

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 269 of 1993

Date of Decision: 12. 8. 1993.

P.I. Mathai

Applicant(s)

VERSUS

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No

VICE-CHAIRMAN

kgd
12-8-93

MEMBER (ADMINISTRATIVE)

1.9.1.1
06 Aug 93
8/12
mp

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.269 of 1993

Date of Decision: 12.8.93

P.I. Mathai

Applicant

VERSUS

Union of India & Others

Respondents

For the applicant

Mr. M. M. Basu
Advocate

For the respondents

Mr. Akhaya Mishra
Standing Counsel
Central Government

...

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

...

8 13

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN) : In this application the petitioner, Shri P. I. Mathai, Language Laboratory Technician, Eastern Regional Language Centre, Bhubaneswar, prays that the order issued by the Director, Central Institute of Indian Languages, Mysore, transferring him (the petitioner) from his present post in Bhubaneswar and posting him to the Northern Regional Language Centre, Punjabi University Campus, Patiala, be quashed on the grounds that :

- i) his wife is employed in a Central Government office at Bhubaneswar;
- ii) the said order arose out of malice on the part of higher authorities;
- iii) the shifting of the post of the Language Laboratory Technicians at Bhubaneswar, which happens to carry a higher pay-scale than those at Patiala, Solan, Pune, Lucknow and Mysore, along with its incumbent (the petitioner) to Patiala is, illogical since none of the other posts or their incumbents have been similarly shifted; the displacement of the post itself from Bhubaneswar to Patiala is ~~inconceivable~~ devoid of justification;
- iv) the work turned out in the Eastern Regional Languages Centre at Bhubaneswar is quantitatively greater than at Patiala;
- v) no transfers of this nature have been ordered or effected in this particular cadre in the past.

Contesting the above arguments, the learned Standing

Counsel for the respondents averred that:

- i) the policy governing the posting together of spouses, both of whom employed in the Central Government Offices, is in the nature of a guide-line and is not, therefore, binding in all cases and under all circumstances on the

authorities;

ii) the transfer of the petitioner from Bhubaneswar to Patiala is a routine administrative action, not remotely attributable to any malice or malafide on the part of the authorities;

iii) the shifting of the post, as also of its incumbent, from Bhubaneswar to Patiala was a routine decision, dictated by administrative necessities and keeping in view the overall interests and urgent requirement of the Regional Centre at Patiala. It was also added that the aspect concerning the deployment and re-deployment of posts is wholly an administrative function at the sole discretion of the administrative authorities; that the mere fact of a particular post carrying a higher scale than others is no impediment to such re-deployment in the interests of individual units comprising the organisation.

iv) the view regarding the quantum of work-load in two separate centres, ^{is} the personal opinion of the petitioner; and the type of work turned out in the Centre at Patiala is no less important than the work turned out at Bhubaneswar Centre, and cannot constitute a bar against routine re-deployment of officers/officials within the organisation.

v) the contention of the petitioner that no transfers have ever taken place in the past in the cadre of Language Laboratory Technicians is incorrect. In support of this assertion, the cases of two officers were cited to prove that Language Laboratory Technicians have indeed been transferred in the past.

3. The learned counsel for the petitioner has sought to link this transfer to an earlier case filed before this Tribunal (O.A. No.178 of 1990) wherein the same petitioner had sought a higher pay scale for himself, on par with that

9
 12/6/93
 8/1/8

of Recordists in the Film Division, Ministry of Information and Broadcasting - a prayer which was allowed by the Tribunal in its judgment dated 17th September, 1991. It was further pointed out that, on account of non-compliance with the directions contained in the above-cited judgment, the petitioner once again approached this Tribunal alleging Contempt of Court. It transpires that the orders of the Tribunal, dated 17th September, 1991, were complied with only after the above Contempt Petition was filed, and arrears on account of the difference between enhanced pay scales as ordered by the Tribunal, and the pre-revised pay-scale, were paid to the petitioner only in December, 1992. The petitioner chooses to connect these earlier petitions with/transfer order and alleges that the move to shift him from his present post was initiated soon after the conclusion of hearing in the Contempt Petition. It is his suspicion that because the Respondents were compelled against their wishes to accord a higher pay-scale to ^{the} petitioner on the strength of this Tribunals' order, they came to harbour a malice against him. He, therefore, asserts that the transfer order, which was issued about four months after the disposal of the Contempt Petition, is to be seen as a corollary and essential link in the chain of events surrounding the impugned posting.

4. We have given a close and careful consideration to this aspect of the petitioner's pleas.

5. There is little doubt that the disposals of O.A.No. 178 of 1990, the subsequent Contempt Petition arising therefrom, and the petitioner's impugned posting have

followed each other successively over a period of three years. While it is possible to argue in most of the cases of this type that an impugned administrative order has possibly arisen from some earlier case or event, the same would remain just a suspicion unless it is substantiated by irrefutable proof; specially where the issue under contention is malafide or malice. In the instant case, apart from alleging malafides, the petitioner has not really advanced adequately convincing arguments which would establish beyond doubt such malafides on the part of his superior authority. Malafide, when alleged, must be proved to its hilt and onus of doing so lies squarely on the party who makes the charge. Mere occurrence of certain events in chronological sequence at distant intervals of time does not necessarily establish any intimate or deductive inter-relationship amongst them. In the event, the petitioner has only voiced what may be regarded as his suspicions and made an allegation of malafide based on those suspicions without, however, furnishing any tangible and unassailable fact to back-up the allegation.

