

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

13
D/M

O.A. No. 395/95
T.A. No.

~~109~~

DATE OF DECISION 2.8.1996

Ved Bajaj

Petitioner

Mr. J.K. Kaushik,

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent(s)

Mr. K.S. Nahar

Advocate for the Respondent (s)
No. 1 to 3.

Mr. Kailash Joshi,

Advocate for respondent
No.4.

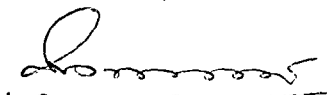


CORAM :

The Hon'ble Mr. S.P. Biswas, Administrative Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes


(S.P. BISWAS)
Member (A)

14/5

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 2.8.1996

OA No. 395/95

Ved Bajaj

...

Applicant.

versus

Union of India & Ors.

...

Respondents.

Mr. J.K. Kaushik, Counsel for applicant.

Mr. K.S. Nahar, Counsel for respondents No. 1 to 3.

Mr. Kailash Joshi, Counsel for respondent No. 4.

CORAM:

Hon'ble Mr. S.P. Biswas, Member (Administrative)

BY THE COURT:

Applicant, Ved Bajaj in this OA has challenged A/l order dated 28.8.95 by which he has been transferred from All India Radio/Jodhpur to Churu in his present capacity as Announcer.

In the face of long line of recent judgements by Hon'ble Supreme Court on the subject of transfer to the effect that transfer orders, issued in public interest, should not be interferred with, it was after considerable deliberations on two different dates that this Tribunal decided to admit the application. It was also with the consent of the counsel for the parties that the case was taken up for final hearing on the date of admission itself.

2. Shri J.K. Kaushik, learned counsel for the applicant submits that the order of transfer is not in public interest and that the same has been issued to accommodate the respondent No. 4, Shri Jafar Khan Sindhi now under probation at Churu. The specific ground of challenge to the order of transfer is that it is arbitrary, issued under colourable exercise of power attributable to competent authority (respondent No. 2) and punitive in substance, though harmless in form. The punishment cannot be imposed without following the procedure established by law.

Shri K.S. Nahar, learned counsel appearing for answering respondents contends that the transfer order has been made in

15 2/16

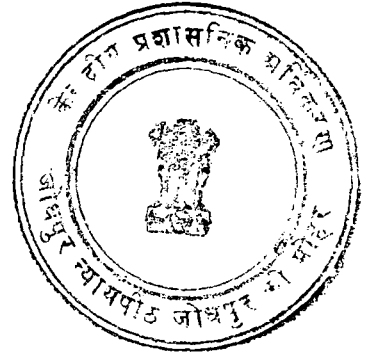
public interest and in exigencies of service. He also denies any political pressure or influence of senior officers in the issue of the present order.

Shri Kailash Joshi, learned counsel for respondent No. 4 cited judgements of the Apex Court in the following cases only to advocate against interference by this Tribunal into the validly issued order of transfer in favour of his client :-

(i) Shilpi Bose vs. State of Bihar,
1992 SCC (L&S) 127.

(ii) Union of India & Ors. vs. S.L. Abbas,
AIR 1993 SC 2444.

(iii) N.K. Singh vs. Union of India & Ors.,
(1994) 6 SCC 98.



3. Heard rival contentions of all the three parties and perused the records thoroughly.

4. The A/1 impugned order dt.28.8.95 is reproduced below :-

"No.PF.3/1642/94.SVIII/1466
Government of India
Directorate General : All India Radio

New Delhi, dated, August 28, 1995.

O R D E R

The following transfers in the grade of Announcer are hereby ordered with immediate effect :-

S.No.	Name & Designation	Transferred	
		From	To
1.	Sh. Jafar Khan Sindhi Announcer	AIR, Churu	AIR, Jodhpur
2.	Shri Ved Bajaj	AIR, Jodhpur	AIR, Churu

Shri Ved Bajaj will be entitled for TA/DA and joining time etc.

Sd/-
(H.C.Sharma)
Director of Programmes (Per)
For Director General"

10 2/17

There is no mention that the aforesaid order has been issued in administrative exigency. It is not in dispute that the applicant will be paid TA/DA while the same is denied to respondent No. 4. Apparently, the order was issued on the request of respondent No.4, though presumed to be in public interest. It is an innocuous order. Element of malafide/colourable exercise of power is not ostensible in it. But when the Court is confronted with specific charges, it has to necessarily tear the veil of deceptive innocuousness and see what actually motivated the transfer. Malafide has only to be inferred from established facts and that inference must be based on factual matrix (See M. Sankaranarayanan vs. State of Karnataka, 1993 SCC (L&S) 122). Before I do this with reference to the main charges aforementioned, look at the existing rules/guidelines governing such transfers would be apposite.

