

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated the 28th October, 1993.

CORAM:

THE HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

O.A. 484/93

Y.Kurikesu

.. Applicant

Mr.M.R.Rajendran Nair

..Advocate for the
Applicant

vs.

1. The Senior Superintendent of Telegraph Traffic,
Trivandrum Division.
2. The Chief General Manager, Telecom, Kerala Circle,
Trivandrum.
3. The Director General, Telecommunications,
New Delhi.
4. P.S. Radhakrishnan Nair

..Respondents

Mr.Abdul Sammad C.S, ACGSC
Mr.A.K.Madhavan Unni

Advocate for R1-3
Advocate for R4

JUDGMENT

Applicant, seeks to quash Annexure.I order, to the extent it transfers him from Trivandrum to Jorhat. According to applicant, arbitrariness is writ large in the order, as he has been subjected to hostile discrimination. Though he is liable to be transferred, applicant would submit that he cannot be transferred at will, retaining those juniors to him and those with longer service in the Circle. He would submit, that his junior Koshi is retained at Trivandrum, while transferring him.

2. In answer, Respondents would submit that the transfer was made in public interest and that an employee has no right to remain at the place of his choice.

3. It is settled law that an employee has no right to remain at any particular station, or for any length of time at any particular station. If authority is needed for this proposition, it is found in Gujarat Electricity Board vs. Atma Ram, AIR 1989 SC 1433, Shilpi Bose vs. State

of Bihar, 1991 Supp.(2) SCC 659, Union of India and others vs. H.N.Kirtania, 1989(3) SCC 447, Union of India vs. Thomas, 1993 Supp(1) SCC 704 and Union of India vs. S.L.Abbas, 1993(3) Judgments Today 678. As true as it is that an employee has no right in the matter of transfer, so true it is, that an employer cannot act arbitrarily or at whim in the matter of ordering transfers. Even in routine administrative matters, every public authority is beholden to the injunctions of Article 14 of the Constitution. As observed by the Supreme Court in S.G.Jaisinghani vs. Union of India (AIR 1967 SC 1427):

"In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view, means that decisions should be made by the application of known principles ... If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

4. To ascertain whether any principle or guidelines was followed in the matter of making the transfer, I adjourned the case on 30.7.93 affording a further opportunity to respondents "to state on affidavit the policy/norms adopted for making transfer to outlying circles". In response to this, an affidavit dated 14.9.93 was filed. I regret to say that instead of stating the policy or guidelines, respondents resorted to an exercise which is elusive, to put it euphemistically. It was stated in paragraph 9 that the policy is "

"exigencies of services", "availability of vacancies", "availability of personnel", "transfer liability of the cadre" and "pending request for transfer".

The statement does not indicate the guidelines to be followed. It only refers to the circumstances, in which transfers are made and not principles, upon which transfers are made. I do not know whether it was inadequacy in understanding, or any other reason that led to this elusive statement. The fact remains that, even after giving several opportunities to justify the order of transfer on any principle or rule, respondents could not justify it, on either. If transfer was made on the

principle of longest stay in a Circle, or on any other principle, that could have been stated. Nothing was stated, presumably because, there was nothing that could be stated.

5. A submission made by counsel for applicant deserves notice in this context. He would submit that one Koshi who is similarly situated as the applicant, was retained at Trivandrum without transfer. To justify this, at one stage it was said by respondents that Koshi had a 'special training'. It is now seen from Annexure.12 that the said Koshi has been transferred to Mattancherry. It is not known whether the incumbent at Mattancherry also had a special training, and whether the person replacing Koshi, had the special training. It would appear from the material on record and the affidavit of the respondents, that the transfer was made not on the basis of any principle or norms. Only humour appears to have guided the respondents.

5. Then, they tried to say that transfer is in public interest. Transfer can only be in public interest, and for no other reason (except when it is by way of disciplinary action). The expression 'public interest' is not a magic word which can do service for anything in any situation. Nor, is it a carpet under which anything could be swept. Expression 'public interest' has a definite purport, and in a particular case such interest must be disclosed or discernible. It has not been done here. The ^pexpression 'public interest' like the expression 'exigencies of public service' is often made an apology, for something that cannot be justified. I am not unaware that these concepts, are not capable of visible demonstration. Then, they cannot be a camouflage for a collateral purpose. It is clear from the facts that the transfer ordered is not supportable (prima facie) on any principle, rule or other known norm.

6. Be that as it may, since applicant has raised his grievances in Annexure.VIII before the third respondent, Director General, I am of opinion that the Director General should consider the matter instead

.4.

of this Tribunal dealing with it. He will specifically examine, (a) whether any public interest supports the order of transfer, (b) whether there was discriminatory treatment between Koshi and the applicant, and (c) whether any known or justifiable principle motivated the transfer. He will also impress the need to act without arbitrariness on his subordinate officials even in routine administrative matters. The interim order of stay granted by a Bench of this Tribunal on 18.3.1993 will enure to the benefit of applicant, till a final decision is taken by the third respondent, Director General, on Annexure.VIII.

7. Application is allowed to the extent hereinbefore mentioned. Parties will suffer their costs.

Dated the 28th October, 1993.

Chettur Sankaran Nair
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

njj/29.10

List of Annexures:

1. Annexure.1

True copy of the order
No.ST/GO/Genl/93/75
dated 15.3.93 issued
by the 1st respondent.

2. Annexure.VIII

True copy of the
representation dated
9.2.93 of the applicant
to the 3rd respondent.

3. Annexure-XII

Memo No.STT/1-2/Gr.
'B'/93 dated 4.10.93.