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Reserve

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 228 of 1993

Bivas Karan

Petitioner

Versus

Union of India & Ors

Respondents

CORAM

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition the petitioner has challenged the transfer order dated 13.1.93 (Annexure A-1 to the petition) whereby the petitioner has been transferred to W.A.O/LLH, Calcutta on the ground that the said transfer order was malafide.

2. The facts leading to this petition briefly stated are as follows:

The petitioner was appointed as Auditor on 31.12.1983 and was posted in Calcutta. After completion of three months training he was transferred to Railway Production Unit D.L.W Varanasi and since then he has been at R.P.U, D.L.W, Varanasi. The petitioner is presently working as Senior Auditor. The petitioner's allegation is that the transfer of the petitioner and other senior Auditors is controlled, regulated and guided by transfer guide lines/Eastern Railways/Metro Railways, Railway Production Unit (C.L.W & D.L.W) Audit Staff Association (E.R.M.R.A.S.A.), 14 Strand Road, Calcutta(hereinafter called the Association) and that the respondents have arbitrarily

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deviated from the guide lines(Annexure A2 to the petition) in transferring the petitioner. The petitioner also alleged that his transfer was ordered on an extraneous consideration at the behest of the Association and not on bonafide administrative grounds. It is the allegation of the petitioner that at the instance of his wife against whom the petitioner is prosecuting divorce case at Varanasi, the Association has influenced the Administration to order the petitioner's transfer near Calcutta.

3. According to Clause 1 of the Association's Guide Lines in the matter of transfer of staff, the transfer should be effected at the commencement of the Calendar year and two months prior notice should normally be given in all cases of transfer and for this purpose a panel of staff likely to be transferred should be announced every six months, say in June and December every year.

4. According to Clause 4, of the Guide Lines the staff willing to continue at out stations beyond two years should not generally be disturbed and in case where the transfer of staff from out stations becomes necessary due to the needs of the work, staff having maximum stay there in the cadre should generally move first. Further the staff posted at a particular station may not be allowed to continue for more than five years at a stretch, if circumstances demand so.

5. The petitioner contends that the aforesaid guide lines have been deviated in the case of the petitioner and he is sought to be transferred even though many other employees with maximum stay at Varanasi out station have been retained to the detriment of the petitioner.

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6. According to paras 4 & 5 of the reply filed on behalf of the respondents, the transfers are made by the Principal Director of Audit, Eastern Railway Calcutta in the interest of Public service and that the impugned transfer order is in no way prejudicial to the interest of the petitioner. It has been stated that the guide lines framed by the Audit staff Association are mainly for the guidance of its members and the transfers of the employees from Head quarter to out stations and vice-versa are made by the Cadre controlling officer(Principal Director of Audit/Eastern Railway Calcutta) keeping in view the administrative exigency. However, it is further stated that while making such transfer the so called guide lines of the staff association are generally kept in view but they do not have any statutory or administrative authority and are not mandatory.

7. Having heard learned counsel for the parties, I have come to the conclusion that this is not a fit case for interference. The allegation of malafides is not supported by any tangible evidence on record. The scope of administrative exigency and public interest in the matters of transfer is wide enough to permit discretionary power to the transferring authority unless it is circumscribed by a statutory rule. The guide lines set out by the association cannot have the over-riding effect in the exercise of discretionary power in the matters of transfer in public interest. In this case sufficient facts have not been set out so as to spell out a clear case of discrimination which might justify interference. In the circumstances, this case in my opinion, does not deserve any interference.

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8. In the result, this petition fails and is hereby dismissed with no order as to costs.

R. K. Vann
Vice Chairman

Dated: 30th July, 1993

(Uv)