated 19/3/98, which was received by the office on 24.3.98, for cancellation of his transfer order to Etanagar, which was under examination but in the meantime, the applicant filed the present petition and obtained the order for maintaining status-quo, thus, the decision on his representation could not be taken. It is also submitted that the present application has been filed without exhausting the remedies available to the applicant, therefore, the O.A. deserves to be dismissed on the basis of alternative remedy. In this way, the respondents prayed that this O.A. be dismissed with cost.

4. The applicant has also filed the rejoinder, in which all the facts mentioned in the O.A., are reiterated.

5. Heard, the learned lawyers for the applicant and learned lawyer for the respondents and perused the whole record.

6. Learned lawyer for the applicant has contended that the impugned order of transfer was issued in violation of transfer policy. In support of his contention, he has referred the transfer policy, which provides;

"(x) As far as possible, every employees will be posted to a category 'C' station at least once during his service.

(xi) Persons who already had a spell of posting at a 'c' station would not be posted to such a station a second time if there are candidates in the same grade who are still to be posted such a station. They may, however, be posted again on promotion. "

7. On the other hand, learned lawyer for the respondents has submitted that guide lines issued by the Government do not confer upon employee any legally enforceable right, therefore, mere violation of executive instructions is not a sufficient ground for interference by this Tribunal in the impugned order of transfer.

8. In Union of India Vs. S.L. Abbas 1994 S.C.C. (L&S) 320', the guide lines issued by the Government, does not confer upon employee a legal enforceable right, therefore, on the basis of this alone, I am also of the view that there is no basis to interfere in the impugned order of transfer.

9. Learned lawyer for the applicant further

submitted that the impugned order of transfer was issued at the instances of Sri M.C. Bhardwaj who has lodged F.I.R. against the applicant which on investigation was found false and Police submitted final report. Therefore, the impugned order of transfer is said to have been issued on the basis of malafides. He has referred a case 'Shri Arvind Dattatraya Dhande Vs. The State of Maharashtra & Ors. J.T.1997(6) S.C. 229', in which it has been held that malafides and arbitrary transfer at the behest of persons interested to victimise honest officer, such transfer orders quashed.

10. This has been strongly objected by the learned counsel for the respondents and argued that at no stage of imagination any action of malafides, could be established by the applicant in issuing this transfer order by the respondents.

11. In Rajendra Roy V. Union of India 1993 S.C.C. (L&S) 138', the Hon'ble Apex Court observed that transfer order which is not malafide and not in violation of service rules and issued with proper jurisdiction cannot be quashed by the court. It also laid down that malafide action can be inferred from the pleading and antecedent facts and circumstances only if there is a firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.

12. In 'Express Newspapers (P) Ltd. Vs. Union of India(1986) 1 S.C.C. 133', the Hon'ble Supreme Court has observed that where malafides are alleged, it is necessary that the person against whom such allegations are made, should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain un-

rebutted and the court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability.

13. In 'Sankaranarayanan Vs. State of Karnataka (1993) 1 SCC 54', the Hon'ble Supreme Court observed that it may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures.

14. As the applicant failed to establish any malafides against the respondents directly or indirectly and in view of the facts and circumstances of this case and legal position as referred above, it is not possible to interfere in the impugned order of transfer on the ground of malafides.

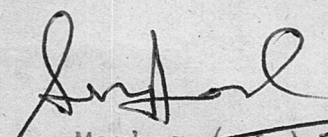
15. Learned lawyer for the applicant has also contended that his children are getting education in schools and his younger brother - Jai Prakash Yadav is the student of Intermediate, therefore, a transfer in the mid session is liable to be quashed. He has referred a case 'Director of School Education, Madras and Others Vs. O. Karuppa Thevan and another 1994 Supp(2) S.C.C. 666'. Learned lawyer for the respondents has objected this argument and states that the impugned order of transfer was issued on 16.3.98 and now session is already over, therefore, the prayer of the applicant has become infructuous on this count. In view of the admitted position, the session for examination etc. is already over, Therefore, the applicant cannot take advantage of this ground

at this stage. Moreover, it is the departmental authority who decides at what place and at what time, the employee is to be transferred. They are the best judge for the concerned employee in the matter of transfer. In N.K.Singh Vs. Union of India 1994 S.C.C.(L&S) 1130', their Lordships of the Hon'ble Supreme Court in para-2 of the judgment had inter-alia observed that only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by malafide or infraction of any professed norms or principle governing the transfer which alone can be scrutinised judicially.

16. The transfer is an incident of service and an employee in transferable establishment, is liable to be transferred anywhere within the jurisdiction by a competent authority. If the transfer is made by a competent authority in public interest, not based on malafides and infraction of professed norms, then Tribunal in such cases of transfer, should not interfere.

17. In view of the above, all, I am of the considered opinion that the applicant has failed to make out a case for interference by this Tribunal.

18. Therefore, this O.A. is dismissed and interim order passed on 24.3.98, stands vacated. However, this order does not preclude the respondents to consider the case of the applicant sympathetically incase he files representation for redressal of his grievance. No order as to costs.


Member (J) 27/8/98

/M.M./