5. The Full Bench of this Tribunal in its decision in OA No. 770/87 on 27.4.88 ^{has} held that the transfer order must (i) be in public interest and in exigency of service on administrative grounds, (ii) it must not be in colourable or malafide exercise of powers, (iii) it should not be arbitrary, (iv) it must be made by a competent authority in accordance with rules and instructions, if any, governing the transfer policy, (v) transfer itself must be ordered by a competent authority in bona fide exercise of power, (vi) it should not be a 'fixed' transfer or for setting scores, (vii) merely because transfer is ordered on complaints or after an enquiry into the guilt of the employee it cannot be said to be by way of punishment, (viii) the principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary proceedings, and (ix) it should not amount to a double jeopardy. The Hon'ble Supreme Court has laid down that a Government servant, holding a transferable post, has no choice in the matter of posting and that even hardship pleaded by applicant is not a matter which ^{can} enter legitimate consideration (See Chief General Manager/Telecom, North East Telecom Grde & Anr. vs. R.C. Bhattacharya, (1995) 2 SCC 532 and State of M.P. vs. S.S. Kaurav & Ors. (1995) 2 JT SC 498).

6. I shall now advert to the factual matrix of the case and examine first if there was any colourable exercise of power.

... 2 ...



(17) 2/18

Learned counsel for applicant drew my attention to the sequence of events leading to the transfer. Annexures R/4 and R/5 bring out the fact that there has been continuous and concerted efforts on the part of the administration to favour respondent No. 4 with an order of transfer from Churu to Jodhpur. The communication (R/4 dated 5.10.94) of Director General of All India Radio addressed to the P.S. to Minister/I&B indicates that respondent No. 4 cannot be posted to Jodhpur immediately. Whereas the letter (R/5 dated 15.4.94) of the Joint Secretary / Ministry of I&B to Shri Ashok Gehlot, Member of Parliament (belonging to Rajasthan) mentions that the request of the Hon'ble Member will be considered when the vacancy comes up in future. Learned counsel for respondents 1 to 3 submits that the chapter of political or administrative pressure was closed in April 1994 when the Member of Parliament was replied as above. Subsequent developments, however, belie this contention.

I find that the Director General (respondent No.2) has issued a specific direction (R/2 dated 19.8.94) as under :-

"Assistant Station Director, All India Radio, Jodhpur, may kindly ascertain whether anyone among the Announcers at the Station is willing to go to All India Radio, Churu. In case, nobody is willing, Assistant Station Director may kindly suggest some old timers, who may be shifted to All India Radio, Churu. This may be treated as urgent."

However, the second effort initiated by respondent No. 2 did not meet any success. As in R/3 (dated 27.8.94) none of the eleven Announcers showed any interest for posting at Churu.

The matter did not stop there. The third attempt to get a volunteer ~~xxxxxxxxxx~~ was made personally by Assistant Station Director (ASD, for short) Km. Asha Shukla, again under the instructions of Director General / All India Radio in June, 1995 when a Conference of Station Directors and ASDs took place at Jaipur. None volunteered. As the ASD/Jodhpur was under continuous pressure from the Headquarters, she again raised and discussed, inter alia, the issue of anybody's willingness for a posting at Churu in a joint meeting of Announcers held at Jodhpur in July 1995. This position has not been controverted by answering respondents or even by ASD/Jodhpur. Before I part with this serious categorical charge against respondents for exerting undue influence in creating a vacancy at Jodhpur, elaboration of an important legal point is very relevant at this stage.



8

9/19

7. What is ostensible in a transfer order may not be the real objective. This Tribunal, therefore, is left with the task of lifting the veil to find out what the "operative reasons" for the transfer was. The real basis, arising out of public interest, that necessitated the present order is as under :-

"The applicant has been transferred following the complaints with regard to his integrity and demanding money from the casual Announcers and not due to the reason that the respondent No. 4 was to be accommodated at Jodhpur (para 4.5 of the reply at page 20)."

It is true that pendency of a disciplinary proceedings or receipt of a complaint may itself be a valid reason for transfer. Neither it is necessary that an enquiry must be held into a complaint before transfer is ordered nor a transfer order be deemed as penal in nature when issued on receipt of a complaint. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed. In other words, a finding which attaches stigma to the employee not preceded by an enquiry and arrived at behind the back of the employee cannot form a valid basis for an order of transfer. The above situation prevails here. Though transfer order per se does not constitute a punishment, in the present case it is punitive in nature as it has been reached on a conclusion, right or wrong, that the applicant is indulging in wrong activities.

