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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 30.05.2001

Original Application No. 108/2001.

Y. N. Sharma son of Late Pt. Kishore Lal Sharma, aged about 48 years, resident of Narayain Niwas, Near Shiv Temple, Dhobi Talai, Bikaner, at present employed on the post of Programme Executive, in the office of Director All India Radio, Bikaner.

APPLICANT..

VERSUS

1. Union of India through Secretary to the Govt. of India, Min. of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Director General, All India Radio, Akashvani Bhawan, Sansad Marg, New Delhi.
3. Chief Executive Officer, Prasar Bharti, Broadcasting Corporation of India, Mandi House, Door Darshan Bhawan, Copernicus Marg, New Delhi.
4. Smt. Meera Pahooja, Director, All India Radio, Bikaner.

RESPONDENTS ...

Mr. J. K. Kaushik, counsel for the applicant.
Mr. M. A. Siddiqui, Adv. Brief holder for
Mr. N. M. Lodha, counsel for the respondents.

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Hon'ble Mr. A. K. Misra, Judicial Member.

ORDER

(per Hon'ble Mr. A. K. Misra)

Vide impugned order dated 17.04.2001 Annexure A-1, the applicant was transferred from All India Radio, Bikaner to All India Radio, Jalandhar.

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The applicant had challenged the transfer order on the ground that he being a Central Government Employee and is on ~~being~~ deputation to the respondents, therefore, the respondents cannot transfer him. The transfer of the applicant has been passed as a measure of penalty, he has been transferred on some complaints on the recommendations of respondent no. 4 who manipulated the applicant's transfer, the transfer is punitive in nature and has been passed arbitrarily and to victimise the applicant. The applicant has prayed for quashing the impugned transfer order dated 17.04.2001 Annexure A-1 with all consequential benefits.



2. Notice of the OA was given to the respondents separately. Respondent Nos. 1,2&3 filed their common reply, whereas respondent no. 4 filed their separate reply. The applicant filed a rejoinder to the reply of the respondents and the respondents filed their reply to the rejoinder of the applicant.

3. It is stated by the respondents that the transfer of the applicant has been passed on administrative grounds. There have been complaints against the applicant regarding indisciplined behaviour with the colleagues and Superiors. It is also stated in the reply that in order to correct the atmosphere at AIR Bikaner, some steps were required to be taken by transferring the persons involved. The applicant has been, therefore, transferred on administrative grounds. The

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transfer of the applicant was not arbitrarily, due to malafide reasons or in the recommendations of the respondent no. 4 against whom, the applicant has alleged ~~to have~~ ~~malafide~~ malafide. The respondents have also taken certain preliminary objections.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. I have also seen the departmental files and notings containing the complaints against the applicant and proposals for his transfer etc.

6. The Law relating to interference in transfer matters is more than settled. It has been observed by the Hon'ble Supreme Court, that transfer order can only be interfered with if the same is tainted with malafides or has been passed in colourable exercise of power. Transfer order can also be interfered with, if the same has been ordered against the Statutory Rules or Statutory guidelines. But if the transfer order is not passed as a result of any of the above factors then the same cannot be interfered with.

7. In the instant case, the applicant has been staying at Bikaner, since almost 4 years, therefore, it cannot be said to be a premature transfer order. There is no recommendations on behalf of respondent no. 4 in the administrative file which has resulted into transfer of the applicant, therefore, the allegations of malafide



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in respect of respondent no. 4 are not borne out from the administrative file. The transfer order has been passed by the Director and therefore, it cannot be believed that some subordinate officer prevailed over the Director General to transfer the applicant from Bikaner. Assuming that the applicant is on deputation to the respondents then his transfer from one unit of the respondents to another cannot be said to be transfer without jurisdiction. A borrowing department can transfer such borrowed officer from one of their units to another unit. Therefore, the transfer order cannot be said to be illegal or without jurisdiction.



8. It was argued by the learned counsel for the applicant that if there were complaints against the applicant then the departmental enquiry should have been initiated against the applicant before transferring him from Bikaner. From consideration of this argument I am of the view that it is not necessary for the respondents to initiate departmental action against the applicant on receipt of complaint or complaints. On receipt of complaints a Government servant can be transferred and such transfer can be termed as transfer on administrative exigency. Smooth working in a particular unit is the concern of the respondents and all possible steps including transfer of an employee could be taken by the respondents to see proper functioning of their unit. If in these circumstances, on receipt of complaints against the applicant made by the colleagues of the applicant or superiors officers of the applicant, the

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applicant has been transferred then such transfer cannot be termed as a punitive transfer. Needless to say that departmental action is not required to be initiated on each occasions on receipt of complaints against the government employee. If such departmental actions are initiated then probably no Government servant could be transfer from one place to another against whom the complaint has been received and the department would be busy in enquiring into the matter. In the meantime, the administration will go from bad to worst, therefore, the contention of the learned counsel for the applicant that there should have been enquiry on the complaints against the applicant is without any force.



9. There is no denial that the applicant has All India transfer liability. When the applicant has all India transfer liability he cannot complain of his transfer from one place to another. From the administrative file it could be inferred that Groupism at Bikaner ~~is~~ started only after the applicant came on transfer to Bikaner. When there is groupism in an office then much of the energy of a Government servant involved in such groupism ^{is spent} in activities not congenial to the smooth running of the office. By his action such employee tries to do undesirable or undo the desirable actions in running administration. In view of this, if the applicant has been transferred to Jalandhar ^{same} the cannot be viewed otherwise than an administrative exigency.

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10. The learned counsel for the applicant has cited 1989 (1) (CAT) SLJ Page 641 Kamlesh Trivedi Vs. Indian Council of Agricultural Research and others, and has argued that the transfer order of the applicant based on complaints and as a result of findings ^{of} ~~and~~ misconduct etc. cannot be termed as a valid transfer and therefore, deserves to be quashed.



11. I have considered this aspect, in my opinion, there is nothing on record to conclude that the order of transfer of the applicant is stigmatic in nature. No finding relating to misconduct has been arrived at ⁱⁿ any enquiry. All that has been mentioned in the file is that there is a groupism at Bikaner and in order to have discipline in the staff, transfer of the applicant is necessary. Even the transfer order does not mention any such finding, therefore, the transfer order cannot be termed as stigmatic in nature. Therefore, the arguments in this respect are rejected.

12. In view of this, I am of the opinion, that the transfer order is not liable to be interfered with. The OA bears no merits and deserves to be dismissed.

13. The OA is therefore dismissed with no order as to costs.

A. K. MISRA
(A. K. MISRA)
Judl. Member

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