6. On the other hand, it has been argued by the respondents with a fair amount of conviction that the initial appointment of the petitioner itself clearly spelt out his transfer-liability to any of the places/stations where Language Laboratories have been established. Their contention that this is, after all, an instance of routine transfer on wholly administrative grounds, and that there have been precedents within the

1206 Aug 93

12 12

organisations of such transfers earlier on, lend credence and force to the respondent's claim that the impugned transfer of the petitioner from Bhubaneswar to Patiala is no more than a routine move in the normal course, on valid administrative grounds. This impression is further reinforced by the attendant fact that the post at Patiala, to which the petitioner stands posted, has been lying unfilled from more than four years and the efforts (said to have been) made by the authorities to recruit a suitable candidate to fill it up through the Union Public Service Commission have not borne fruit during the period.

7. We have, therefore, felt compelled to dismiss the petitioner's allegation of malafide to be no more than an unfounded suspicion on his part insufficiently backed-up by any unassailable evidence. We would also agree with the assertion of the respondents that deployment and re-deployment of posts (and/or the incumbents) are matters of their discretion, where such discretion has been exercised on valid grounds and in an unbaised manner. We do not feel called upon to express any opinion about the contention of the petitioner that the work turned-out in the Northern Regional Language Centre at Patiala is quantitatively lighter or less important than that done at Bhubaneswar. We have neither the means to judge these matters nor are those really relevant to the main issue.

8. It is seen that the petitioner initially communicated his agreement to be posted as Language Laboratory Technician, Eastern Regional Language Centre,

1/1

26 Aug 93

12/8/93

18

Bhubaneswar in the form of a conditional acceptance. Evidently, no cognisance can have been taken of such conditional acceptances. Even so, his 'acceptance' letter dated 12.8.1977 (Annexure-1) to the petition stated that he was not in a position to accept his posting other than at Bhubaneswar for the time being. That was a full 16 years ago and the basic difficulty expressed at the time of his initial appointment, viz., his wife's employment at Bhubaneswar, remains unaltered to-day. It is also evident that his problem is going to remain in future as well since the petitioner's wife is posted in a stationary appointment in an administrative office at Bhubaneswar. It may be unfair under such circumstances to expect any Department to hold-out an all-time guarantee or to confer a selective immunity against transfers in all such cases for indefinitely long years.

9. To sum up, a careful - and not an unsympathetic - consideration of the salient facts leads us to the inescapable conclusion that the order of transfer of the petitioner, Shri P.I.Mathai, Laboratory Technician, Eastern Regional Language Centre, Bhubaneswar, to Regional Language Centre, Patiala, issued by the Director, Central Institute of Indian Languages, is wholly valid, lawful and, therefore, entirely sustainable and that it should be complied with.

10. While the only unavoidable inference based on facts and the record produced before us, has been indicated above, the one factor which might yet warrant some

26/11/93
12/8/94

consideration the petitioner's request is the sole circumstance of his spouse having already forfeited 10 years of her service in order to be able to be with her husband at his place of posting. This forfeiture was on account of the transfer earlier granted to her under Rule (38) of P.&T. Manual, Vol-IV, whereby an official seeking a transfer to a station/unit other than his/her place of recruitment and/or of posting has necessarily to accept a position below that of all officials of the same cadre serving in the receiving unit/office on the date of her joining the new post. She has expended the option once on an earlier occasion, and in doing so, has lost a part of the service which she had rendered prior to that event. Apart from the fact that she is unlikely to find it easy to get a further posting under the same rule in the Punjab Postal Circle, she may, - in the event of such a transfer being at all approved eventually, - have to once again lose the service she has so far rendered in her present circle in order to achieve her objectives of being with her spouse at his place of posting. This would undoubtedly be a little harsh on her. The counsel for the petitioner urged in this context that the petitioner be given liberty to make a further representation, this time to his next higher authority, setting forth his problems and difficulties in complying with the orders posting him to Patiala. We have no objection to this, although we are clear in our mind that the mere fact of this fresh representation should not result in an indefinite delay in complying with lawful orders. Considering all

12/12/93

✓ 15 factors of the case, including humanitarian aspect, we permit the petitioner to submit a final representation, through proper channel, to his next higher authority within four(4) days of the receipt of a copy of this order. The immediate controlling officer of the petitioner will forward the same with his comments/recommendations, if any, to the next higher authority within four(4) days of its receipt in his office. It is our reasonable expectation that the representation will eventually be disposed of with a final decision within fifteen(15) days of its receipt in the office of the next higher authority of the petitioner. The stay order earlier granted shall therefore have to continue to operate for a period of 30 days from to-day at the end of which, if no decision is received in the meantime, it will automatically stand vacated and the petitioner will carryout the order dated 12.4.1993 contained in Annexure-3 to the petition. Thus the application is disallowed. No costs.

h g a *On 12.8.93.*
12.8.93.
VICE-CHAIRMAN

134
MEMBER (ADMINISTRATIVE)
06 AUG 93

