

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

M.A. No.88 of 1997
O.A. No.174 of 1997

Present: Hon'ble Dr. B.C. Sarma, Administrative Member
Hon'ble Mr. D. Purakayastha, Judicial Member

MANINDRA NATH DAS

....Applicant

VS

1. Union of India, through the
Secretary to the Government of India,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-110 001

2. Director General/Joint Secretary,
All India Radio, Mandi House,
Copernicus Marg,
New Delhi-110 001

3. Chief Engineer (E.Z.),
All India Radio and T.V.
Akashvani Bhavan (4th floor),
Calcutta-700 001

.....Respondents

For the Applicant : Mr. M.K. Bandopadhyay, counsel
Ms. B. Banerjee, counsel

For the Respondents: Mrs. B. Ray, counsel

Heard on 21.4.1997

: :

Date of order: 21.4.1997

O R D E R

B.C. Sarma, AM

The dispute raised in this application is about the impugned order of transfer passed by the respondents on the applicant on 24/28.1.97 whereby he has been transferred from Calcutta to Boudh. The applicant contends that the said order is in violation of the decision taken in 28th meeting of the Departmental Council of Ministry of Information and Broadcasting, which was confirmed in the 29th meeting of the Departmental Council held on 17.12.87. As per the said decision, considering the nature of duties and detachment from family during his/her career in service, the employees recruited from the category of Ex-servicemen under the Ministry of Information and Broadcasting may be exempted from transfer twice in his/her service career in order to settle their family life properly. The applicant contends that he was earlier posted under the respondents at Kohima which was a difficult area and he came on transfer to Calcutta on



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13.2.1993. Therefore, as per the decision of the Departmental Council meeting, the applicant is supposed not to be transferred within a period of 8 years from February, 1997 to February, 2005. The applicant submits that he had also filed a representation on 8.4.1996 and that has yet to be disposed. Meanwhile the impugned transfer order was passed against which the applicant has obtained an interim order exparte. Since the exparte order expired on 28.2.97, the applicant had filed an MA which was ordered to be listed on 4.3.97. Meanwhile the applicant was released from his present post. Being aggrieved thereby, the instant application has been filed with the prayer that the impugned order be quashed and set aside and the applicant be allowed to continue in the present place of posting.

2. The case has been opposed by the respondents by filing two replies, one to the original application and the other to the miscellaneous application. The contention made by the respondents has been that it was a routine transfer order and neither the impugned order is illegal nor any malafide is involved in it and therefore, there is no ground for interfering with the impugned order of transfer. Meanwhile, it has also been submitted that the reliever of the applicant had also arrived and, therefore, he was allowed to join, otherwise the applicant could not have been released from his present post. Accordingly the applicant was released on 4.3.97. The respondents have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit.

3. During the hearing Ms. Ray, learned counsel appearing for the respondents cites the decision of the Hon'ble Apex Court in the case of Union of India & others v. S.L. Abbas, reported in AIR 1993 SC 2444 to buttress her contention that unless the impugned order of transfer is arbitrary or malafide, a Court or a Tribunal cannot interfere with such transfer order. It was also submitted by Mrs. Ray on the basis of S.L. Abbas case that which officer is to be transferred where and when is a matter which squarely falls within the domain of the administration and the Court cannot interfere unless such order is malafide or arbitrary.

4. The matter has been examined by us carefully after hearing the submissions of the learned counsel for both the parties, perusing the records and we have considered the facts and circumstances of the case. We note that the applicant had arrived in Calcutta on transfer from Kohima in 1993 and he has already completed a full term of four years in Calcutta. It is true that the applicant has submitted a representation for giving him exemption twice on the basis of the decision of the Departmental Council meeting of the JCM of the Ministry of Information and Broadcasting. We have perused the relevant minutes of the meeting which runs as follows: "The employees recruited from the category of Ex-Serviceman under the Ministry of I&B may be exempted from transfer twice in his/her service career. Considering the nature of duties and detachment from family during his/her career in service, they should be given the facilities for exemption from transfer, twice in service career in order to settle their family life properly." We find that in the 29th meeting of the Departmental Council this item was confirmed. It is, however, not understood ^{whether} ~~why~~ a Government order was issued on the basis of the said decision. We also note that the minutes of the said meeting were circulated amongst the authorities concerned. In any case, the Departmental Council meeting decisions are meant for implementation. We, however, note that the applicant has prayed for exemption twice at a stretch after completion of normal tenure of posting at Calcutta upto February, 1997. This is a matter to be decided by the authority concerned. However, since the applicant had filed a representation for grant of such exemption and since he is a recruit from Ex-serviceman, we are of the view that the applicant has a case for being considered before he moves on transfer.

5. Accordingly the application is disposed of at the stage of admission itself with a direction that ^{within} ~~after~~ a period of 15 days from the date of communication of this order, the respondents shall take a decision on the representation filed by the applicant on 8.4.96 and their decision shall be conveyed to the applicant within a period



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of further two weeks from the date of taking such decision. Till such decision is communicated to the applicant, the applicant need not join at the new place of posting. The period from the date of release of the applicant to the date on which the applicant might be joining another place of posting may be decided by the authority as per rules. No order is passed as regards costs.

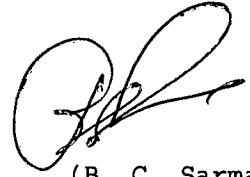
6. M.A. is also disposed of accordingly.



(D. Purkayastha)

MEMBER (J)

21.4.1997



(B. C. Sarma)

MEMBER (A)

21.4.1997