8. The next issue for consideration is whether the order is vitiated by arbitrariness. Complaints received against the applicant speaks about manipulation of duties for Announcers. Applicant is alleged to have demanded 'bribes' from casual Announcers for fixation of roster duties out-of-turn. It is admitted by respondents that the senior Announcer who is incharge of preparing the 'roster' can only show some undue favour in assigning jobs to other Announcers including those on casual list. It is also not in dispute that the applicant was never incharge of "roster preparation", not even in the month of February and March 1995. It eludes comprehension as to how such complaints, unrelated to official responsibilities of the applicant, could be relied upon in determining applicant's misdeeds.

9. Since the impugned order was the outcome of complaints received and the materials available before the Tribunal is silent as to how the conclusion of "doubtful integrity", was arrived at,



the pleadings on 2.8.96 was adjourned for a while and respondents were given yet another opportunity to produce the report that could have normally been sent, in the circumstances of the case, to the Ministry for a decision in the matter. Km. Asha Shukla, ASD, AIR/Jodhpur, submitted that no formal report was sent. Neither a decision was taken as to whether the complaints received, were of verifiable nature, nor were they enquired into at any time or at any level. She had, however, carried those complaints and after having made an unsuccessful attempt to get a suitable official for Churu, handed over those cases of complaints to officers of Headquarters who came to attend the said conference at Jaipur. This happened, according to her, in May and the order was issued in August 1995. On a perusal of the records, I find it difficult to accept the stand of the respondents that the influence or efforts to get the post vacated at Jodhpur came to a halt in April 1994. Thus, behind the mask of an innocent order issued in public interest basis, there was evidently an ulterior motive to favour respondent No. 4.

10. To make matters worst for the answering respondents, she admitted that though "questionable integrity" was used as a basis for the impugned order, she as a controlling officer of the applicant herein had recorded the latter's integrity as "Good/beyond doubt" for the very relevant period in Annual Confidential Report of 1995-96. With this obvious contradiction, respondents' order of transfer on the basis of applicant's misconduct falls to the ground. In fact, the entire activity of handling the complaints and arriving at a conclusion about applicant's misdemeanour has been marked by non application of mind at all levels including that of respondent No. 2.

11. The transfer order has been issued in August 1995 and the applicant has also come out with difficulties in respect of his School going children, one of them is reading in Class VII and the other is in Class XII and the academic session ends in April/May in the State of Rajasthan. It has been laid down by Hon'ble Supreme Court in the case of Director of School Education, Madras & Ors. vs. O.Karuppa Thevan & Anr., 1994 SCC (L&S) 1180, that the transfers should not be normally effected during the mid academic session. Although, there is no such rule, that an official cannot be transferred during the school session, their Lordships in the above case was of the view that "in effecting transfer, the fact that the children of an employee are studying should be given due



20

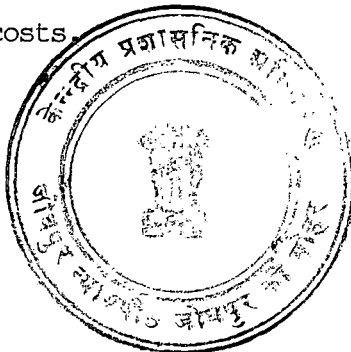
9/21

weight if the exigencies of the service are not urgent". In the instant case, the respondents have not explained any urgency for which they could not wait till May 1996.

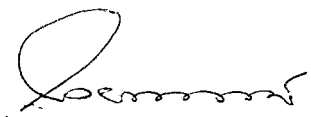
12. Learned counsel for respondent No. 4 argued that "Churu" being a "difficult station", the transfer of respondent No. 4 to Jodhpur is covered by guidelines (para 3 of the transfer policy) of the department. I am unable to accept this contention in view of judgements of the Apex Court in the case of Chief General Manager (Telecom), North East Grid & Anr. vs. R.C. Bhattacharya, (1995) 2 SCC 532 (supra). In this case, it was held that since the respondent has no legal or statutory right to claim his posting at Agartala, there was no justification for the Tribunal to set the respondent's transfer to Dimapur. The same situation prevails here. In fact, the case of the respondent No. 4 herein is evidently more weaker. He has hardly completed the period of training and is claiming for a comparatively "posh" posting. Whereas as per A/3 advertisement, he can be posted only at Churu or Barmer.

13. In the light of discussions as above, it is established that the impugned order has been issued in violation of norms at Sl.Nos. (ii), (iii) and (vii) set out in para 5 aforementioned. The present O.A., therefore, succeeds on merits and is accordingly allowed. The A/1 order dated 25.8.95 by which the applicant has been transferred in the mid session is set aside. Liberty is given to the respondents to transfer the applicant after the current academic session provided that such transfer is in public interest and is in accordance with the rules/guidelines laid down.

14. The O.A. is disposed of accordingly. There shall be no order as to costs.



[cvr]


(S.P. BISWAS)
Member (Administrative)